



Thursday, 27 April 2017

## **DEVELOPMENT MANAGEMENT COMMITTEE**

A meeting of **Development Management Committee** will be held on

**Monday, 8 May 2017**

commencing at **2.00 pm**

The meeting will be held in the Rosetor Room, Riviera International Conference Centre, Chestnut Drive, Torquay

### **Members of the Committee**

Councillor Kingscote (Chairman)

Councillor Barnby  
Councillor Lewis (B)  
Councillor Morey  
Councillor Pentney

Councillor Robson  
Councillor Stringer  
Councillor Tolchard  
Councillor Winfield

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**A prosperous and healthy Torbay**

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For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

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# DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 27 February 2017 and 13 March 2017.

(Pages 4 - 10)

3. **Declarations of Interests**

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

4. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

5. **Land Off Brixham Road -Long Road, Former Nortel Site, Paignton - P/2017/0123/MVC**

(Pages 11 - 39)

Variation of conditions on planning application P/2014/0947 (Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe/restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping) - Variation of Condition P1 (approved plans) to amend the access off Long Road and Variation of Condition 32 (Sale of goods within specified categories) to permit

the sale of convenience goods within one unit of up to 1,486sqm.

6. **Torquay Pavilion And Marina Car Park And Office And Adjoining Land, Vaughan Parade, Torquay - P/2015/0961/MPA** (Pages 40 - 108)  
Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms.  
Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel.  
Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016).
7. **Wheatridge Lodge, Wheatridge Lane, Torquay, TQ2 6RA - P/2017/0226/HA** (Pages 109 - 118)  
Double garage with workshop/storage over (retrospective).
8. **42 Whidborne Avenue, Torquay, TQ1 2PQ - P/2017/0259/PA** (Pages 119 - 129)  
Resubmission of application P/2016/0932/PA- Demolition of dwelling and proposed replacement dwelling with associated works.
9. **42 Whidborne Avenue, Wellswood, Torquay, Torbay - P/2017/0260/OA** (Pages 130 - 136)  
Re-submission of application P/2016/0933/OA - Demolition of dwelling and proposed replacement dwelling shown as 42A (in outline).
10. **31 Loxbury Road, Torquay - P/2017/0280/HA** (Pages 137 - 143)  
Side extension, extended balcony, porch and new hardstanding.
11. **Public speaking**  
If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.
12. **Site visits**  
If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 3 May 2017. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

#### **Note**

An audio recording of this meeting will normally be available at [www.torbay.gov.uk](http://www.torbay.gov.uk) within 48 hours.



## Minutes of the Development Management Committee

27 February 2017

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Cunningham, Darling (S), Morey, Robson, Stringer,  
Tolchard and Winfield

(Also in attendance: Councillors Amil, Brooks, Bye, Excell, Haddock, Lewis, Pentney,  
Stubley, Sykes, Thomas (D) and Tyerman)

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### 88. **Torquay Pavilion, Marina Car Park and Office and adjoining land, Vaughan Parade, Torquay - P/2015/0961/MPA**

The Committee considered an application for change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock Masters Office and associated landscaping (proposal revised 5 July 2016).

In October 2016 Members of the Development Management Committee undertook a site visit. Prior to the meeting written representations were circulated to members.

At the meeting the following people addressed the meeting against the application: Alan Griffey, Keith Richardson, Julie Brandon, Patricia Bishop, Cordelia Law and Jonathan Williams.

At the meeting the following people addressed the Committee in support of the application: Nicholas Roach, Lawrence Murrell, Ian Handford, Susie Colley and David Jobbins.

In accordance with Standing Order B4.1 the following members addressed the Committee: Councillors Lewis, Thomas (D), Bye and Darling (M). Councillor Excell's representation was read out by the Team Leader for Development Management.

Resolved:

- (i) That planning permission be granted for the proposal subject to clarification

of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:

- a) Opportunities for mitigating the impact of the lift shaft;
  - b) Confirmation that the balconies will be constructed as a continuous curve;
  - c) Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail;
  - d) Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building; and
  - e) External plant in relation to listed building;
- (ii) the conclusion of a Section 106 Agreement at the applicants expense to secure the following matters;
- a) to secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units (based on Appendix B of the IVA dated 31st August 2016, specifically the Savills estimates of values); or such other method agreed with the applicant (e.g. open book accounting of the entire scheme);
  - b) the maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm;
  - c) to ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed);
  - d) a commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report;
  - e) a commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel;
  - f) to secure a financial contribution of £30,000 towards enhancements to Princess Gardens;
  - g) to secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed;
  - h) to secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not 'bank parked' as explained in the body of the report;
  - i) to secure modelling of the mini roundabout and implementation of any

highway works deemed necessary via a S278 Notice prior to any occupation Performance bond (if required); and

- iii) and the conditions set out in the submitted report plus additional conditions relating to monitoring of key walls and dock office.

**89. Torquay Pavilion, Marina Car Park and office and adjoining land, Vaughan Parade, Torquay - 2015/0962/LB**

The Committee considered an application for refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016).

In October 2016 Members of the Development Management Committee undertook a site visit. Prior to the meeting written representations were circulated to members.

Resolved:

That listed building consent be granted subject to a) receipt of details which confirm that the extract and ventilation requirements of the pool, spa and restaurant uses within the building can be accommodated without harm to the internal character of the building or to its external appearance and that the impact of warm humid air on the stability of the plasterwork can be mitigated and b) to the following conditions:

- (i) to secure an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works and reinstatement included with the application drawings. The agreed schedule of works to be implemented in full prior to any occupation of the proposed flats included in the sister application P/2015/0961;
- (ii) submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair, reinstatement of key features. This document to include large scale details as appropriate of all works of repair and reinstatement of external and internal features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme;
- (iii) details of all partitions showing final position and relationship to the internal structure of the building and showing inclusion of glazed panels as appropriate to maintain the open character of the main auditorium;
- (iv) submission of a structural survey to confirm that the long term stability of the quay side can be assured;
- (v) submission of a full photographic record of all key features along with any exposed during conversion; and
- (vi) full details of the proposed relocation of the traditional bollards along the quayside.

Chairman



## Minutes of the Development Management Committee

13 March 2017

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Lewis (B), Morey, Pentney, Robson, Stringer, Tolchard and Winfield

(Also in attendance: Councillors Amil, Brooks, Excell, King, Lewis and Parrott)

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### 90. Minutes

The Minutes of the meeting of the Development Management Committee held on 13 February 2017 were confirmed as a correct record and signed by the Chairman.

### 91. Urgent Items

The Committee considered the items in Minute 98, and not included on the agenda, the Chairman being of the opinion that it was urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

### 92. 286-288 Totnes Road, Paignton, TQ4 7HD - P/2015/0679/R3

The Committee considered an application for demolition of one pair of semi detached houses and redevelopment with two three bed houses and five two bed flats with associated parking.

Prior to the meeting written representations were circulated to members.

Resolved:

Approved with the final drafting of conditions being delegated to the Executive Head of Business Services relating to:

- i) reserved Matters;
- ii) tree protection;
- iii) details of cellular root protection system;
- iv) landscaping scheme including biodiversity enhancements;
- v) Implementation of drainage scheme;
- vi) submission of reptile mitigation strategy;
- vii) no vegetation removal or demolition during bird nesting season;
- viii) provision of cycle storage;

- ix) provision of bin storage and submission of waste management strategy; and
- x) provision of parking provision.

**93. Whitehill Country Park, Stoke Road, Paignton, TQ4 7PF - P/2016/1253/MPA**

The Committee considered an application for additional mobile holiday accommodation and associated engineering works, replacement of toilet block with mobile washroom facility and new tennis court.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members. At the meeting Mr Jeavons addressed the Committee in support of the application. In accordance with Standing Order B4.1 Councillor Amil addressed the Committee.

Resolved:

Approved subject to:

- i) the receipt of further information relating to drainage; ecology, highways and landscaping;
- i) a Section 106 Agreement towards the monitoring of the holiday use;
- ii) an Unilateral undertaking to fund a Traffic Regulation Order for the double yellow lines at the junction of Stoke Road and Totnes Road; and
- iii) final drafting of conditions to be delegated to the Executive Head of Business Services.

**94. Devonshire Park (Formerly Nortel Site) Proposed Unit C Shown On Plan 14290 007B Land Off Brixham Road, Long Road Former Nortel Site, Paignton, TQ4 7BE - P/2016/1372/MVC**

The Committee considered an application for the variation of conditions P1, 34 and 35 of P/2014/0947.

Prior to the meeting written representations were circulated to members.

Resolved:

Approved subject to:

- i) the receipt of additional evidence which demonstrates that there are no sequentially preferable alternative sites for a retail unit of 557sqm ground floor prior to the 23.03.2017 unless an extension of time has been agreed with the applicant. In the absence of satisfactory information, or where Officers conclude that such evidence fails to demonstrate that a significant adverse impact is unlikely then the application to amend condition 34 be refused;
- ii) revised wording to;



- a) retain a reference to the masterplan within Condition P1;
  - b) permit the provision of one retail unit with a gross ground floor area of less than 929sqm but restrict this one unit to a total floor area no less than 836sqm and including gross ground floor area of no less than 550sqm, and;
  - c) permit a non-retail concession within retail units, solely for A3 café/restaurant use, where the floorspace of the concession does not exceed 10% of the gross ground floor area of the unit;
- iii) all previous conditions; and
- iv) completion of a Deed of Variation to the original Section 106 Agreement linking the amendment to the original agreement, to be completed by 23 March 2017, or within three months of the date of this meeting where an extension of time has been agreed with the applicant. In the absence of the signed deed the application to be refused.

**95. Myplace, Parkfield, Colin Road, Paignton, TQ3 2NR - P/2017/0121/MPA**

The Committee considered an application for relocation of Torbay School to MyPlace, Parkfield. Alterations to MyPlace, Parkfield and construction of new single storey extension for Torbay School.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members. At the meeting Simon Sinclair and Tim Tipping addressed the Committee against the application and Alison Kenny and Matt Caunter addressed the Committee in support of the application. In accordance with Standing Order B4.1 Councillors Lewis and Parrott addressed the Committee.

Resolved:

That the application be refused on the grounds of overdevelopment on the site and the impact the proposal would have on neighbouring properties by reason of the proximity to these properties.

**96. Land At Raleigh Avenue, Adj. Davis Avenue, Chelston, Torquay, TQ2 6DU - P/2017/0031/CU**

The Committee considered an application for the installation of 12.5m monopole, 2 microwave dishes, 2 equipment cabinets and associated works.

Prior to the meeting written representations were circulated to members. In accordance with

Resolved:

Prior approval refused due to the visual impact of the monopole on the surrounding area.

**97. Land At Princess Gardens, Off Torbay Road, Torquay, TQ2 5EY - P/2017/0092/PA**

The Committee considered an application for change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5 year period between the period of March to the 31st October).

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members. At the meeting Martyn Jenkins addressed the Committee against the application.

Resolved:

Temporary approval subject to:

- i) consent granted for use between 15 March and 31 October annually up to and including 31 October 2020;
- ii) subject to the resolution of the matters set out in the submitted report;
- iii) the receipt of satisfactory revised drawings showing revised location;
- iv) an additional condition requesting the ground be reinstated with turf before Remembrance Sunday; and
- v) the completion of a Section 106 Agreement to mitigate the impact on the registered park and garden.
- vi) The condition relating to hours of opening to require operation to cease at 10pm.

**98. Land West of Brixham Road, Paignton - P/2016/0188/MRM**

The Team Leader for Development Management explained that following the meeting of the Committee held on 13 February 2017 clarity had been sought from the applicant on the accuracy of the landscaping and visual lighting assessment and any impact on the Area of Outstanding Beauty.

Resolved:

Members resolved to accept the submitted landscaping and visual lighting assessment.

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Chairman

**Application Number**

P/2017/0123

**Site Address**

Land Off Brixham Road -Long Road  
Former Nortel Site  
Paignton

**Case Officer**

Mr Scott Jones

**Ward**

**Description**

Variation of conditions on planning application P/2014/0947 (Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and/or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping) - Variation of Condition P1 (approved plans) to amend the access off Long Road and Variation of Condition 32 (Sale of goods within specified categories) to permit the sale of convenience goods within one unit of up to 1,486sqm.

**Executive Summary/Key Outcomes**

This application is to change two conditions attached to a recently approved outline consent granted under reference P/2014/0947 for mixed use (Business/Bulky Goods Retail and Residential) development on the old Nortel/Bookhams site adjacent to Long Road and Brixham Road, Paignton.

Permission P/2014/0947 granted outline consent for the demolition of buildings and mixed use development comprising up to 255 dwellings, up to 5,574sqm of business and/or warehouse uses, up to 8,501sqm of (bulky goods) retail with up to 515sqm garden centre and up to 139sqm of café/restaurant use, along with related infrastructure and detailed consent for the access, and all other matters reserved.

The decision to grant outline consent was finely balanced as the provision of the retail floor space was considered to have an adverse impact on the Paignton and Torquay town centres, and approaching a significant adverse impact, due to the poor health of the centres and their vulnerability to relatively small levels of impact. This context is relevant to the application before Members.

The application seeks to vary Condition P1 (Plans) to amend the detailed access arrangements off Long Road. The amendment seeks to relocate the central of the three Long Road access points, which in the indicative masterplan at outline stage was shown to provide access to the rear of the retail area and one side of the

employment area. It is proposed to move the access westwards in the direction of the South Devon College and thus closer to the westward-most access that was shown to serve the employment area and rear service area. In terms of highway safety the revised access point is acceptable if one of the access points is solely for commercial vehicles only, in order to reduce highway conflict caused by close proximity. In terms of design the illustrative masterplan submitted as part of the outline permission identified the provision of up to 5574sqm of business floor space in this area of the site. The reduced distance between the two access points reduces the land available to deliver the business uses and certainty that the amount of floor space can still be delivered. Further information on this point has been requested, which includes certainty on the floor space to achieve the 515sqm of garden centre.

The application also seeks to vary Condition 32 (Sale of goods within specified categories) to permit the sale of convenience (food) goods within one unit of up to 1,486sqm.

The NPPF sets out two tests for assessing applications for town centre uses in out of centre locations. These are the sequential test and impact test. The current situation is made more complicated by sites permission for retail use, albeit non-food retail.

Convenience retail is a town centre use and it is necessary to consider whether there is a sequentially preferable site and also to consider the retail impact upon Paignton, Brixham and Torquay town centres. Further information has been requested of the applicant and a response has been recently submitted. The Council's retail advisor is currently considering the additional information and the weight that should be given to the sequential test and the advice will be presented to Members verbally at the meeting.

If it is considered that full weight should be applied to the sequential and there is a sequentially preferable alternative site for a convenience retail unit circa 1486sqm the application should be refused, as it would be contrary to local and national planning policy guidance.

If there is no sequentially preferable site but the impact of the convenience store is likely to have a significant adverse impact upon town centres the application should be refused as it would be contrary to local Plan Policies TC1-TC3 and the National Planning Policy Framework.

If it is concluded that there is no sequentially preferable site and that the provision of convenience retail is unlikely to have a significant adverse impact on town centres then the provision of a convenience retail unit would not fail the key retail policy tests and the application can be approved.

The contribution that an approval for convenience retail could make to unlocking the development of the derelict brownfield site is a material consideration.

However, paragraph 27 of the NPPF indicates that applications in out of centre locations should only be approved where both the sequential and impact tests are met, and therefore the interpretation of these tests is pivotal to consideration of the application.

The applicant has cited that the amendments are required to enable terms to be agreed with retail users in order to permit the implementation of a viable retail park following disappointing interest on the terms granted at outline stage.

There are three representations raising objections. The Paignton Neighbourhood Forum cites that the proposal fails the sequential test for food retail as Crossways could deliver the store, and has concern that the retail impact assessment is not robust enough. The two further representations raise concern in terms of traffic impact and the robustness of the assessment, along with certain points that appear to relate to the wider outline consent.

### **Recommendation**

Should the retail advice conclude that there is no sequentially preferable alternative site(s) for a convenience retail unit of 1486sqm and that there will be no significant adverse impact upon town centres, the recommendation is;

Approval subject to;

- i. Submission of further detail which demonstrates to the satisfaction of the Executive Head - Business Services that the quantum of development approved at outline stage (to include the 5574sqm of business uses and 515sqm of garden centre) can be appropriately delivered within the revised access arrangement. In the absence of information that demonstrates that the quantum of business uses can be appropriately delivered the application to be refused as it fails to ensure that the distribution of uses granted at outline stage can be achieved.
- ii. Submission of revised access details that reduces the conflict between the two access points that sit in close proximity, to the satisfaction of the Executive Head - Business Services.
- iii. Completion of a deed of variation to the original S106 legal agreement linking the amendment to the original agreement, to be completed within three months of the date of this meeting unless an extension of time has been agreed with the applicant, to include a sustainable transport contribution to the sum of £122,479.00 to mitigate the additional trips and provide for improvement works to the Western Corridor. In the absence of the signed deed within an agreed time period the application is to be refused as it fails to mitigate the impact upon the highway network.
- iv. Conditions attached to the parent permission P/2014/0947.

Should the outstanding retail advice conclude that there is a sequentially

preferable site for a convenience store of 1486sqm and/or there is a likely significant adverse impact upon existing town centres the recommendation to Members is:

Refusal; as the proposal (if relevant) fails to demonstrate the absence of a sequentially preferable site to accommodate a convenience retail unit of around 1486sqm, having regard to the need for flexibility in the format and/or scale as required by the NPPG; or (if relevant) fails to demonstrate that it is unlikely that there would be a significant adverse impact upon existing town centres, contrary to Policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF (Paras 24 and 27 and NPPG). Precise wording to be delegated to the Executive Head - Business Services.

### **Decision Level / Statutory Determination Period**

The application is before Members as the proposal is an amendment to a major application.

The determination date for this application is the 10th May 2017.

### **Site Details**

The site comprises the former Nortel/Bookham site, now known as Devonshire Park, to the west of Brixham Road on the outskirts of Paignton. The site area is 9.76ha. The site is a former industrial site that primarily manufactured electronics and closed in 2006. Following demolition of most of the buildings in recent years, the site is largely derelict.

The site is bounded by housing, sports pitches and Western Business Park to the north, Brixham Road to the east, Long Road to the south and South Devon College to the west.

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. The topography of the site rises by about 20 metres from south to north. It is within Flood Zone 1 and a Critical Drainage Area. Parts of the site particularly to the north have become overgrown. There are scattered lines of trees on and around the boundaries of the site. Parts of the site are likely to be contaminated from the historic uses. The parts with most risk are to the south and particularly to the west, with lower risk to the north.

### **Detailed Proposals**

The application seeks to vary two conditions, as outlined below.

The application seeks to vary Condition P1 (Plans) to amend the detailed access arrangements off Long Road. The outline consent approved four access points, one off Brixham Road to serve the residential use, and three off Long Road to serve the retail and employment uses. The amendment seeks to move the central of the three Long Road access points, which within the outline masterplan provided

access to the rear of the retail area and also serve one side of the employment area. The proposal is to move this access westwards in the direction of the South Devon College and closer to the westward-most access that also served the employment area. The previous distance between these two access points was 72.5m, the amendment reduces this to 33m.

The application also seeks to vary Condition 32 (Sale of goods within specified categories) to permit the sale of convenience goods (food retail) within one unit of up to 1,486sqm. Condition 32 currently permits the sale of the following goods;

- (i) Do-It-Yourself goods and materials;
- (ii) new kitchens and bathrooms;
- (iii) garden centre goods and materials, including plants;
- (iv) furniture and home furnishings
- (v) carpets and other floor coverings;
- (vi) gas and electrical goods;
- (vii) camping and associated leisure goods, no more than 10% of the net sales floor area of this category to be used for the sale or display of clothing and/or footwear;
- (viii) motor vehicle and bicycle related goods;
- (ix) pets and pet products;
- (x) office furniture; and
- (xi) ancillary products reasonably related to the categories above and restricted to a maximum floor area within each retail unit of 10% of the net sales floor area.

The range of goods that can be sold from the site was restricted to ensure that the retail units would be used for the sale of genuine bulky goods in order that the provision of out of town retail units on the site would not have a significant adverse impact on the vitality and viability of Torquay and Paignton town centres.

### **Summary Of Consultation Responses**

**Strategy and Project Officer (regarding highway and transport matters):**

#### ***Revised access:***

Relocating the industrial access closer to the access servicing the back of the retail units reduces the inter-visibility between the two accesses. The Highway Authority request that the access to the retail units is built as a commercial vehicle standard junction and limited to servicing vehicles. This should avoid confusion and conflict between the two junctions. The applicant will need to ensure that the HGV turning head is wide enough (in accordance with P33 of the Highways Design Guide) and that the turn around the business land is sufficient for service vehicles within any future Reserved Matters application.

Further to the above relocating the road appears to reduce the land available for employment. Plan 14290-007Rev F shows 0.9433ha. Achieving the Outline quantum of 5,574sq m would entail 55.74% site coverage, which is above the 35-

40% generally assumed for employment layouts. It is necessary for the applicant to show that the site with the changed access is capable of delivering 5,574sqm of employment floorspace.

As a note the access to the retail and residential areas appears to have been approved under the outline application. Neither appears to have a means of emergency access/exit, which should be provided in accordance with the Highways Design Guide.

***Convenience store:***

The submitted TRICS assessment to address the impact of convenience retail upon the immediate road network concludes that the traffic impact can be accommodated within the existing highway network, and does not create specific capacity log jams. It also notes that a number of trips will be passing or shared trips.

Notwithstanding the Transport Assessment convenience retail has a greater impact on the road network than non-food. TRICs indicates that Retail Parks excluding food generate 30.771 trips per day; whereas retail parks that include food sales generate 78.974 trips per day. The difference in trip rates between "with food" and "without food" retail parks is 48.2 trips per 100 sq m. On this basis 1,486 sq m food store on a retail park would generate 716.25 more trips than the same unit selling non-food. The Adopted Planning Contributions SPD seeks transport contributions based on £171 per trip (based on the assessed cost of delivering the LTP and highway infrastructure in Future Growth Areas).

The introduction of food retail will require a contribution of £122,479 to mitigate the additional impact upon the highway network, to be used towards projects on the Western Corridor as per Policy SS6.2.ii, and SS7 of the Adopted Local Plan.

*The Council's Retail Advisor (GVA)*

***Interim comments;***

The applicant's impact assessment adopts the contents of the Torquay retail study update as the basis for the assessment. It also takes into account the contents of a household survey which was undertaken for the Tesco proposals in Torquay in order to estimate the effect of some recent store openings, such as ASDA. Given the age (and mixture) of the household survey information being used, it would have been preferable for the applicant to commission a new survey which would remove the need to make a large number of assumptions about the trading effects of recent store openings. If a new survey is not undertaken, a consideration of the robustness of the evidence base data will be necessary.

In addition to taking into account the effects of the recent ASDA and ALDI store openings the applicant's assessment also takes into account the likely trading effects of the White Rock commitment. This is considered to be acceptable but the assessment should provide separate convenience and comparison goods



assessments.

Whilst it is reasonable to test the level of impact against the whole turnover of stores and centres, the applicant's assessment appears to exclude the impact of the remainder of the Devonshire Park scheme. There is also no mention of the new Range store in Torquay. As a consequence, the applicant's assessment needs to be updated.

Further information is necessary in order to provide advice on the retail impact of the proposal.

*Note: A response from the applicant has been received and the updated comments of the retail advisor will be provided to members.*

TDA Regeneration Programme Director

This out of centre food outlet does not accord with the Local Plan. Town centre regeneration is now one of the Council's top transformation projects to which significant resources are being committed. There is an evolving programme of work to achieve the first phase of regeneration, which seeks to build investor confidence. That confidence, and our efforts, will be significantly undermined by any further increase in food retail out of town. Food retail is a key element of viability and achieving viability for town centre redevelopments is tough and with food retail is really tough. Additional out of town food retail will reduce viability. Town centres should be the only available option.

**Summary Of Representations:**

There are three representations raising objections. The Paignton Neighbourhood Forum cites that the proposal fails the sequential test for food retail as crossways could deliver the store, and has concern that the retail impact assessment is not robust enough. The two further representations raise concern in terms of traffic impact and the robustness of the assessment, along with certain points that appear to relate to the wider outline consent. These have been sent to Members electronically for their consideration.

**Relevant Planning History:**

*P/2016/1372:* Variation of condition P1, 34 and 35 of P/2014/0947 (Outline Application with all matters reserved except access) - to vary Condition (P1) - Approved Plans to omit reference to the Masterplan, Condition (34) to vary the minimum unit size restriction for 1 unit and Condition (35) to clarify the restriction of concessions. Resolved Approval by DMC - Pending formal decision.

*P/2014/0947:* Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and

redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. Approved 22.03.2016 (Subject to a legal agreement and conditions).

**Key issues / material considerations:**

The key issues are:

1. The access amendment and impact upon; (a) the outline consent and (b) the highway network, and
2. The provision of convenience retail concerning; (a) the sequential test, and (b) town centre investment and vitality and viability

**1. Revised Access**

**1(a) Impact upon the outline consent**

The outline consent was granted with four detailed access points and all other matters were reserved. The proposal was accompanied by a Design and Access Statement and an indicative masterplan that demonstrated that the quantum of development proposed could be delivered within the site.

The outline permission granted three detailed access points off Long Road that collectively served the retail and employment elements of the outline permission. The proposal seeks to relocate the central access which, as indicated within the previously submitted indicative masterplan, was shown to serve the rear of the retail area (units) and also served the eastern flank of the employment area (units). As a point of note the employment area (units) were also shown to be served by the western-most access which served the western flank of the area (units) and also its rear. These two access points were 72.5m apart and the indicative masterplan showed a large employment block provided between the two with linear parking to either side. The indicative building was circa 44m wide by 86m deep, with a building line very close to Long Road.

Relocating the access point to a distance of 33m from the western-most access appears to reduce the land available for employment. Plan 14290-007Rev F shows 0.9433ha. To achieve the 5,574sqm of employment space specified in the outline permission would entail 55.74% site coverage, which is above the 35-40% generally assumed for employment layouts. Considering the constraints of the site area at present it is uncertain that the revision would not demonstrably harm the potential to appropriately deliver the amount of employment floor space approved at outline (5574sqm). In addition at present it is uncertain that the revision would

not demonstrably harm the potential to appropriately deliver the quantum of garden centre floor space approved at outline (515sqm) as the outline layout supporting the submission shows an area below this level.

It is recommended, for the reasons above that prior to the grant of permission, the applicant should submit revised indicative plans that show that 5574sqm of business floorspace and 515sqm of garden centre could be provided within the constraints of the revised access points.

The applicant has been requested to provide this information and members will be updated.

#### 1(b) Impact upon the Highway Network

Relocating the access point closer to the adjacent access servicing the back of the retail units reduces the inter-visibility between the two accesses and will provide two access points in relatively close proximity.

Long Road offers principally unobstructed sightlines as it is a relatively straight and flat section of highway. Notwithstanding this due to the close proximity of the two junctions there could be an impact upon highway safety should both junctions be in regular use.

The Highway Authority has requested that the access to the rear of the retail units is built as a commercial vehicle standard junction and limited to servicing vehicles only. This would avoid confusion between the two junctions and limit the regularity of use of one of the junctions and limit any conflict in terms of vehicle movement.

It is recommended that the submitted plans are amended to show (annotated) that the westernmost access is to be built to a commercial vehicle standard and limited to servicing vehicles and serves the rear of the commercial uses.

Subject to the above the proposal is considered acceptable on highway safety grounds and compliant with the aims and objectives of policies TA2, and DE1 of the Torbay Local Plan 2012-2030.

## **2. The Provision of a Convenience Retail Unit of 1486sqm**

#### 2(a) The Sequential Test

The site is in an out of centre location and is not within an area allocated or intended to be allocated for convenience retail use in any local plan.

A convenience store is a main town centre use as defined by the National Planning Policy Framework (NPPF). Paragraph 24 of the NPPF requires that a sequential test should be applied to planning applications for main town centre uses that are not proposed in an existing centre and are not in accordance with an up-to-date Local Plan.

Paragraph 27 of the NPPF states that where an application fails to satisfy the sequential test or is likely to have significant adverse impact it should be refused.

The applicant has provided a Planning and Retail Statement in support of the proposal which includes sequential testing (Section 7). The submission states that the outline permission (P/2014/0947) approved 8501sqm of retail space at Devonshire Park and thus establishes the principle of retail development on the site (Para 7.2). It further claims that appeal decisions (Para 7.3) should be taken into consideration where inspectors have concluded that where proposals did not seek new buildings or additional floor space, but widen the goods available within them, a more relevant and appropriate consideration was retail impact. It concludes that in light of the outline permission the site is a sequentially acceptable location.

The Council's retail advisor is to provide comment on the sequential test, including the weight it should be accorded in the light of the extant permission, and members will be updated. If the proposal is considered to fail the sequential test the application should be refused in-line with the NPPF.

*2(b) Impact on Town Centre Investment and Vitality and Viability*

The NPPF provides clear advice that proposals with the potential to generate a significant adverse impact upon town centres should be refused planning permission (Para 27).

Where the impact is adverse but not significant other benefits of the development, such as regenerating a derelict brownfield site, can be weighed against the harm to town centres when determining the application. In this case the applicant has reported that the convenience store is necessary in order to achieve a viable development to commence and bring forward in the market.

The decision to grant outline consent under planning reference P/2014/0947 was finely balanced as the provision of the retail floor space was considered to have an adverse impact on town centres, and near to a significant adverse impact, due to the poor health of the centres and their vulnerability to relatively small levels of impact.

During consideration of the outline consent the Council's retail consultant raised concern on the potential for a significant adverse impact on town centres. The parameters for the retail element were subsequently evolved and ultimately measures were identified to try and reduce the likely trading overlap between the comparison goods sectors to prevent a significant adverse impact.

Subsequently the Council's retail advice concluded that the revisions including terms of the range of goods that could be sold would reduce the trading overlap and in turn reduce the financial impact on these centres. It was however concluded

that although the restriction in goods may reduce the scale of risk regarding the significant adverse nature of any impact, the scale could remain significantly adverse as both centres are susceptible to relatively small levels of impact.

Outline permission was ultimately granted which was likely to have an adverse impact, but not a significant adverse impact, on town centres. The conditions attached were to limit the risk of a significant adverse impact on town centres, and included the range of goods to be sold, concessions, maximum floorspace, and a minimum unit size at ground floor level.

The current application seeks to introduce a convenience retail unit of 1486sqm, which is currently restricted by Condition 32 of the outline consent. The impact of this should be duly considered.

Policy TC3 of the Torbay Local Plan 2012-2030 provides policy guidance in regard to new out-of-centre retail development, citing that proposals must meet 3 criteria, these being;

1. Proposals should not cause any unacceptable impacts either individually or cumulatively on the vitality and viability of existing or planned centres,
2. No other town centre or edge of centre site is suitable, available or viable; and
3. Development would improve the spatial distribution of accessible facilities.

It is clear that the outline consent was granted on balance with restrictive conditions to reduce the risk of a significant adverse impact on town centres, which included the type of goods to be sold.

As there was clearly considerable concern over the level of the likely adverse impact any relaxation of the restrictive conditions should be duly considered due to the previously cited susceptibility of town centres to relatively small levels of impact.

The submitted Planning and Retail Statement has considered the likely impact upon Paignton and Brixham town centres.

It concludes that Paignton has a reasonably healthy town centre, given its size and function, and that the assessed trading impact of the development and the committed White Rock foodstore would be £1.21m in turnover which equates to a 2.06% trading impact. The submitted document concludes that 2.06% impact should not harm the vitality and viability of the Paignton Centre.

In regard to Brixham it concluded that the centre was healthy given its size and function and that a trading impact of £0.63m, which equates to a 3.09% impact, would not have a significant impact.

Other centres were also assessed including Preston Local Centre, which was considered to have a 6.28% trading impact. This was also considered by the applicant's Retail statement not to have a significant impact within the retail study.

The Councils' retail advisor has advised that given the age (and mixture) of the household survey information being used it is preferable to commission a new survey which would remove the need to make a large number of assumptions about the trading effects of recent store openings. If a new survey is not undertaken concern over the robustness of the evidence base data will have to be duly considered.

In addition the Council's retail advisor has advised that it is reasonable to test the level of impact against the whole turnover of stores and centres and that the applicant's assessment appears to exclude the impact of the remainder of the Devonshire Park scheme and also appears to exclude the new Range store in Torquay. The advice is that the applicant's assessment needs to be updated.

These points have been raised with the applicant and a response has been submitted. This response is currently being considered by the Council's retail advisor and Members will be updated and advised on the proposals compliance with Policy TC3 of the Torbay Local Plan 2012-2030 and the NPPF in terms of impact. Members are advised that if there is a likely significant impact then the proposal should be refused in accordance with the NPPF and Policy TC3.

### **S106/CIL**

Notwithstanding the Transport Assessment convenience retail is considered to have a greater impact on the road network than non-food.

The difference in trip rates between "with food" and "without food" retail parks is 48.2 trips per 100 sq m. On this basis 1,486 sq m food store on a retail park would generate 716.25 more trips than the same unit selling non-food.

The Adopted Planning Contributions SPD seeks transport contributions based on £171 per trip (based on the assessed cost of delivering the LTP and highway infrastructure in Future Growth Areas).

This would equate to a contribution of £122,479 to mitigate the additional impact upon the highway network. It would be used towards projects on the Western Corridor as per Policy SS6.2.ii, and SS7 of the Adopted Local Plan.

On the basis of the above, it is considered appropriate to seek a S106 Obligation as above to mitigate additional traffic generated by convenience sales.

The existing Section 106 agreement will need to be tied to the new application through a deed of variation to include the transport obligation outlined above.

This should be completed prior to the formal determination of the applications.

The proposal is not CIL liable as it is an amendment to an extant planning permission and does not increase floorspace. However CIL will be liable on any future increase in retail floorspace, should this occur. .

### **Statement of Pro-active Working**

The Council has sought to work positively and proactively with the applicant through pre-application discussions and through open dialogue throughout the application process including requests for further information.

### **Local Finance Considerations**

The applicant cites that the convenience store is necessary in order to provide the necessary quantum of interest to make commencement of the outline consent viable.

Delivery will bring a number of economic benefits to Torbay through the mixed provision of housing, retail and employment space.

However the economic consideration should also include the retail impact upon town centres and the potential loss of retail jobs in retail elsewhere in Torbay and adverse impact upon town centres.

Consideration should also be given to whether it has been demonstrably shown that the development would not come forward as approved without the provision of a food store and the potential retail impact of this.

### **Human Rights and Equality Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### **Conclusions**

The revised access is considered acceptable subject to (i) the receipt of outline plans that demonstrate that the quantum of development approved within the original outline consent can be adequately achieved, and (ii) the receipt of amended plans that confirm that one of the two access points in close proximity of each other is to be built to a commercial vehicle standard and limited to servicing vehicles, in order to reduce vehicular conflict.

The provision of a convenience food store is dependent on two matters which are currently unresolved.

Firstly acceptability is dependent on whether the proposal satisfies the sequential test. If it doesn't satisfy the test then the application should be refused in-line with advice contained within Policy TC3 of the Local Plan and in-line with Para 27 of the NPPF. The Council's retail advisor is to provide advice on this matter, and the level of weight that should be applied to the sequential test in light of the extant permission for non-food retail of mainly bulk items.

The second matter is dependent on the likely impact of the development on town centres. Should the proposal be likely to have a significant adverse impact the application should be refused in-line with Policy TC3 of the Local Plan and in-line with Para 27 of the NPPF. If it is concluded that the proposal will have a less than substantial impact then the broader merits of the scheme, including bringing forward development on a brownfield site, can be judged against the proposal. If there is considered to be a less than substantial impact Officers recommend, subject to all other matters being resolved, that the amendment is supported in order to help deliver development on a brownfield site and help secure the wider economic benefits that this would bring.

The Authority is in receipt of further information and the Council's retail advisor is to provide advice on the sequential test and the likely retail impact.

The introduction of convenience retail is indicated by trip rate analysis (TRICS) to generate an increase in vehicular traffic. The Highways Authority has requested a S106 Contribution towards mitigating the effect of this upon the Western Corridor.

*Proposed planning conditions:*

All conditions previously attached to the outline consent apply.

**Condition(s)/Reason(s)**

01. Prior to the submission of any application for approval of the reserved matters, a Tree Survey of the site shall be submitted to and approved in writing by the Local Planning Authority. The Tree Survey shall be carried out in accordance with BS 5837:2012 (or any superseding British Standard). The approved Tree Survey shall be used to inform the details of the reserved matters.

Reason: To ensure that appropriate trees are retained on the site and integrated into the detailed design of the scheme in accordance with Policy C4 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that appropriate existing trees and/or hedgerows are retained in the development and taken into account in the detailed design proposals.

02. Details of the reserved matters set out below ("the reserved matters") shall be submitted to the Local Planning Authority for approval within three years from



the date of this permission:

- (i) layout
- (ii) scale
- (iii) appearance
- (iv) landscaping

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced. The reserved matters shall be carried out as approved.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

03. The details of reserved matters shall include the mitigation and enhancement measures set out in Section 6 of the submitted Ecology and Landscape Report (Engain, September 2014). The artificial bat roost shall be constructed as approved prior to the first occupation of any of the dwellings hereby permitted. The artificial feature for reptiles shall be constructed as approved prior to the commencement of development and used in connection with the provisions of condition 10.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF.

04. The details of reserved matters shall include bird nesting/bat roosting boxes in the design of the buildings in accordance with the RSPB comments received on 24.11.2014. Prior to the commencement of the development of the buildings, the design specification(s) of the bird nesting/bat roosting boxes that will be used in the buildings shall be submitted to and approved in writing by the Local Planning Authority. The bird nesting/bat roosting boxes will be provided in the buildings as approved.

Reason: In the interests of biodiversity in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that appropriate bird nesting/bat roosting boxes are provided in the buildings.

05. The details of reserved matters shall include noise mitigation measures in accordance with the Noise Impact Assessment (24 Acoustics, September 2014) submitted with the application. No dwelling shall be occupied until the noise mitigation measures have been provided as approved. This includes any measures to be provided on land outside the application site boundary in accordance with Para 5.2 of the Noise Impact Assessment. The noise mitigation

measures to be provided on site shall form an integral part of the landscaping details and shall be designed to not have an adverse impact on views of the site or on visual amenity. The details shall be accompanied by technical information to demonstrate to the satisfaction of the Local Planning Authority that the measures will be adequate to prevent any noise nuisance to the dwellings from the business and retail uses, including any plant and associated traffic and deliveries, as well as the surrounding uses and roads. The technical information shall demonstrate that the level of noise at the nearest noise sensitive receptor will be 10db below background noise levels when measured and rated using BS 4142:2014 'Methods for rating and assessing industrial and commercial sound' (or any superseding British Standard).

Reason: In the interests of residential and visual amenity in accordance with Policies DE1 and DE2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58 and 123 of the NPPF.

06. The details of reserved matters shall include details of cycle parking and bin storage/waste recycling facilities for the dwellings and any retail or business unit formed from the retail, business and/or warehousing floorspace hereby permitted. The cycle parking shall be secure, covered and located where it is well overlooked, wherever practicable, to reduce opportunities for crime. The relevant cycle parking and bin storage/waste recycling facilities shall be provided as approved prior to the first occupation or first use of the dwelling or unit to which it relates.

Reason: To promote cycling as an alternative mode of transport to the private car in accordance with Policy TA1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and to ensure appropriate space is provided for the storage and removal of waste, including waste recycling facilities, in accordance with Policy W1 of the Torbay Local Plan - A landscape for success 2012-2030.

07. No development (including demolition and ground works) or vegetation clearance works shall take place until a Scheme that includes the following components to deal with the risks associated with contamination of the site shall each be submitted to and approved in writing by the Local Planning Authority:

- 1) A preliminary risk assessment which has identified:
  - all previous uses;
  - potential contaminants associated with those uses
  - a conceptual model of the site indicating sources, pathways and receptors;
  - potentially unacceptable risks arising from contamination on the site.
- 2) A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off site.
- 3) The results of the site investigation and detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action. Any changes to these components require the express written consent of the Local Planning Authority. The Scheme shall be implemented as approved. If, during development, contamination not previously identified is found to be present at the site then no further development shall be carried out until a remediation strategy has been submitted to and approved in writing by the Local Planning Authority detailing how this unsuspected contamination shall be dealt with. The remediation strategy shall be implemented as approved.

Reason: To minimise contamination risks to future users of the site and surrounding land, including controlled waters, and to ensure the development can be carried out safely in accordance with Policy ER3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 120 and 121 of the NPPF. These details are required pre-commencement as specified to ensure that contaminated material is not released into the environment from building operations and there are no risks to workers, neighbours or other receptors.

08. No development (including demolition and ground works) or vegetation clearance works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. Priority shall be given to sustainable urban drainage systems, where soakaways must be designed in accordance with Building Research Establishment Digest 365 and include details of how they have been designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change. Evidence that trial holes and infiltration tests have been carried out in accordance with Building Research Establishment Digest 365 in the same location as any soakaways or sustainable drainage features must be provided. The scheme shall demonstrate that there will be no increased risk of flooding to surrounding buildings, roads and land. The development shall not be occupied or brought into use until the approved surface water drainage scheme has been completed as approved and it shall be continually maintained thereafter.

Reason: To manage water and flood risk in accordance with Policies ER1 and ER2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 103 of the NPPF. These details are required pre-commencement as specified to ensure that an appropriate drainage system is provided for the development and there will be no increased risk of flooding to surrounding buildings, roads and land.

09. No development (including demolition and ground works) or vegetation clearance works shall commence until:

a) a detailed survey and evaluation of the public foul sewerage network has taken place (at the Owner's expense) to identify improvements necessary to be

funded in advance and executed to accommodate the discharge of foul sewage from the development; and

b) the Owner has submitted an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 (which shall include the provision of public sewerage improvement works identified as necessary). The development hereby approved shall not be occupied or brought into use and there shall be no discharge to the public foul sewerage network, unless approved in writing by the Local Planning Authority (as in accordance with the scheme of improvement works identified by the Sewerage Undertaker as necessary to accommodate the discharge of foul sewage from the development).

Reason: To ensure the public foul sewerage network has capacity to accommodate the development and any necessary improvement works are carried out in accordance with Policies ER2 and W5 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that the public foul sewerage network has capacity to accommodate the development.

10. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. The CEMPs shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of 'biodiversity protection zones'.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
- d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person. The approved CEMPs shall be adhered to and implemented throughout the construction period of the phase of the development that they relate to strictly in accordance with the approved details.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan – A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that biodiversity is not harmed by building operations or vegetation removal.

11. No development (including demolition and ground works) or vegetation clearance works shall take place until a Lighting Design Strategy to maintain "dark areas" on the site has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include:

- a) A map showing the "dark areas" that will be maintained on site.
- b) An evidence based assessment of light levels of the proposed development, including buildings, vehicle headlamps and street lighting, comprising a written report and accompanying drawings of the site with the levels of predicted illuminance and light spill in and adjacent to the "dark areas" shown by appropriate isolines
- c) Evidence to demonstrate that a light spill no higher than 0.5 lux will be achieved within the "dark areas".
- d) Where c) is achieved either fully or in part through landscaping, details of the landscaping and its management to ensure it will maintain the "dark areas" in perpetuity. These details shall be incorporated into the Detailed Landscaping Scheme and Landscape and Ecological Management Plan (LEMP) where applicable. The Lighting Design Strategy shall be implemented and maintained as approved.

Reason: To prevent disturbance to bats, including greater horseshoe bats, in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that bats are not harmed by the construction and operation of the development.

12. No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be undertaken until the reasons why have been submitted to and approved in writing by the Local Planning Authority. The works shall not be undertaken except in the presence of a suitably qualified ecologist. If breeding birds are found or suspected, the works will not be permitted until the ecologist is satisfied that breeding is complete.

Reason: To ensure no harm to breeding birds in accordance with Policy NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 109 and 118 of the NPPF. The reasons why works must be carried out during the bird breeding season are required pre-commencement as specified to ensure that breeding birds are not harmed by building operations or vegetation removal.

13. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Construction Method Statement for that phase has been submitted to and approved in writing by the Local Planning Authority. The Statements shall provide

for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) Measures to minimise noise nuisance to neighbours from plant and machinery.
- h) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays. The approved Statements shall be adhered to throughout the construction period of the phase of the development that they relate to.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users. These details are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users.

14. No development (including demolition and ground works) or vegetation clearance works shall take place of any phase of the development until a Waste Audit and 5 year Waste Management Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. The Waste Audits and 5 year Waste Management Plans shall include measures to:

- a) Prevent and minimise, re-use and recycle waste (including composting where appropriate).
- b) Minimise the use of raw materials.
- c) Minimise the pollution potential of unavoidable waste.
- d) Seek alternative modes of transport (to the use of roads) to move waste (wherever possible).
- e) Make provision for the storage and collection of waste.
- f) Dispose of unavoidable waste in an environmentally acceptable manner. The Waste Audits and 5 year Waste Management Plans shall be implemented as approved.

Reason: To minimise waste from the development in accordance with Policy W2 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that waste generation is minimised from the start of the development and is dealt with in a sustainable way.

15. No development (including demolition and ground works) or vegetation

clearance works shall take place of any phase of the development until fences have been erected and any other protection measures put in place for the protection of trees and/or hedgerows to be retained in accordance with a Scheme for that phase which has been submitted to and approved in writing by the Local Planning Authority. The Schemes shall be prepared in accordance with British Standard BS 5837:2012 (or any superseding British Standard). The fences and any other protection measures required in the approved Schemes shall be retained until the completion of the development in the phase of the development that they relate to and no vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences.

Reason: To protect the trees and hedgerows to be retained in the interests of the amenities of the area, in accordance with Policy C4 of the Adopted Torbay Local Plan - A landscape for success 2012-2030. These details are required pre-commencement as specified to ensure that trees and hedgerows to be retained are not damaged by building operations or vegetation removal, including biodiversity interests.

16. The development shall not be occupied or brought into use until a Section 278 Highways Agreement has been entered into in order to secure the necessary works to the public highway. The s278 works shall include a waiting lane in the centre of the carriageway of Brixham Road for vehicles exiting the site and turning right onto Brixham Road from the vehicular access on the eastern site boundary, and provision of a shared footpath/cycleway linking this access to the pedestrian crossing at the Brixham Road/Long Road junction. The development shall not be occupied or brought into use until the s278 works have been implemented in full to the satisfaction of the Local Highway Authority.

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 32 of the NPPF.

17. Prior to the first occupation of any of the dwellings hereby permitted, a Detailed Landscaping Scheme for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping forming part of the curtilage and boundary of any dwelling, and access thereto, shall be constructed as approved prior to the occupation of the dwelling. The soft landscaping shall be planted in the first planting season following the occupation of the dwellings or completion of the residential development, whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the residential development as a whole die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

18. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Detailed Landscaping Scheme for the business and/or warehousing part of the site, including associated parking areas, shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping shall be constructed as approved prior to the first use of the business unit(s). The soft landscaping shall be planted in the first planting season following the occupation of the business unit(s) or completion of the business unit(s), whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the business unit(s) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

19. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Detailed Landscaping Scheme for the retail part of the site, including associated parking areas, shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include details of hard and soft landscaping, including all boundary treatments. This will include tree and plant species and methods of planting. The hard landscaping shall be constructed as approved prior to the first use of the retail unit(s). The soft landscaping shall be planted in the first planting season following the occupation of the retail unit(s) or completion of the retail unit(s), whichever is the sooner, or in earlier planting seasons wherever practicable, and any trees or plants which within a period of 5 years from the completion of the retail unit(s) die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Reason: In the interests of amenity and design in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

20. Prior to the first occupation of any of the dwellings hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications



in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

21. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the business and/or warehousing part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies

DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

22. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Landscape and Ecological Management Plan (LEMP) for the retail part of the site shall be submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP. The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery. All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 58, 109 and 118 of the NPPF.

23. Prior to the first occupation of any of the dwellings hereby permitted, an External Lighting Scheme for the residential part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the occupation of the dwellings. Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

24. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, an External Lighting Scheme for the business and/or warehousing part of the site shall be submitted to and approved

in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the first use of the business unit(s). Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

25. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, an External Lighting Scheme for the retail part of the site shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme shall be implemented as approved prior to the first use of the retail unit(s). Should any of the external lighting become damaged and need replacement it shall be replaced with external lighting of the same specification. No additional external lighting shall be installed on this part of the site.

Reason: In the interests of amenity, design, crime prevention and biodiversity in accordance with Policies NC1, DE1 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 125 of the NPPF.

26. Prior to the first occupation of any of the dwellings hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the residential development meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

27. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the business and/or warehousing part of the site meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

28. Prior to the first use of any retail unit formed from the retail floorspace

hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the retail part of the site meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 58 of the NPPF.

29. Prior to the first occupation of any of the dwellings hereby permitted, a Residential Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by future residents of the dwellings. The Residential Travel Plan shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the developer of the dwellings to ensure that it meets its objectives and targets. The contact details of the TPC shall be provided in the Residential Travel Plan. In the event that the objectives and targets of the Residential Travel Plan are not met, the Residential Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of the Residential Travel Plan or updated Residential Travel Plan, as the case may be, shall be made available to the Local Planning Authority upon request during normal business hours. A summary of the Residential Travel Plan shall be provided to the first occupier of each dwelling hereby permitted setting out the options for sustainable modes of travel in the area.

Reason: To promote sustainable modes of travel in the interests of reducing greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

30. Prior to the first use of any business unit formed from the business and/or warehousing floorspace hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by staff of the business unit. The Travel Plans required by this condition shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the relevant occupier of the business unit or the developer of the business and/or warehousing floorspace to ensure that they meet their objectives and targets. The contact details of the TPC shall be provided in each Travel Plan required by this condition. In the event that the objectives and targets of any Travel Plan required by this condition are not met, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of any Travel Plan or updated Travel Plan, as the case may be, shall be made available to the Local Planning Authority upon request during normal business hours.

Reason: To promote sustainable modes of travel in the interests of reducing

greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

31. Prior to the first use of any retail unit formed from the retail floorspace hereby permitted, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority incorporating measures to promote the use of sustainable modes of travel instead of private car by staff and customers of the retail unit. The Travel Plans required by this condition shall be implemented as approved and shall be continually monitored by a Travel Plan Coordinator (TPC) appointed by the relevant occupier of the retail unit or the developer of the retail floorspace to ensure that they meet their objectives and targets. The contact details of the TPC shall be provided in each Travel Plan required by this condition. In the event that the objectives and targets of any Travel Plan required by this condition are not met, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of any Travel Plan or updated Travel Plan, as the case may be, shall be made available to the Local Planning Authority upon request during normal business hours.

Reason: To promote sustainable modes of travel in the interests of reducing greenhouse gas emissions and pollution, in accordance with Policies SS13, TA1, TA2 and DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 36 of the NPPF.

32. The retail floorspace (Use Class A1) hereby permitted shall not be used for the sale of any goods other than those within the following categories:

- (i) Do-It-Yourself goods and materials;
- (ii) new kitchens and bathrooms;
- (iii) garden centre goods and materials, including plants;
- (iv) furniture and home furnishings
- (v) carpets and other floor coverings;
- (vi) gas and electrical goods;
- (vii) camping and associated leisure goods, no more than 10% of the net sales floor area of this category to be used for the sale or display of clothing and/or footwear;
- (viii) motor vehicle and bicycle related goods;
- (ix) pets and pet products;
- (x) office furniture; and
- (xi) ancillary products reasonably related to the categories above and restricted to a maximum floor area within each retail unit of 10% of the net sales floor area.

Reason: To protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

33. The total gross floor area of the retail floorspace (Use Class A1) hereby permitted, including ancillary storage and office space, shall be no more than 8,501 sq m. The total gross floor area, together with any external area, of the garden centre hereby permitted shall be no more than 515 sq m. The total gross floor area of the retail floorspace (Use Class A3) hereby permitted, including ancillary storage and office space, shall be no more than 139 sq m.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

34. The minimum gross floor area at ground floor level of any retail unit formed from the retail floorspace (Use Class A1) hereby permitted shall be 929 sq m and the retail units shall not be sub-divided into smaller retail units.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

35. Any retail unit formed from the retail floorspace (Use Classes A1) hereby permitted and the garden centre shall be used by a single operator and shall not include any independently operated concessions, unless they are reasonably related to the goods sold by the unit as permitted by condition 32.

Reason: For the avoidance of doubt and to protect the vitality and viability of Paignton and Torquay Town Centres and other nearby centres in accordance with Policies TC1 and TC3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraphs 24 and 27 of the NPPF.

36. No delivery vehicular movements to any retail unit formed from the retail floorspace hereby permitted or business unit formed from the business and/or warehousing floorspace hereby permitted nor any loading or unloading of vehicles in connection with the aforementioned units shall take place except between the hours of 08:00 and 18:00 Monday to Friday and 08:00 and 13:00 on Saturdays. There shall be no deliveries to the units nor any loading or unloading in connection with the same on Sundays or Bank and Public Holidays.

Reason: To protect residential amenity in accordance with Policy DE3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030, and paragraph 123 of the NPPF.

37. No dwelling shall be occupied until its allocated parking space(s) and access thereto, as shown in the approved details of reserved matters, has been provided and made available for use. The parking space(s) and access thereto

shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the dwellings and kept permanently available for use in the interests of highway safety and residential amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

38. No business unit formed from the business and/or warehousing floorspace hereby permitted shall be brought into use until its allocated parking spaces and access thereto, as shown in the approved details of reserved matters, have been provided and made available for use. The parking spaces and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the business units and kept permanently available for use in the interests of highway safety and amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

39. No retail unit formed from the retail floorspace hereby permitted shall be brought into use until its allocated parking spaces and access thereto, as shown in the approved details of reserved matters, have been provided and made available for use. The parking spaces and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: To ensure that adequate off-street parking and access thereto is provided for the retail units and kept permanently available for use in the interests of highway safety and amenity, in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan - A landscape for success 2012-2030.

**Application Number**

P/2015/0961

**Site Address**

Torquay Pavilion And Marina Car Park And  
Office And Adjoining Land  
Vaughan Parade  
Torquay  
TQ2 5EL

**Case Officer**

Mrs Helen Addison

**Ward**

Tormohun

**Executive Summary/Key Outcomes**

1. Members will be aware that the resolution of the Development Management Committee of 27<sup>th</sup> February 2017, to grant planning permission for the development of Torquay Pavilion and Marina car Park, subject to the receipt of further information, the completion of a s.106 agreement and various planning conditions, is currently the subject of an application for Judicial Review. The Council is contesting the application, and is awaiting a decision from the High Court as to whether the application will be given permission to proceed.
2. Whilst the legal advice received is that the application that has been made is not well-founded, further consideration has been given to the overall decision-making process, and this has identified that the original officer report ('the Report') was not as clear as it might have been in certain respects. The legal advice is that it is prudent to address these matters at this stage, whilst the planning application remains outstanding, in order to ensure that any planning permission, if and when issued, is robust and not vulnerable to challenge on the basis of a technicality.
3. This report will clarify, for the avoidance of doubt, the policy assessment of the proposals against relevant provisions of the Local Plan and all other material considerations (including the Public Sector Equality Duty). It will also provide members with an update on the progress of the applications, particularly regarding matters where "clarification" was sought in the original resolution.
4. The policy assessment concludes that the proposals are in accordance with the Local Plan and that the application should be approved subject to a s106 agreement, receipt of additional information, and appropriate conditions.

**Recommendation**

- A. That the following additional information, submitted by the applicant as part of the application since 27 February 2017, is confirmed as being acceptable
  - a. clarification of the impact of 'shadowing' on the amenity of public space
  - b. opportunities for mitigating the impact of the lift shaft
  - c. confirmation that the balconies will be constructed as a continuous curve
  - d. detail in relation to the harbour walkway
- B. That conditional planning permission is granted for the proposal subject to
  - a. receipt of the following additional information
    - i. strategy for relocating the traditional railings and form and extent of new railing detail; and
    - ii. strategy for external and internal plant in relation to the listed building
    - iii. further details relating to the extended resurfacing between Offshore and



- the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services
- b. completion of a S106 agreement to include the matters listed in the Minutes to the Committee meeting of 27<sup>th</sup> February 2017
  - c. final drafting of conditions to be delegated to the Executive Head of Business Services

## **Assessment of Proposals against provisions of the Local Plan**

### **Guidance**

5. All members of the Development Management Committee have had Spatial Planning, Member Induction training and are aware that planning decisions must be made in accordance with the up-to-date development plan (the Torbay Local Plan 2012-2030), unless material planning considerations indicate otherwise.
6. If a planning application accords with the provisions of the development plan, planning permission should be granted without delay.
7. It is considered that the officer report dealt with all issues comprehensively, however it did not explicitly reach a conclusion on compliance with the Local Plan before going on to consider whether material considerations indicate a different outcome to that indicated by the Local Plan. The Council has received legal advice which recommends that the committee's decision will be strengthened if this omission is addressed before any planning permission is granted. This advice does not apply to consideration of the application for Listed Building consent because there is no statutory requirement to have regard to the provisions of the development plan when determining such applications.

### **Description of Development**

8. The proposals seek consent for the construction of a 60-bed hotel, which includes restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms, together with 43 residential apartments and ground floor restaurant and retail uses adjacent to the harbour . Consent is also sought for a link between Pavilion and new hotel, a new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel), a Marina office, berth-holder facilities, a Dockmaster's office and associated landscaping.

### **Assessment**

9. With appropriate planning conditions and subject to additional control through a s.106 planning obligation, both as set out in the Report, the proposals will result in
  - a. large-scale urban regeneration which supports Torquay Town Centre and Harbourside by the provision of 43 good-quality town centre homes, a high-quality hotel and additional restaurant/retail facilities in Core Tourism Investment Area.
  - b. the renovation and long-term maintenance of the Pavilion through its integration into the hotel complex
  - c. improvement of the public realm in a key Harbourside location and the provision of public changing facilities for adults with disabilities.
  - d. the creation of up to 179 jobs in the hotel/restaurants and, through the use of a s.106 planning obligation, the use of local labour, training for local people and use of local produce.

10. The proposals accord with policies SS11 (Sustainable communities), TO1 (Tourism events and culture), SDT1 (Torquay Strategic Policy Area), SDT2 (Torquay Town Centre and Harbour), SS1 (Growth strategy), HE1 (insofar as it supports proposals which will help to conserve the historic fabric and character of a Listed building), H1 (Applications for new homes), DE1 (Design), DE2 (Building for Life), DE3 (Development Amenity), ER1 (Flood Risk), ER3 (Contamination), ER4 (Ground Stability), TC5 (Evening and night-time economy), SS14 (Low carbon development and adaptation to climate change), TA1 (Transport and Accessibility), TA2 (Development Access), TA3 (Parking requirements).
11. The Environment Agency and the Council's drainage engineer are satisfied with the Flood Risk Assessment; there are no land contamination or ground stability issues and the minimisation of carbon emissions will be secured by condition.
12. Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitats.
13. Although there are no specified minimum (or maximum) parking thresholds for town-centre uses in the Local Plan, the amount of car parking provided on site is considered to be the minimum necessary for successful delivery of the various proposed uses of the scheme and parking that is not related to the marina, hotel or apartments will not be provided.
14. The Council's Strategic Transport/highways teams consider that the proposals are acceptable subject to modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 agreement.
15. The Local Plan contains a number of additional policies, not specifically mentioned in the Report, which reinforce the aim of the Local Plan to support sustainable development. These include: SS3 Presumption in favour of Sustainable Development, SS4 The Economy and Employment, SS5 Employment Space, SS10 Conservation and the Historic Environment, SS12 New Housing, SS13 Five year housing land supply. The site is within Torquay Town Centre and Policy TC1 promotes the regeneration of key sites as expanded in Policies SDT1 and 2. Several of the proposed uses (hotel, leisure, retail and food and drink) are main town centre uses, which are supported by Policy TC1, TC2 and TC3 of the Local Plan.
16. The Torquay Town Centre Masterplan identifies the whole application site as a key regeneration site.
17. **Design and height/mass of the building** – the Report concludes that the building is 'well designed and has inherent merit'. Subject to ensuring that the detailed appearance and use of good quality robust materials by the imposition of planning conditions, on balance, the proposals accord with policy DE1 (Design). As the building will deliver significant wider public benefits, and alternative ways of delivering those benefits have been considered and discounted, the proposals are accordance with policy DE4 (Building Heights) and HE Advice Note 4 'Tall Buildings'.

18. **Affordable Housing** - Policy H2 (Affordable Housing) sets out a requirement to provide 20% affordable housing. The policy states that developers would be required to provide an independent assessment of viability in order to be permitted to reduce significantly the provision of affordable housing. Policy H2 further states that in order to secure additional investment in disadvantaged areas, the Council may agree to a reduction or zero provision of affordable housing. Development of such sites should provide significant benefits in terms of creating sustainable, balanced communities. The application was supported by an IVA and is located within a Community Investment Area (Policy SS11 area). On this basis, despite not providing affordable housing, the proposals accord with policy H2
19. The Report confirms that  
“The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden”
20. **Effect on Heritage Assets** - The Report assesses in detail the effect of the proposed building, and the loss of Cary Green (as part of the setting of adjacent listed buildings) on various Heritage Assets and concludes that the development is harmful to the setting and significance of key listed buildings (Members should note that, contrary to heading 11 on p. 51 of the report, the quay walls adjacent to the site are not listed), to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. The Report concludes that
- a. the extent of the harm caused by the building is ‘significant’ but ‘less than substantial’
  - b. the proposed alterations to Cary Green are acceptable in heritage terms
21. Sections 66 & 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the ‘Listed Buildings Act’) imposes a duty on Local Planning Authorities when determining planning applications to pay special attention to the desirability of preserving Listed Buildings, their setting or any features of special architectural or historic interest (s.66) and preserving or enhancing the character or appearance of the Conservation Area (s.72).
22. Paragraph 134 of the NPPF provides that ‘where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use’.
23. Policy SS10 (Conservation and the historic environment) reflects the requirements of sections 66 & 72 of the Listed buildings Act but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment.
24. SS10 states that proposals may affect heritage assets will be assessed on eight criteria. Criterion 7 is particularly relevant. It includes a test that allows any harm caused to

heritage assets to be balanced against (and potentially outweighed by) public benefits. In addition, para 4.4.30 of the supporting text to explain Policy SS10 suggests that it contains “sufficient flexibility” to ensure that any heritage harm is weighed against wider benefits.

25. The report acknowledges that the harm to heritage assets is ‘significant’ or ‘considerable’ but goes on to state that
- a. Subject to conditions, the design of the building and improvements to the public realm will lift the quality of spaces around it and achieve ‘place making’ regeneration to offset some of the harm to the historic environment
  - b. The public benefits of the scheme (discussed in full in section 4, p37 of the Report) are :
    - i. The restoration of the Pavilion – the cost of repairing the building to provide 25 years life has been estimated at £2.76m
    - ii. Public realm improvements round the Pavilion (although in part subject to a deferred contribution) as per p10 of the Committee Report
    - iii. Delivery of a 4\* hotel and the contribution this will make to maintaining Torbay’s position as a premier resort. The Council’s Tourism Strategy “Turning the Tide” identifies a shortage of higher ranking hotels, and a need for modern purpose built accommodation. Tourism accounts for about 22% of Torbay’s employment and the GVA generated by the development is estimated to be about 1% of the value of the tourism sector.
    - iv. Economic benefits estimated at being £32m of construction and 20 TFE construction jobs; plus 98 FTE jobs in the hotel and 81 jobs from the operation of bars and restaurants. The value to the local economy of this is estimated to be £4.27m per year. Up to an additional 136 jobs and £2.9m per year of economic benefit are assessed to arise from “net additional local impacts” arising from local sourcing and multiplier benefits.
    - v. Broader (and difficult to quantify) catalyst for urban renewal and regeneration as sought by the Local plan (SS1 etc) and the Corporate Plan. The development of nearby Palm Court has significantly regenerated this part of Torquay’s waterfront.
    - vi. The provision of 43 dwellings.
    - vii. Torbay is one of the most deprived areas in the South West. The indices of Deprivation 2015 indicate that its rank of average indices of multiple deprivation puts it at 46<sup>th</sup> out of 326 Local authority areas in England. By concentration of deprivation and employment deprivation, Torbay has even more severe indicators at 37 most deprived by concentration, 32 by average income and 14<sup>th</sup> by employment. Torquay Harbour (and most of Torquay town centre) falls within the top 10% most deprived lower super output areas. Deprivation has become steadily more pronounced over successive indices. The IMD picture is reflected in employment, income, GVA and benefit statistics. This is a material consideration in determining the weight that should be given to economic regeneration benefits.
26. The Report concludes, (in section 7, page 43) that
- “given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of

the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.”

The officer recommendation is therefore that the proposals accord with Local Plan policy SS10 (Conservation and the Historic Environment).

27. Policy HE1 (Listed buildings) accords with the LPA’s statutory duty as imposed by the Listed Buildings Act. It requires development proposals to have ‘special regard’ to the desirability of preserving listed buildings or their settings states but also states that suitable uses for listed buildings will be supported where this would help to conserve their historic fabric and character.
28. The report acknowledges that there will be some harm to the setting of the Grade I Listed St Johns Church and the Grade II listed Mallocks clock tower. However it concludes that the benefit of saving the Pavilion outweighs the harm the development will cause. The proposals therefore accord with Local Plan policy HE1 (Listed Buildings).

### **Material Considerations**

29. Government Guidance – The National Planning Policy Framework (NPPF) contains the government’s planning policy. The presumption in favour of sustainable development (para 14) does not apply to designated heritage assets (which include conservation areas and listed buildings). However the Ministerial Foreword indicates that development means growth, and that the planning system should enable positive growth. Paragraphs 6-10 indicate that the planning system should play an active role in promoting sustainable development.
30. Paragraph 17 sets out Core Planning Principles. Bullet 3 indicates that every effort should be made to meet the needs of an area. Bullet 4 seeks high quality design and good standards of amenity.
31. Specific policy on conserving and enhancing the historic environment is set out in Chapter 12. Paragraph 131 requires planning authorities, when determining planning applications, to take account of:
- i. The desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation.
  - ii. Positive contributions that conservation of heritage assets can make to sustainable communities including their economic viability.
  - iii. The desirability of new development making a positive contribution to local character and distinctiveness.
32. Paragraph 133 indicates that proposals that lead to substantial harm to, or total loss of, a designated heritage asset, should be refused *unless the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss*; or all of four criteria apply. In summary these criteria are:
- There are no reasonable uses of the site due to the nature of the heritage asset.
  - No viable use of the heritage asset can be found in the medium term.
  - Conservation is demonstrably not possible.
  - The harm or loss is outweighed by the benefit of bringing the site back into use.

33. Paragraph 134 of the NPPF indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm must be weighed against the public benefits of the proposal, including securing its optimum viable use.
34. The Glossary of the NPPF defines heritage assets and significance. Significance means value for this and future generations, and includes a number of factors including setting.
35. The NPPF is elaborated on by the online (National) Planning Practice Guidance (PPG). Paragraph 18a-017-20140306 defines substantial harm in terms of the impact on the significance on the heritage asset. Assessing whether a proposal causes substantial harm is a matter for the judgement of the decision taker, but it is noted that “in general terms substantial harm is a high test”.
36. The PPG defines public benefits in relation to heritage assets at 18a-020-20140306. These include (but are not limited to):
  - Sustaining or enhancing the significance of heritage assets
  - Reducing or removing risks to a heritage asset
  - Securing optimum viable use of a heritage asset in support of its long term conservation.

### **Emerging Torquay Neighbourhood Plan**

37. The Torquay Neighbourhood Forum consulted on a Regulation 14 Draft version of the Torquay Neighbourhood Plan between 22 August and 3 October 2016. This document identifies that the Pavilion and Torquay Marina Car Park site has potential for development. The plan states that building height should be carefully considered so that the impact is not detrimental. In addition a number of ideas/alternative proposals are suggested as possible options for development. The draft Torquay Neighbourhood Plan specifically allocates the area known as Cary Green as a Local Green Space, which has a meaning in the NPPF (para. 77) of ruling out development within this area other than in very special circumstances.
38. (National) Planning Practice Guidance states that an emerging neighbourhood plan may be a material consideration in determining planning applications. However, Paragraph 216 of the NPPF says that decision-takers may give weight to emerging neighbourhood plans from the **date of publication**, and only then according to how advanced the plan preparation is, the extent to which there are unresolved objections and the degree of consistency with the NPPF. As the Torquay Neighbourhood Plan has only reached Regulation 14 Pre-submission Consultation, only limited weight can be afforded to the Plan as it may be subject to change following consultation and prior to submission to the local authority. The plan has not yet been checked for legal compliance (carried out at Submission) and has not yet been tested against the Basic Conditions (carried out at Examination).

### **Public Sector Equality Duty**

39. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

40. In terms of direct impacts the proposal is most likely to affect people with disabilities; although there are likely to be age related issues pertaining to the economic benefits arising from regeneration.
41. The proposal provides through S106 requirements public realm enhancements including extension and improvement of paving.
42. Mencap requested that changing facilities be provided in the building for people with disabilities, which will be provided to “Changing Places” standard.
43. The building will need to comply with accessibility requirements under building regulations; however the proposed 43 dwellings are below the 50+ dwelling threshold in Policy H6 of the Local Plan for 5% to be built to Building Regulations Standard M4(2) accessible and adaptable standard).

### **Conclusion**

44. For the reasons stated above your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

### **Other issues**

#### **Receipt of further information**

The following additional information has now been submitted;

#### **Opportunities for mitigating the impact of the lift shafts.**

45. There are two lift shafts that will be visible on the roof of the development. One will be on top of the tower and the other on top of the five storey element of the building. Both over runs will project 1.4 metres above the roof. The lift overrun on the tower was concealed from view within the previous design but was subsequently exposed due to Historic England’s views on the assertiveness of the roof profile which, in their view, increased the impact on the setting of the Pavilion when viewed from nearby to the west. Historic England felt the most recent revisions made the proposals less assertive. However the changes to the design of the roof on the tower increases the prominence of the lift shafts.
46. There isn’t a straightforward solution to this issue and the applicant has explained that it is difficult to devise a strategy that will hide the appearance of the lift shafts. This is explained in more detail below. Due to the topography of the surrounding area the lift over runs will be visible from elevated locations that overlook the site. The applicant has submitted an assessment of the views of the lift shafts from a number of locations. The most notable locations that the lift shafts will be visible from are the Church of St John the Apostle and the Terrace car park.
47. The applicant advises that they have considered the following options for mitigation;
  - i. Revert to previous roof profile –this would not be acceptable due to previous HE concerns
  - ii. Raise main roof to reduce relative height of overrun –this would not be acceptable as height is not needed internally and HE would be likely to consider this a negative step in heritage terms

- iii. Revise layouts to move lifts further inboard – the applicant advises this would require fundamental replanning which may alter external facade and would increase circulation and reduce usable floor area on lower floors
- iv. Change materials / appearance of overrun – possible but will have limited impact as silhouette will remain the same
- v. Incorporate platform lifts in lieu of conventional lifts to remove overrun completely – not practical as excessive travel distance and travel times would be unacceptable
- vi. Change top two floors to duplexes –The applicant advises that visually there would be no net benefit as the removal of the overruns would be offset by introduction of external privacy screens to prevent overlooking between duplexes and their neighbours' balconies. A principle of the development is for the top floors to be as slender and uncluttered as possible and this would be a negative step in this regard. Also would almost certainly cost more to build for less useable floor area.

48. The lift overrun on the tower would have a greater impact on the appearance and character of the Conservation Area than the overrun on the lower level because it would project above the height of the building and would to some extent compromise the distinctive design and appearance of the tower. The visual assessment shows that it would be less apparent when viewed from the north and west as it would be seen against a backdrop of development on Parkhill Road and above. It would have a greater visual impact when viewed against an open background, which would occur in views from the north of the site, particularly St Johns Church and the Terrace car park.

49. Considering the applicant's comments, the submitted evidence that the lift shaft on the tower would not be visible from a number of locations around the site and the context of the visual impact of the development as a whole it is considered that the proposed lift shaft overruns would be acceptable.

#### **Clarification of 'shadowing' on the amenity of public spaces**

50. A shadow study with a summary of the effects of shading from the proposed development has been submitted. The images show minimal overshadowing of public external space at mid – summer with the lower block shading only the car park and the areas immediately in front of its own A3 units. The shadow of the tower element will pass over the car park during morning and shade the proposed development for the majority of the day without affecting other properties. By the evening the shadow of the building is shown to pass across parts of the harbour, with only the top storeys shading a small section of Victoria Parade after 7pm, which is approximately 1 hour before the sun retreats behind Waldon Hill.

51. The impact on Victoria Parade would be limited, with the shadow of the top few storeys shading only a small proportion of the street from April to September in the last hour before the sun retreats behind Waldon Hill. For most of autumn and all of winter the shadow of the building is shown not to reach as far east as Victoria Parade at any point of the day.

52. Shading of the area between the proposed new hotel wing and Vaughan Parade is minimal at the height of summer, with the new building shading mostly the area immediately in front of its ground floor restaurant unit, peaking at around 2pm. In spring and autumn (March, April, September and October) the shadow will extend further across the street with the area in front of Offshore also shaded during the middle of the day.



**Confirmation that the balconies will be constructed as a continuous curve and that the aluminium framework can also deliver the quality of detail.**

53. The sectional perspective of the prow of the Fish Quay building has been updated to show the curvature of the balcony edge and balustrading. Images have been submitted of the type of aluminium cladding which is proposed for these details. It would have curved rather than faceted profiles, recessed joints, concealed fixings and folded rather than jointed corners / edges. It would be appropriate to impose a condition requiring large scale details of the proposed balconies and a specification of materials in order to ensure this key element of the external appearance of the building is of sufficiently high quality.

**Additional detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.**

54. An indicative plan showing the proposed relocation of the existing bollards and a specification of works to make good the quay wall is awaited. Similarly details of the new enclosure/railings that will extend up to the fish quay are also awaited. It would be appropriate to condition the strategy for relocation of the bollards to be agreed by the LPA prior to their removal as there may be implications for the operation of the harbour or health and safety issues which will need to be further considered by the Council including the Harbour Master.

55. Further clarification of how the habourside elevation of the walkway will be addressed has been submitted. This shows that the walkway will be cantilevered above the harbour walls with a mesh inserted in the gap between the wall and the walkway to prevent nesting by birds and accumulation of rubbish. A chamfered concrete capping will be placed on top of the harbour wall to match similar capping around other sections of the harbour walls. The detail is considered to be acceptable taking into account the fact that the harbour wall is not listed in this area.

56. A plan showing how the new walkway adjacent to the harbour will work in terms of public and disabled access has been submitted. This shows that level access can be achieved along the new walkway adjacent to the inner harbour.

**Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.**

57. A revised plan has been received which shows natural stone paving extended to the site boundary opposite Offshore. In addition a previously indicated vehicular access to the southern side of the Pavilion adjacent to the marina has been deleted from the plan.

**Clarification of the impact of external plant in relation to the listed building.**

58. Revised plans have been submitted that show the existing plant to be removed from the outside of the Pavilion and the locations of new external plant. The majority of plant will be screened by existing balustrade walls apart from an area of plant on the eastern elevation, which is shown as being behind a new screen. A draft strategy clarifying how this will be addressed will be needed as this has the potential to be prominent in both the north and east elevations and further clarity to demonstrate that this can be achieved without resulting in harm to the architectural and historic character of the Pavilion is needed.

59. In respect of provision of internal plant a draft strategy has been requested. The needs to include method statements for removing redundant plant and installing new plant, confirmation that a conservation specialist will collaborate on the strategy, the method of monitoring the operation of the plant to ensure levels of humidity are not excessive.

#### **Update on progress of S106 agreement**

60. The S106 agreement is still being agreed between the applicant and the Council. Negotiations are ongoing.

#### **Conclusions**

61. For the reasons given in the Report and in this supplemental report your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

62. The additional information submitted since 27th February is considered to be acceptable however, further information is still required. Approval of these minor outstanding matters can be delegated to officers.

63. As a result the recommendation remains that the proposals are approved subject to completion of s.106 agreement, conditions and the receipt of satisfactory additional information all as discussed earlier in this report.

Annex A – Original Committee Report

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\*note: pagination is the same as for the original published report i.e. the first page is numbered '4'

**Application Number**

P/2015/0961

**Site Address**

Torquay Pavilion And Marina Car Park And  
Office And Adjoining Land  
Vaughan Parade  
Torquay  
TQ2 5EL

**Case Officer**

Mrs Ruth Robinson

**Ward**

Tormohun

**Description**

1. Change of use and restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel, 5 and 11 storey block of 43 residential apartments, with ground floor restaurant and retail uses adjacent to harbour. Link between Pavilion and new hotel. Construction of new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel). Construction of Marina Office and berth holder facilities and erection of Dock masters Office and associated landscaping (proposal revised 5 July 2016)

**Executive Summary/Key Outcomes**

2. The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.
3. It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.
4. Discussions on the future development of this site have been ongoing for many years. The need to achieve regeneration of Torquay Harbour, particularly from tourism related uses, was highlighted in the now superseded Local Plan, this site was identified as a development site in the Draft Torquay Harbour Action Area Plan (2006), in the Mayoral Vision (2008) and now in the recently adopted Torquay Local Plan (2012-30) and in the Town Centre Master Plan.
5. Central to that designation is an ambition to secure the restoration of the Pavilion; a grade II listed building which suffers inherent structural problems and the redevelopment of the existing car park which forms an unattractive edge to the harbour, to create a catalyst for regeneration. The contribution that the development of this site could make to regeneration of the harbour side and town centre is significant.
6. Two planning applications (with accompanying listed building applications) have been submitted to the LPA. The first application, P/2014/0282 submitted in 2014 now comprises

a 14 storey tower block and is as yet undetermined.

7. The second application, submitted in 2015 provides for a lower rise solution and arose as a response to the scale of objection to the original application.
8. Both options include a 60 bed hotel, (part of the 'higher end' Harbour Hotel Group). This is to be located to the northern end of the site adjacent to Vaughan Parade on the harbour side using the Pavilion as 'a front of house', including spa, bars and restaurants with a 'bedroom bridge' linking the two.
9. Commercial floor space occupies the entire ground floor of the harbour side building opening up onto a new waterside walkway, residential accommodation in the form of either 43 or 45 flats occupies the balance of the site. Car parking is largely accommodated within the retained MDL car park with hotel and seasonal/ overspill proposed for Cary Green.
10. An economic appraisal submitted to support the application estimates that construction costs are in the order of £32m, the equivalent of 20 FTE jobs will be created though construction of the building, the operation of the hotel will create around 98 FTE jobs averaged over the year with 58 FTE jobs estimated to be generated by the operation of the bars and restaurants.
11. The application which is the subject of this report is a revision to the 2015 application and involves a building which increases from four storeys adjacent to Vaughan Parade to five storeys in the middle section of the building reaching eleven storeys at the most southern end of the site overlooking Fish Quay. It includes 69 car parking spaces on a 'remodelled' Cary Green.
12. It is principally these two aspects of the scheme, the height and size of the building and the loss of Cary Green to car parking that are at the heart of the significant level of objections from local residents and statutory consultees alike.
13. The evolving proposals for this site have been scrutinised throughout by the Councils Design Review Panel who favour a 'tall and elegant' solution for the site and Historic England who prefer a scheme that does not impose such a tall building on the harbour.
14. This revision has sought to fuse the most successful elements of both alternative approaches. The options have all been informed by appraisals of the impact on the historic environment and on views in and out of the site.
15. The size of the development is driven by the need to fund the restoration of the Pavilion (with an anticipated repair cost of £2.7m) and to deliver a new 4\* hotel on the site which is not in itself viable.
16. A hotel use would be welcome given the sites location in a Core Tourism Investment Area and is beneficial from an economic point of view.
17. It is argued that a 'subsidy' in the form of this number of high value flats is necessary for

delivery.

18. This position has been examined via an Independent Viability Assessment. The primary purpose of this is to understand whether the scale of residential development proposed is necessary to ensure delivery of the overall proposal. It is also useful to determine whether the scheme can afford to meet S106 requirements in relation to Affordable Housing and other community infrastructure contributions and whether it has the capacity to deliver wider regeneration aspirations in terms of an exemplar building and appropriate public realm enhancements.
19. This assessment confirms that this level of development is needed to deliver a hotel led scheme on the site. It identified however, a greater profit margin than the applicant's viability study allowed for and whilst this wasn't sufficient to allow any meaningful reduction in the scale and bulk of the proposed building it did confirm that the scheme could afford to deliver a much improved range of public realm improvements that would help meet Local Plan regeneration objectives.
20. The applicant initially disputed this, but the scale, range and quality of public realm improvements has been substantially upgraded in recent weeks.
21. The primary reason for the delay in reaching a determination on the proposals for this site has been attempts to try and find the best way of arranging this rather challenging amount of floor space on the site in a way that minimises harm and to ensure that the quality of the scheme is such that it achieves a transformative scale of regeneration.
22. This most recent revision is the 'best fit' that has been achieved in terms of its basic form and relationship to the surrounding area and it does now deliver a more 'place making' scale of regeneration.
23. In policy terms, the decision maker's prime consideration and legal duty is to take fully into account the duty to 'preserve and enhance' the character of the Conservation Area and listed buildings.
24. S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas. There is a strong presumption against planning permission being granted in the event of there being harm arising from development. This has to be the first consideration.
25. The NPPF however does allow some discretion and harm, particularly 'less than substantial harm' can be acceptable if there are defined public benefits.
26. Much of the 'harm' is driven by the inclusion of the hotel as its low value means a significant level of development is needed to pay for it. It is therefore incumbent on the decision maker to consider whether those public benefits can be delivered in a way that reduces the identified harm on the historic environment. An option tested in the IVA involved deleting the hotel in favour of higher value flats which resulted in a far smaller

building.

27. In a nutshell, is the hotel 'worth' the level of harm?
28. In order to fully evaluate the implications of this development, in terms of the balance between harm and benefit, this report seeks to explain:
  - Why this amount of development is needed.
  - What impact the scheme has on the historic environment.
  - Whether the scheme is 'good enough' to drive quality regeneration.
  - What the public benefits are, whether they are of a scale that will mitigate for the harm and whether they can be guaranteed.
  - Whether the identified benefits could be delivered in a way that reduced the level of harm as required by the broad thrust of Historic England's enabling guidance.
29. Critical to this assessment is the scale of harm and the quality of the scheme. This is a key issue and is essentially a matter of judgment. Historic England's response confirm that this harm is 'less than substantial' although still significant. The Victorian Society, the Garden History Society and the Theatres Trust all consider the scheme to be of a substantial level of harm. Improvements to the quality of the building and to the public realm have been recently secured which have to be further weighed in the balance.
30. Relevant to considerations of the 'balance' between harm and public benefit is the wider economic context. Recent figures relating to increased poverty levels and deprivation in Torbay reinforce the need to put economic growth high up the agenda. National and local planning guidance promotes economic growth as a priority. Investment to the Bay needs to be encouraged if the economy is to flourish and ultimately that can only be achieved if viable schemes are encouraged and long established development sites such as this are bought forward.
31. The submitted economic impact report provides a best practice assessment of these benefits in terms of jobs created and wider improvements in the local economy.
32. In view of the centrality of the economic arguments, the LPA has commissioned its own review of the findings of this report. This confirms that despite some discrepancies in methodology, the assumptions about the overall economic benefit are sound.
33. The same balance of costs and benefits needs to be applied to the loss of Cary Green. This is as big an issue to local people as the concern about the size of the proposed buildings and the impact on the historic environment. The report explains that the design of this space has moved on from a tarmacked fenced car park to a more shared public space and recent improvements to its design and management have helped maximise public use and deliver a space of some quality that will create a more appropriate setting to the adjacent listed buildings.
34. The question is whether the recent improvements to the proposed building, to the scale

and quality of the public realm and to the treatment of Cary Green are good enough to offset some of the harm on the historic environment.

35. The following broad conclusions are drawn from an assessment of the scheme against the relevant policy guidelines.
- The level of residential floor space included in the scheme is shown to be broadly necessary for delivery of the hotel and restoration of the Pavilion and this has been confirmed via an IVA (Independent Viability Assessment)
  - There will be a significant level of harm to the character of the Conservation Area, on the setting of listed buildings and on the adjacent Registered Garden,
  - The quality of the scheme in terms of the detailed appearance of the building, wider public realm improvements and the delivery of place making regeneration has been recently been improved which to some degree offsets the scale of harm.
  - The benefits are delivery of a restored Pavilion and for a use that will secure its long term future, the provision of a more active and attractive edge to the harbour as a result of the new walkway and proposed restaurants and bars and the provision of jobs and associated spin off economic benefits.
  - The inclusion of flats in place of the hotel would deliver a smaller building and one that could positively enhance the character of the Conservation Area and the settings of adjacent listed buildings and Gardens but it would deliver fewer jobs, reduced economic benefits and although funding would be secured to refurbish the Pavilion it would not guarantee it a secure future use and the increased delay in achieving essential repairs to the listed building would be a concern.
36. The harm v benefits argument is very finely balanced and reflects priorities about whether the delivery of a hotel of this quality with all its attendant benefits in terms of jobs and economic stimulus outweighs the demonstrable harm to the historic environment and the character and visual amenity of the area.
37. It also needs to be weighed in the balance that alternative options which didn't include the financial burden of a hotel could deliver a more sympathetic scheme albeit with reduced job generation and lack of certainty about the long term future of the Pavilion. This is a very difficult judgement call. There is clear concern about the scale of harm on the historic environment. However, the Bay faces serious economic difficulties and increasing levels of deprivation which reinforce the need to encourage tourism, economic growth and regeneration.
38. This application involves delivery of a high end hotel which would be a real coup for the Bay. It would increase visitor numbers and benefit existing businesses. Should the 'public benefit' of greater economic vitality and a secure future for the Pavilion should be given greater weight?
39. The need for an exemplar scheme and a place making scale of regeneration to help mitigate the scale of harm is critical. Throughout the lengthy discussions on the site officers have held the line in terms of demanding a better building and a better setting to



help offset the harm to the historic environment. The recent revisions to the design of the building and the improvements to the public realm help towards meeting those concerns.

40. In terms of opting for a revised scheme that deleted the hotel, whilst this would deliver a smaller building there is no certainty that such an option would be taken up. Further it would not deliver the same scale of economic benefit, it would introduce further delay in resolving the future of the Pavilion and it would not secure such a robust long term future use for this building.
41. Officers therefore are now of the view that on balance, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and consider that the application should be approved subject to a s106 agreement, revised plans and appropriate conditions as detailed below.
42. However, it is entirely legitimate to reach the judgement that the public benefit of the proposal does not outweigh the clear presumption against planning permission being granted and that greater weight should be given to the preservation and enhancement of the historic environment.
43. For that reason, the recommendation below includes firstly the officers 'on balance' view and secondly a reason for refusal of planning permission should Members take the view that the harm to the historic environment is such that it is not outweighed by the public benefits of the scheme.

### **Recommendation**

44. On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:
  - Opportunities for mitigating the impact of the lift shafts.
  - Confirmation that the balconies will be constructed as a continuous curve.
  - Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
  - Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
  - External plant in relation to listed building.
  - And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.
  - In terms of the S106 agreement:
  - To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site

over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units or such other method agreed with the applicant (e.g. open book accounting of the entire scheme) Costs/values to be used shall be based on the Savills Supplementary Viability Report dated 26th July 2016.

45. The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.
- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
  - A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
  - a commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
  - To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
  - To secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.
  - To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not ‘bank parked’ as explained in the body of the report.
  - To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
  - Performance bond (if required)
46. However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation Area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.
47. As a consequence of its size, height and design, the development would be harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area. The development would harm key public views of listed buildings, eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the

NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

### **Statutory Determination Period**

48. The target date for a decision to be made on this application was January 16 2016. The applicant has agreed to an extension of time for the determination of the application. Further time has been needed to negotiate a scheme that accords with the Councils policies and national guidance on this prominent and important site.

### **Site Details**

49. The application site flanks the west side of the Inner Harbour and comprises the existing MDL car park and associated Marina offices, the Pavilion and includes Cary Green and adjacent areas of public realm.
50. It is a site of particular significance in heritage terms due to its prominence within the Torquay Harbour Conservation Area and its relationship to nearby listed buildings and the Grade II Registered Princess Gardens.
51. The Pavilion is Grade II listed, 3-15 Vaughan Parade, the adjacent terrace is Grade II listed as is the Cary Estate Office on Palk Street and 1 Palk Street which overlook Cary Green. The quay walls and the Fish Quay which is to the immediate south of the application site are also Grade II listed.
52. The Grade 1 listed St Johns Church sits on the nearby hillside which forms backdrop to the harbour and overlooks the site. Part of the application site lies within Princess Gardens, a Grade II entry in the Register of Parks and Gardens. The registered Garden extends to the west of the application site and includes two further (Grade II) listed structures, the Fountain and the War Memorial.
53. Currently the MDL car park site comprises a semi basement and top deck car park providing 235 car parking spaces for the associated Marina. The lower level is normally used exclusively by MDL berthholders with the upper deck often used for public pay and display purposes.
54. The car park forms the western edge of the harbour walkway and includes at the northern end, retail and catering outlets with associated seating looking out over the inner harbour. It otherwise presents an inactive frontage to the harbour.
55. The Pavilion, constructed as a theatre in 1911, has been vacant for several years having previously been in use as a small specialised retail outlet and is now in a very poor structural condition. This largely arises due to corrosion of the innovative steel frame used in its construction and is a common problem in other similar buildings of this era.
56. Cary Green, a public open space, was laid out in its current form following the construction of the Fleet Walk Shopping Centre in the 1980's comprising a mix of hard and soft landscaping. It is overlooked on three sides by listed buildings, The Pavilion to the south, the Cary Estate Office and 1 Palk Street to the north and 3-15 Vaughn Parade to the east. To the north west of the open space lies the Ziggurat, a rather unappealing means of

achieving pedestrian and disabled access from Fleet Walk Car Park to the sea front which dominates this space. There is a detached single storey building with a pitched roof on the south side of Cary Green in use as a taxi office.

57. The site is located within the defined town centre and adjacent to the harbour with high levels of pedestrian and vehicular traffic. It is very prominent within the townscape both in short and long distance views.

### **Detailed Proposals**

58. By way of background, two planning applications (with accompanying listed building applications) have been submitted to the LPA for development of this site. They all include a 60 bed hotel, commercial floor space, residential accommodation in the form of either 43 or 45 flats and parking on Cary Green.
59. These are **P/2014/0282** registered in June 2014 and **P/2015/0961** registered in October 2015.
60. There were subsequently two revisions to P/2014/0282 both of which included a 14 storey tower block to accommodate the residential flats. The most recent of these revisions is referred to as the 'Tower scheme' and is still to be determined.
61. **P/2015/0961** originally included a 10 storey tower with the displaced accommodation included in a higher six storey middle section of building and is referred to as the 'Stepped scheme'.
62. This proposal has been superseded by a further revision comprising an 11 storey tower with the higher middle section reduced to five storeys.
63. It is this version of P/2015/0961, which is the subject of this report. It is referred to as the 'revised stepped scheme'.
64. This revision involves the refurbishment of the Pavilion and a change of use to provide a 'front of house' facility for a new 60 bed hotel to be constructed on the harbourside. This includes 'public' uses such as bars, restaurants, a spa and function rooms as well as reception facilities for the hotel. The two are linked by an elevated and enclosed walkway with hotel bedrooms bordering both sides of the structure.
65. The scheme includes the construction of 43 2 and 3 bed flats in a building which increases from four storeys adjacent to Vaughan Parade to eleven storeys at the most southern end of the site and provides for restaurant uses on the ground floor with external terraces and a new public walkway along the harbourside.
66. 43 car parking spaces to serve the residential flats are included in the existing MDL car park.
67. The scheme originally included 74 car parking spaces on Cary Green with 32 spaces to serve the hotel and 42 'replacement' spaces for MDL. This has recently reduced to 69

spaces.

68. There is a sister listed building application **P/2015/0962** which relates to the detail of the external and internal alterations to the Pavilion and Quay wall. This will be considered later in the agenda.
69. The Council is the freeholder of the whole site and MDL have a long lease on the Pavilion building and the car park site. The applicant has a lease from the Council in respect of Cary Green (excluding the site of the taxi office) and incidental areas of public realm required to allow the development to proceed.

### **Summary Of Consultation Responses**

70. It is to be noted that the comments below are summaries of the responses received to consultation and Members are urged to read the full transcripts which are available on line and have been circulated with the report.
71. **Historic England:** They confirm their strong opposition to the fourteen storey tower included in P/2014/0282 and recognise that the shorter scheme (the revised stepped scheme) now under consideration has undergone considerable design revisions some of which would improve the relationship with the historic environment. However they still consider that the taller element of the proposed building included in this application would have an adverse impact on the designated heritage assets. The restoration of the Pavilion is described as a significant heritage benefit along with other less substantial heritage benefits arising from the proposal such as the removal of the inactive and blank edge to the existing car park. The potential of this site to be a catalyst for regeneration of the harbour and to enhance the appearance and vitality of the harbour is also recognised but they stress that it is not their role but the LPAs to consider wider economic/regeneration consequences.
72. The response recognises the positive improvements to the design achieved in the latest revision but they do not consider that these amendments 'would negate the impact of the proposed tall building' considering that the assertive presence of a tower immediately to the right of the Pavilion when viewed from Princess Gardens would cause considerable harm to its setting.
73. It is also thought that the height of the Tower would harm the setting of the Grade I St Johns Church through challenging its visual primacy in the townscape and result in the listed Grade II Mallock clock tower being read against a backdrop of development rather than open sky.
74. The open character of the harbour would also be harmed by the proposed buildings obscuring views from the Strand and Torwood Street across the Bay. Similarly concern is expressed at the impact the tall building would have on views from the harbourside to surrounding Conservation Areas. They raise no objection to the loss of Cary Green.
75. The impact of the tall building is however in their opinion exacerbated by the 'challenging design of its upper levels and roof'. The letter also refers to HE Advice Note 4 'Tall

Buildings' which they comment should be taken into account in determining the proposal.

76. In conclusion, HE considers that harm will accrue to the setting and significance of the Pavilion and the character and appearance of the Conservation Area. The proposal would cause some harm to the setting of the Grade I listed church and some harm to the Mallock Clock Tower, the visual connection between Princess Gardens and Vane Hill would be diminished by the introduction of a 'built form' causing some modest harm to the setting of the Grade II registered gardens. The scale of harm is defined as less than substantial although still 'significant'. HE further advises that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.
77. **Victorian Society:** They confirm continued objection to the scheme and have resubmitted their previous objections. They describe the inclusion of a tall building 'in perhaps the most sensitive location in Torquay' as a 'disaster for the character of the town worse than past planning mistakes'. In their opinion the height of the tower is immaterial it is simply not suited to this site and they describe Torquay waterfront being treated like a piece of recently reclaimed land in Dubai rather than land reclaimed for public benefit. They cite substantial harm to the Conservation Area arising from the height and scale of the development and are also critical of the loss of Cary Green regarding it as an important public space and a quintessential feature of Victorian resort town planning questioning why its loss is necessary when Fleet Walk car park is a matter of metres away. They do not consider that the benefits of restoring the Pavilion are outweighed by the harm the development would cause and urge that these applications are refused or referred to the Secretary of State for determination if the Council is minded to approve.
78. **Devon Garden Trust:** Object in the strongest possible terms to this application considering that the design is 'mediocre in terms of design scale and massing resulting in a form of development which would be totally inappropriate when seen from Princess Gardens looking towards the Pavilion'. It is suggested that the design of Abbey Sands is 'most successful and enhances the experience of the seafront and promenade' and an equally simple approach would work better here. They remain convinced that the site is not capable of accommodating the large amount of development proposed and that the brief for the site needs to be radically reconsidered and alternative funding sought for the restoration of the Pavilion.
79. **Theatre Trust:** Is keen to find a new and sustainable use for the former theatre. They describe it as a highly significant seaside building and despite past alterations one that is remarkably well preserved. The proposals in the main are supported but they express concern about the impact of warm humid air from the pool and spa on the stability of the plasterwork immediately above the pool area. They are anxious to ensure that the height of the former auditorium is retained as any loss would be detrimental to the significance of the building. They urge the central void to be enlarged and question the location of the function rooms doors and dias which do not appear to match up with the location of the stairs on the first floor plan. The linked access between the two buildings is not liked and they would prefer the complete separation of the two uses along with review of the car

park being retained in its current form which detracts from the appearance of the building. Whilst outside their remit they comment that the tall building proposed in all revisions would affect the setting of Princess Gardens and the Pavilion and that the proposed use of Cary Green would have a negative impact on its setting and it should be retained as parkland. It is requested that if permission is granted that a full update and photographic record is made of all changes to the building.

80. **Design Review Panel:** The various proposals for the site have been reviewed by DRP on no less than seven occasions. The currently undetermined Tower scheme and the superseded Stepped scheme were most recently reviewed at its meeting on the 14th August 2015. The panel's view was that a more slender and more elegant tower (such as is included in the current Tower revision) represented the most appropriate way of accommodating the scale of development required by the Developer on this sensitive site. There were a number of detailed design points they felt should be addressed to confirm quality and to demonstrate 'delight' and a lighter seaside architecture.
81. In respect of the original Stepped scheme, the architectural treatment was described as weak, lacking in integrity, less elegant, lumpen and unlikely to 'exhibit the national/international award winning design quality previously urged for this incredibly important site'. A number of specific design concerns were detailed namely the increased height of the central section which disturbed the reading of the northern arm of the building, the lack of visual empathy with nearby historic terraces, exposed service cores and other flank/secondary elevations which turned their back to the town.
82. This critique strongly informed the design approach taken in evolving the revised lower rise stepped scheme currently for consideration.
83. **Conservation Officer:** Raises serious concerns about the impact of the scheme on the historic environment particularly the height of the development and the inclusion of the fifth storey on the terrace range which he considers seriously impacts on the views of the Pavilion from Princess Gardens. He draws attention to the importance of views from Princess Gardens of the roofscape and cupolas of the Pavilion against the wooded backdrop of the eastern harbour side which are masked by the scale of the four/five storey building. A similar impact is experienced in views from the west which divorces the harbour side from views of the Pavilion. He questions whether the public benefit of restoring this unique listed building is outweighed by the significant harm.
84. **Strategic Transport/Highways:** Offer no overall objection to the proposal in terms of traffic generation subject to the modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 Notice. The main concern is the lack of justification for use of Cary Green for car parking given the relevant local plan policy which seeks to minimise car parking in town centres. The lack of provision for disabled drivers, electric charging points and cyclists is raised as an issue. The means of connecting to cycling networks should be investigated. Highway cycling and pedestrian improvements as highlighted in the TA should be secured to overcome the identified conflicts. The Travel Plan is regarded as inadequate and should aim for a 30% target. Tracking for larger service vehicles should be carried out to ensure that the site is

fully accessible.

85. **Principal Natural Environment Officer:** Has reviewed the value of Cary Green as a public open space in light of this proposal and also as part of a wider review to consider efficiency savings. This has identified that Cary Green is not considered a 'destination space' but more of a 'transition space' unlike nearby Princess Gardens which has a broader role and function. He raises no objection to the removal of the existing planting and considers the large Palms could be relocated for use elsewhere. He considers the water feature to be of little value compared to the Princess garden fountain although some provision for a more modern water feature would be an attractive component of the new design. He supports the use of the space for events and markets and considers its use for such purposes would be preferable to the continued use of Princess Gardens and the Promenade but it needs to be properly designed to ensure a successful outcome such as lighting, seating and a more robust and visually appropriate surface treatment. The use of materials such as granite setts and paving to link with the palette used at Abbey Sands, along the Promenade and in the Town Centre would be more appropriate. More information is required with regard to the species of trees and their future maintenance.
86. **Arboricultural Officer:** Does not raise any specific objection to the loss of planting on Cary Green. He considers the replacement planting to be appropriate but would prefer to see larger specimens along the road side to tie in with the existing plane trees on Torbay Road. He considers that more detail is required in relation to tree pits and the species of trees should perhaps be given more consideration.
87. **Landscape/Green Infrastructure:** Considers that the detail of soft landscape plans should be secured by condition with clear management regimes. It is considered that the loss of Cary Green should be compensated by enhancements to Princess Gardens.
88. **Local Access Forum:** Object to the loss of Cary Green and consider that use of nearby facilities should be given greater consideration.
89. **Environment Agency:** Raises no objection subject to the scheme being implemented in accordance with the submitted FRA
90. **Natural England:** Raise no objection to the scheme bearing in mind its relationship to the Marine SAC subject to a Construction Management Plan being in place which can be secured by condition.
91. **Drainage Engineer:** Raises no objection subject to the scheme being implemented in accordance with the submitted FRA. His formal response requested a contribution towards the maintenance of Haldon Pier.
92. **South West Water:** Raise no objection.
93. **MMO:** Request that the applicant is made aware that early consultation be carried out to establish whether a Marine Licence would be required for the works.



94. **Police Architectural Liaison Officer:** Raises detail in relation to security of the hotel guests and future occupants of the proposed buildings.
95. **EHO:** Requires the imposition of conditions to secure soundproofing of residential flats to avoid nuisance to future occupiers from the operation of the A3 uses and the achievement of specific targets in relation to food extract systems in terms of odour and noise mitigation. Raises no specific objection subject to food safety standards being adhered to and management of the pool in line with HSE guidance.
96. **Affordable Housing Manager:** Considers that the scheme should deliver Affordable Housing Contributions in line with adopted Local Plan policy.
97. **Torbay Development Agency:** Are supportive of the scheme due to the need for significant regeneration in and around the town centre and the contribution development of the site would make to the continued economic recovery of the Bay. The delivery of a high quality hotel along with improved food and drink outlets would help boost tourism and compensate for the identified shortfall in quality tourism accommodation. This would increase visitor numbers, footfall and spending which would generate significant economic benefits. The 'Transformation Agenda' and the role sites like this will play in realising its ambitions is stressed along with need to be wary of undermining investor confidence and the impact this could have on the rate and scale of economic recovery.

#### **Summary Of Representations**

98. At the time of writing, 500 letters of objections and 89 letters of support have been received in relation to this application. It is difficult to be absolutely clear on numbers of respondents as there have been several versions of the scheme advertised and some understandable confusion about the relevant application numbers and many responses included both references.
99. It should be noted however, that significant opposition in the form of letters and various petitions were submitted in response to earlier proposals on the site and it cannot be assumed that the current revision to the scheme has necessarily overcome their concerns.
100. The **Torbay Friends of the Earth** originally submitted a petition signed by 345 people against the proposal on the grounds of overshadowing, loss of open carefree character, impact on views, contrary to the Councils Building Heights Strategy, creating a precedent for further development along the sea front and opposition to the loss of Cary Green on the grounds of traffic congestion and loss of open space. This has since been supplemented by a further petition with 2014 people voicing opposition and 13 support on similar grounds.
101. Objections have been received from the **Torquay Neighbourhood Plan Forum** and the **Town Centre Community Partnership**.
102. The former take issue with the loss of Cary Green and the impact of the development on the historic environment. The latter object to the failure to comply with the NPPF in terms

of sustainability, the protection of the natural built and historic environment and that it fails to take account of the proposals included in the emerging neighbourhood plan. It represents poor design and involves the loss of public open space. Cary Green is identified in the Draft Neighbourhood Plan as a protected space.

103. Local hotel operators object to the proposal. The **Rew Group** consider the economic justification for the scheme unconvincing and that it will have an adverse impact on existing hoteliers. **Richardson Hotels** consider the proposal 'monstrous' casting shadows over the harbour and obscuring views out to sea. An alternative community based approach is suggested to saving the Pavilion.
104. **Mervyn Seal**, a local architect of note has commented extensively on the proposals finding it damaging to the historic and architectural character of the area and has drawn up an alternative scheme for the site.
105. Two principal areas of concern have emerged from the consultation: the size and design of the building and the loss of Cary Green along with a number of more functional matters relating to the design and impact of the building.
106. The big issues are:
  - The height and scale of development on the site and its impact on the character of the Torquay Harbour Conservation Area, on the settings of adjacent listed buildings and on Princess Gardens.
  - The quality of the design being out of keeping with the quaint 'domestic' character of the harbour and comprising overdevelopment of the site.
  - Whether further hotel development is needed and whether this will only deflect investment from existing sites, whether there are enough visitors to fill the bed spaces, that a priority should be to sort out the town centre and that the economic justification is unconvincing. It is also thought that those responsible for the decline of the building should pay to have it repaired rather than it being funded on the back of this damaging development.
  - Whether the restoration of the Pavilion and delivery of the hotel can be guaranteed.
  - The loss of Cary Green for car parking. The concerns are the loss of a green public space and its historical associations, that it is not shown to be necessary as the existing MDL car park is not heavily used, that more shared use of the existing facility should be encouraged and that the loss of this space can't be justified when nearby public car parks are underused.
107. The design and functional concerns are:
  - The 'shadowing' impact of the 11 storey structure on premises on Victoria Parade and on Offshore.
  - The possible impact of wind funnelling.
  - The impact on the listed quay walls from the construction.
  - The design and impact of the 'bedroom bridge' linking the Pavilion to the proposed

harbour side hotel.

- The width and design of the new waterside walkway and loss of traditional railings.

108. There has also been a petition and letters of support which has been more pronounced in relation to the current revision. There is support from some parts of the business community, the **Torbay Chamber Of Commerce** submitted a petition signed by 270 businesses in support of the proposal and the **Chairman of the Torbay Business Forum** offered support on the grounds that it is essential to achieve regeneration of the harbour and will act as a spring board for further investment.

109. The **Torbay Civic Society** supports the proposals as does the **Torquay Yacht Club**.

**South Devon College** have voiced support for the proposal and would hope to use the new hotel for student training experience.

110. There has been a specific request from **Mencap** to find space within the scheme to provide changing facilities for disabled people which the applicants have said they can accommodate. This can be secured by condition.

111. The reasons given for supporting the scheme are:

- The benefits to tourism and the provision of jobs and economic growth.
- The ability to save the Pavilion.
- That the Bay needs to be bought into the 21st century and needs to embrace change.
- The creation of an iconic development that will complement Abbey Sands, encourage further investment and encourage regeneration.

### **Relevant Planning History**

112. Planning permission was granted in the 1980's for a three storey terrace building situated on the quay wall and of a similar height to Vaughan Parade.

113. Application P/2014/0282 was submitted in early 2014 and followed an extensive period of pre application consultation. It is as yet undetermined as is the sister listed building application P/2014/0283.

114. This first submission as part of this application was relatively low rise, achieving a maximum height of 8 storeys however it was not considered that the quality of the scheme was acceptable. It achieved a more consistent height across the whole building and a wider footprint and so did not relate well to Vaughan Parade and due to the width of the 'bookend' encroached unacceptably on the setting of and views of the Pavilion.

115. This scheme was widely criticised by the public and statutory consultees alike resulting in a review by the DRP who suggested a taller more slender building may be more successful as a way of accommodating the scale of development proposed for the site.

116. The opportunity was taken to look at how Cary Green should be developed to create a quality hard and soft landscaped place within which overspill parking could take place when necessary but which could revert to public use for events or markets at other times.
117. A revised scheme was subsequently submitted which included a 14 storey tower and the application re-advertised. This involved a lower run of building in relation to Vaughan Parade but the 14 storey lozenge shaped 'bookend' which was considered a fine response to the site by the DRP in its further review was condemned by Historic England as causing substantial harm to the historic environment due primarily to the height of the tower. This scheme did however include Cary Green as a more dual use space with improved surfacing and tree planting.
118. Further revisions to the Tower scheme were suggested to try and create a more slender 'lightweight' appearance to the tower.
119. This further revised Tower scheme was advertised concurrently with a new application, P/2015/0961, for a lower rise 'stepped scheme' which sought to accommodate the required level of floor space in a different format.
120. Whilst the 'stepped scheme' reduced the scale of the bookend to 10 stories, the 'lost' floor space was simply reapplied across the rest of the block with consequent impacts particularly on the views of the Pavilion from Princess Gardens. The DRP considered the stepped scheme weak and uninspiring but Historic England were more positive given the reduction in height which they consider a major factor in achieving an acceptable character and form of development.
121. There were however a number of detailed areas of concern in relation to the new design of both the revised Tower and the stepped scheme.
122. The revisions to the Tower scheme did not overcome concerns about the dominance of the structure and the shorter tower in the stepped scheme was 'anywhere' architecture and had none of the 'delight' considered important by the DRP.
123. The northern elevation of the tower was dominated by service cores and lift shafts, the rear of the hotel by extract systems and vents and the stepped increase in height and busy design of the backdrop to the Pavilion was considered damaging to the setting of the Pavilion and on views from Princess Gardens. It also included a two storey link to the Pavilion which was particularly clumsy.
124. This again generated significant and understandable concerns from statutory consultees and members of the public.
125. The applicants were asked to look again at whether the more successful elements of both the 'Tower scheme' and the 'Stepped scheme' could be merged to achieve a more comfortable fit with its surroundings.
126. This was submitted as a formal revision to P/2015/0961 and has again been subject to

formal consultation and advert. It is this proposal that is being considered today.

### **Key Issues/Material Considerations**

127. There is a long history to discussions on this site. This report will provide a background to those discussions in terms of planning policy, explain the evolution of proposals on the site, examine the key issues emerging from consultation and how these have been responded to in terms of changes to the scheme.

### **Principle and Planning Policy -**

128. The now superseded Torbay Local Plan for the period 1997-2011 recognised the need to encourage regeneration of the Harbour through a series of measures including new development. The Draft Torquay Harbour Area Action Plan, from its inception in 2006, considered in more detail how key waterfront sites such as this should be developed to help 'fulfil the Harbour area's potential'.
129. Policy TH4 1 proposed the development of this key site as a 'significant waterfront destination' including hotel use, niche retail, restaurants, bars, residential accommodation and a new use for the Pavilion.
130. Whilst this document was not formally adopted, the broad principles embodied were picked up and developed as part of the Mayoral Vision (2008) which anticipated a significant amount of development on this site. This identified the potential to upgrade the 'unattractive single storey concrete structure on North Quay comprising the Pavilion car park' which it regarded as an underutilised resource in a prime waterside location. It also identified the need to secure substantial investment to repair and refurbish the Pavilion building. The current applicant has been in discussions with the Council and LPA about bringing development forward on this site since the Mayoral Vision was first mooted.
131. Time has passed and these problems have not gone away or been resolved so the need to develop this site to improve the waterfront and to secure the future of the Pavilion figures in the newly adopted Local Plan as it did in its predecessor.
132. The site is located in a Core Tourism Investment Area and within the defined town centre where there is need for regeneration and investment. Policy TO1 seeks investment in tourism related uses, Policy SDT1 underpins the need to secure regeneration and large scale investment in the town centre and harbour areas and policy SDT2 requires a mix of suitable town centre uses to come forward in the harbour area. The Torquay Town Centre Master Plan identifies the whole application site as a key regeneration site.
133. In the Draft Neighbourhood Plan Cary Green is identified as a protected public space.
134. The need to encourage and promote sustainable economic growth is a key objective in the Local Plan (Policy SS1) and the 'golden thread' in the NPPF.
135. The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact

this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden.

136. Whilst successive revisions have sought to reduce this impact it is clear from responses from both statutory bodies and the public that this remains a key issue.
137. In terms of legal context, sections 66 and 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas, listed buildings and their setting. It is clear from case law that the impact of harm on the historic environment has to be given considerable weight and the presumption has to be in favour of preservation.
138. In terms of judging the impact of development on the historic environment, NPPF paragraphs 132, 133 and 134 are of primary significance. Paragraph 132 explains that great weight should be given to the conservation of the heritage assets as set out in law.
139. Paragraph 133 and 134 however do provide some discretion and allow a degree of harm to the heritage asset providing this can be balanced against public benefit. Development which causes substantial harm is only acceptable in exceptional circumstances. Development which causes less than substantial harm is subject to a less onerous test but must still demonstrate clear evidence of public benefit. This is not however a simple balancing exercise but an assessment of whether there is justification for overriding the presumption in favour of preservation.
140. Paragraph 140 of the NPPF also explains that LPAs should assess whether a proposal for enabling development which would otherwise conflict with planning policies but would secure the future of a heritage asset would outweigh the dis-benefits of departing from those policies.
141. In this context HE Guidance in respect of Enabling Development which is still extant guidance (although in the process of being updated to reflect the NPPF) provides useful guidance about how the merits of a scheme should be evaluated. This particularly exhorts LPAs to ensure that in the event of harm, ways of minimising that harm are fully explored.
142. HE's Guidance Note 4 Tall Buildings is also of relevance in assessing applications on this site.
143. Adopted Local Plan, policy SS10 reflects the requirements of s. 66 and s.72 of the 1990 Act in terms of an expectation that development will 'sustain and enhance' the historic environment but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment and lists factors that will be taken into account in reaching a decision such as the need to encourage appropriate adaptations and new uses and whether the impact is necessary to deliver demonstrable public benefits.
144. Policy HE1 requires development proposals to have 'special regard' to the desirability of

preserving listed buildings or their settings. It also confirms that new development should respect the significance, scale, form, orientation and architectural detailing of any listed building it affects.

145. Policy H1 encourages the delivery of new homes, Policy H2 specifies that a percentage of affordable homes should be delivered as part of any scheme in excess of 15 units on brownfield sites. There are a number of functional and design policies in the NPPF and the Local Plan which are of relevance. These are paragraphs 56-64 in the NPPF and in the Adopted Local Plan, policies DE1, DE2, DE3, and DE4 in relation to design, amenity and building heights, ER1 in relation to flood risk, ER3 in relation to contamination, and ER4 in relation to ground stability. The hotel and commercial uses will contribute to the night-time economy in line with Policy TC5.
146. The scheme is required to reduce carbon emissions and the use of natural resources in its design and operation in line with policy SS14 of the Local Plan and a condition will be applied requiring the submission of a statement confirming how it will meet sustainability objectives. In terms of meeting equality and diversity objectives as required by policies SS11 and DE1, the delivery of changing facilities in line with 'Changing Places' guidance will help increase access to and use of local facilities.
147. In relation to movement, access and car parking, policies TA1, TA2 and TA3 are relevant. These recommend a sustainable approach to transportation promoting development in well located, accessible locations where the use of the car is reduced. In relation to town centre development TA3 indicates no minimum threshold and expects new development to be serviced by existing car parks and on street parking.

### **Key Issues.**

148. The response to consultation confirms that there are two principle areas of concern which is the size and height of the development and its impact on the historic environment and the loss of Cary Green to car parking. These matters are dealt with in 1-9 below. The questions seek to address most significant points in assessing the scheme. There are also a number of specific design/functional matters which are dealt with in 10-14.
1. The scale of development proposed for the site and why this is needed.
  2. What impact does this have on the character of the historic environment?
  3. Is the scheme of exceptional quality?
  4. What are the public benefits of the scheme?
  5. Is this harm mitigated by the scale of public benefit?
  6. Can the delivery of the public benefit be guaranteed?
  7. Can this benefit be delivered in other less harmful ways?
  8. Is the loss of Cary Green to provide car parking acceptable?
  9. Is this loss mitigated by the proposed public use of the space and is this secured in any meaningful way?
  10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises?
  11. Is it likely to create wind funnelling?

12. Is the construction likely to adversely affect the listed quay walls?
13. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?
14. Is the width and design of the new waterside walkway acceptable?

Each will be addressed in turn.

**1. The scale of development proposed for the site and why this is needed.**

149. There have been ongoing discussions on an appropriate scale and form of development for this sensitive site for several years. All the proposals have been informed by an appraisal of the heritage significance of the site and its surroundings and an assessment of sensitive viewpoints through an LVIA (Landscape and Visual Assessment Appraisal).
150. An urban design analysis was then carried out which recommended that the most suitable form of building, in terms of achieving 'a good fit' with the established character of the area would be to continue the form and scale of the listed Vaughan Parade terrace terminating at the southern end of the harbour with a taller bookend of a similar height to the 5 storey 'Harbour Point' on Victoria Parade. All the schemes submitted to date follow this basic model but have included significantly more floor space than anticipated in this early appraisal.
151. This scheme provides for a 4/5 storey building in a terrace form fronting the harbour adjacent to Vaughan Parade to be used for hotel purposes increasing to an 11 storey 'bookend' comprising private flats to the south of the application site overlooking Fish Quay.
152. The 'terrace' element will be a recessed storey higher than the ridge height of the adjacent Vaughan Parade increasing to two storeys higher closer to the 'tower' or 'bookend element' of the scheme.
153. To give some idea of the height of the tower it is useful to consider comparisons with existing structures in the area.
154. Shirley Towers on Vane Hill Road are 9/10 storeys and Warren House, the block of flats on St Lukes Road South with the 'Pagoda' lift overrun is the equivalent of a 9/10 storey building. Ridgeway Heights and Kilmorie both achieve 8/9 storeys. This block at 11 storeys will be taller than those structures.
155. It is 36 m tall and so is some 14m shorter than the Observation Wheel which is 50m in height. Its height particularly has drawn strong criticism from statutory consultees and residents alike on the grounds of its adverse impact on the historic environment.
156. This amount of development is needed, according to the applicant, to deliver a viable scheme that achieves regeneration of the site in line with adopted national and local policies, to secure economic growth and to secure the refurbishment of the Pavilion with costs of around £2.67m.



157. For this reason, attempts to reduce the scale of building on the site which would help overcome the anticipated impacts have been resisted on the grounds of 'viability'.
158. This latest revision, as will be explained in a subsequent section, does involve some reduction in size and height achieving greater compatibility with its surroundings but it does still present a challenging scale of development.
159. It is necessary however to be mindful of commercial realities. There is a clear desire reflected in Local Plan policies to secure a scheme that will deliver a tourism related use, save the Pavilion and provide a catalyst for regeneration. To happen, it has to be demonstrably viable. This requires a certain amount of development to ensure delivery. Achieving this in such a sensitive context is difficult. This is recognised in the NPPF and lies behind the greater flexibility included in its policies which now accept a degree of harm in conservation areas in order to secure development that will deliver defined public benefit.
160. Many have commented that the Council should 'give' the building to the community but it must be noted that the Council whilst freeholder does not have control of the building. MDL have control of the Pavilion and the existing car park under the terms of a long lease. It is also suggested that those responsible for the condition of the building should finance the repairs. However, the problems with the building are a product of its steel frame construction and not entirely attributable to neglect or lack of maintenance. This is a significant inherent defect and a means of raising the funds for repair are needed along with a robust and guaranteed future use for the building.
161. It is important therefore to consider the evidence supporting the need for this amount of development.
162. A 'supplemental viability study' has been submitted by the applicant in relation to the current scheme to demonstrate that this amount of development is necessary to deliver a hotel of this quality on the site and to fund restoration of the Pavilion.
163. Such a study is also of relevance in terms of understanding the capacity of the scheme to deliver an exemplar building and a place making scale of regeneration and whether there is scope to meet S106 contributions towards Affordable Housing and Community Infrastructure Contributions.
164. The applicant was requested to submit a detailed summary of this supplemental study to be available for public comment. This document reflected only a 7% profit margin but was based on outdated figures and gave rise to comments from the public about the deliverability of the improvements to the Pavilion.
165. The data included in this study has been independently assessed via an Independent Viability Assessment (IVA) and it is now agreed by both parties that the predicted profit margin is closer to what would be regarded as 'viable'. Members have been fully briefed.

166. Developers would normally expect to achieve a profit margin of 20% but in this case they claim they are prepared to proceed on the basis of their estimated 14.89% margin. The viability study explains that the developer is prepared to do this due to his 'place making' motives to enhance the offer in the town centre which will increase the long term value of the hotel.
167. The outcome of the IVA indicated a possible profit margin of around 20% whilst still being able to 'afford' a S106 contribution of £270,000 along with around £1m towards public realm improvements. Whilst this doesn't represent enough profit to allow any meaningful reduction in the bulk of the scheme it did mean that the scheme should be able to afford to deliver in terms of quality, wider public realm enhancements and/ or s106 contributions.
168. Until recently there was some considerable distance between the LPA and the applicant in terms of what the scheme could 'afford' to deliver This was largely based on a disagreement about the likely values of the residential development which the IVA assessor considers to be underplayed but also from the low value of the hotel which according to the applicant costs significantly more to build than it is worth at least in the short term.
169. As a means of trying to resolve the impasse it was suggested that this 'surplus' profit, as a compromise, should be invested solely in the public realm in order to mitigate harm on key public spaces, to uplift the quality of spaces around the building and to achieve quality regeneration.
170. In the circumstances of the site, and the pressing need to deliver quality, this would be more beneficial than trying to meet Affordable Housing or wider S106 related objectives. This would benefit the operator of the hotel, deliver his place making aspirations and help achieve the required scale of regeneration from the LPA's perspective.
171. Significant progress has been achieved on this front and the applicant has now agreed to fund key public realm improvements 'up front' as well as to a range of public realm improvements to be funded through deferred contributions in the event that the scheme is more profitable than anticipated.
172. The Independent Viability Assessment (IVA) therefore confirms that there is limited scope for any appreciable reduction in the scale of development beyond that already achieved and that this number of high value flats is required to fund the restoration of the Pavilion and delivery of a 4\* hotel. The recent concession by the applicant in terms of agreeing to fund wider public realm improvements goes a long way towards closing the 'viability gap'

It is necessary to then consider what harm this scale of development creates.

## **2. What Impact does this size of building have on the character of the historic environment?**

173. The evidence in relation to the significance of the heritage asset and the impact of the scheme on the historic environment is contained in a Heritage Impact Assessment and its

subsequent addendums to reflect later revisions to the scheme and in a LVIA (Landscape and Visual Impact Appraisal).

174. These documents identify the sensitivities in terms of the character of the place and assess the impact of the proposal on them.
175. In relation to the impact on visual amenity which is addressed via the LVIA, this scale of harm is graded to provide a more objective assessment of impact. There is not a similar objective assessment of the impact of the scheme on the heritage assets despite requests for this to be supplied.
176. This section considers the changes to the scheme that have taken place to try and overcome concerns about the impact on the historic environment and then evaluates the components of the current proposal.
  - a) How this scheme has changed from earlier proposals.
177. This revision does involve some reduction in floor space, unlike its predecessors, which has allowed some concession to be made to achieving a better fit with its surroundings.
178. In the previous 'stepped' proposal the higher six storey middle section disrupted the architectural language of the lower range of building. It no longer picked up the 'terrace theme' identified as an important design concept but appeared disjointed and inconsistent with adjacent building typologies.
179. The height and elevational treatment of this middle section seriously affected views of the Pavilion from Princess Gardens. The location of plant, service cores and lift shafts impacted on the visual quality of the overall scheme but particularly the tower element by creating blank elevations which would have been readily visible from the town. The recessed upper storeys, designed to achieve some consistency with the scale of Vaughan Parade, were brought flush through the inclusion of relocated bedrooms into the setback, the link to the Pavilion was two storey and clumsy. The tower looked like a standard residential block and did not reflect any kind of 'sense of place' or seaside character.
180. In this 'revised stepped scheme', a floor has been deleted from the higher middle section thus allowing a return to a lower more streamlined terrace to form the northern arm of the building, service cores and lift shafts have been internalised, the recessed roof line has been reinstated, balconies have been made a more pronounced feature of the tower to lighten its profile, add delight and more of a seaside character and the link has been returned to single storey.
181. In order to recapture some of this lost space however, the 'bookend' has increased from 10 to 11 storeys.
182. Notwithstanding these amendments, the size of the scheme continues to generate a number of concerns, namely the height and dominance of the 'bookend', the scale of enclosure of the Harbour and relationship to Vaughan Parade, the impact on views from

Princess Gardens and the impact on views from the Conservation Area to the surrounding area.

183. It is useful to break down the scheme into the component parts and consider the impact of the tower, the height and form of the terrace and the overall scale and form.

b) Impact of the Tower.

184. There are clearly understandable concerns about the height of the bookend which at 11 storeys is imposing on the more domestically scaled harbour.

185. The tower has been reduced in size from that included in P/2014/0282 and the 'bookend' has been redesigned to create a far more visually appealing building and has been rotated slightly to try and reduce its impact on key views. It has a more 'seaside appearance' with a sharper more dramatic prow to the building. It provides for a dark central core encased in a pronounced white aluminium 'skeletal' frame with generous balconies. The top two storeys are set back and designed to try and reduce its dominance. This produces a more lightweight appearance which reduces the dominance of earlier schemes.

186. Historic England raise a series of concerns in their response about the impact of the tower on key views although in relation to this scheme it is described as 'less than substantial' and that design modifications to the roof and upper level could reduce its impact further. Since then, revised plans have been submitted which simplify the upper levels of the tower though a change in roof profile and the framework encasing the upper levels has been made less asymmetrical. It is considered that this does reduce the impact of the upper levels of the tower although it now exposes the lift shaft to view which the architects are trying to remedy.

187. Historic England have commented on this revision and whilst they confirm that the 'geometry of the roof in the revised proposal is less assertive and will be less of a draw to the eye' it is only considered to offer a modest improvement and does not alter the substance of their advice which is that the scale of harm is considerable. Any progress on mitigating the impact of the lift shaft will be provided at the meeting.

188. The Devon Garden Trust is a statutory consultee as the development affects the Registered Park and Garden but their consultation response does not specifically suggest that the height of the proposed building is an issue. Their comments relate clearly to the overall mass and quality of the design which they consider mediocre and not providing 'an elegant building of the highest quality'. The Theatre Trust raised concerns about the impact on the setting of the Pavilion but accept that this is beyond their remit.

189. The Victorian Society expressed serious concerns about the level of harm arising particularly from the height of the 11 storey tower.

190. The impact of the tower is a serious matter of concern to many local people.

191. There are two sources of guidance in respect of the acceptability of tall buildings. The

Councils Building Heights Strategy 2010, the principles of which are now included in the Adopted Local Plan (policy DE4) and HE Advice Note 4 'Tall Buildings'.

192. In broad terms, the potential of tall buildings to promote regeneration particularly in accessible locations and where nodes of activity can be reinforced such as harbours and along sea fronts is recognised. Tall buildings may be acceptable if they enhance the vitality of an area, contribute to the regeneration of Torbay, strengthen the character of the area, are appropriate in terms of their visual impact, provide wider urban design or socio-economic benefits, make a positive contribution to the built form townscape and surrounding landscape, and preserve or enhance local long distance views and key vistas subject to full impact testing.
193. HE guidance note 4 'Tall Buildings' requires that great weight should be given to the assets conservation in cases where tall buildings have an adverse impact on a designated heritage asset and that any harm requires a clear and convincing justification. It goes on to say, that in assessing this justification and weighing any public benefits offered by a tall building proposal, particular regard should be paid to the policies in paragraphs 8 and 9 of the NPPF which state that economic, social and environmental gains are to be sought jointly and simultaneously in order to deliver positive improvements in the quality of the built, natural and historic environment. This, it suggests may involve looking at alternative designs or schemes that might be more sustainable because they can deliver public benefits alongside positive improvements in the local environment.
194. Thus in policy terms a tall building in this location would not be precluded as a matter of principle providing it was thoroughly tested, shown to deliver quite significant wider public benefits and that alternative ways of delivering those benefits had been fully considered.

c) Height and Form of the Terrace

195. The northern arm of the building takes the form of a terrace as identified in the Urban Design Appraisal as being the most appropriate approach to developing this part of the site. At four to five storeys it is a taller structure than envisaged in this study which recommended a more consistent height relationship with Vaughan Parade so that the domed roof of the Pavilion could still be read from Victoria Parade and to avoid overwhelming views of the Pavilion from within Princess Gardens.
196. Whilst the relationship of the four storey section of the terrace to Vaughan Parade is considered broadly acceptable, the increase to five storeys along about half of its length does act in a way to impede views and disrupts the visual relationship of the Gardens and its Pavilion building to the Harbour and its wooded backdrop.
197. It appears particularly imposing in views from Princess Gardens. It is this aspect of the proposal that the Councils Conservation Officer finds the most harmful and it is certainly picked up as a particular concern in the Devon Garden History Society's comments.
198. In response to this concern, the applicant has looked again at whether this element of the building could be removed or whether it could be set back a further metre to potentially

reduce its visual impact. It is clear that removal would make the scheme unviable and it has been shown through modelling that setting it back would have a negligible impact on the visual relationship between Princess Gardens and the harbour side.

199. This element of the building is harmful to the historic environment. It does impact on views between the Harbour and Princess Gardens. However the severity of impact is dependent on where views are taken from and there are positions within the Gardens where the new building succeeds in blocking views of Shirley Towers which might be regarded as an advantage.

d) Overall Scale and Form.

200. The proposed building is clearly of a size and scale that is challenging and despite design modifications, is difficult to accommodate without harm to the historic environment.

201. It will form a fairly imposing edge to the harbour and whilst the mass is broken down to pick up the verticality of the adjacent terrace it will appear out of kilter with the fine grained more domestic scale of the majority of the harbour side. It will enclose the harbour to a degree that will fundamentally affect its character and it will impact on views in and out of the Torquay Harbour Conservation Area. It will also affect the setting of the Grade II listed Pavilion and the Registered Park and Garden.

202. There will be some harm to the Grade I Listed St Johns Church as from a number of key views its primacy in the townscape will be eroded. It will also affect, through the backdrop it creates, views of the Grade II listed Mallocks clock tower. These concerns are reflected in the responses from statutory consultees who consider the benefit of saving the Pavilion to be outweighed by the harm the development will cause.

203. However, this scheme is an improvement on previous proposals. It is well designed and has inherent merit. It has sought to fuse the best elements of both the original tower scheme and the original stepped scheme to produce a building that, notwithstanding its size, has tried to reflect the rhythm, verticality and appearance of the adjacent listed terrace in the design of the northern arm of the building and includes a tower element that has been substantially redesigned to face all ways, has eliminated the blank elevations that marred the previous iteration and includes an architectural treatment that succeeds in creating a more lightweight and less dominating appearance. This relieves some of the dominance of the previous proposals.

e) Assessment of impact.

204. Key views have been thoroughly assessed on a Member site visit. The viewpoints considered are included as an appendix to the report. Comparisons with structures of a similar size were also made to ensure clarity about height.

205. Additional viewpoints were requested by Members following the site visit and these have now been submitted and forwarded to Members and included on the Councils web site.

206. The impact of the development on these viewpoints have been more objectively assessed as part of the LVIA which specifically looks at the impact of the proposal on visual amenity and townscape.
207. This describes a 'slight beneficial' impact on views along Torwood Street when the development is operational. A 'moderate adverse-slight adverse' impact is described on views from Parkhill Road due to the screening of the Pavilion in views across the Harbour. Views from Beacon Hill are classified as 'slight adverse' as the Royal Terrace Gardens will remain as a back drop to the site.
208. Views from Haldon Pier, Beacon Quay and South Quay are described as 'slight adverse' as partial views towards the Pavilion will be maintained by the form of the proposed building. Views from the Terrace will experience a 'moderate adverse' impact due to the screening of views towards the sea. Views from Rock Walk will experience a 'slight adverse' impact as will views from Princess Gardens according to this assessment. Members will be able to consider whether this assessment correlates with their impressions following the site visit.
209. In relation to views down Torwood Street, which are currently quite open and include vistas of the sea and countryside beyond, these would be largely obscured by any development of the site which is inevitable if the unattractive car park edge to the harbour is to be remodelled as anticipated in various local plan proposals both now and in the past.
210. The same applies to views of Mallocks Clock Tower: its backdrop will fundamentally change through any development of the car park site whatever its size.
211. A beneficial impact of development on this site and an aspect missed in the Historic Impact Assessment and the LVIA is the degree to which views of the rear of the Fleet Walk shopping centre will be screened from positions along Beacon Quay and South Quay.
212. An objective matrix base evaluation of the impact of the proposal on the heritage assets, similar to that included in the LVIA is not provided in the Heritage Impact Statements to help a greater understanding of the scale of harm on the defined heritage asset. It offers a commentary on the evolution of the proposals and makes presumptions about relative scales of harm but does not attempt to quantify the level of impact on individual heritage assets.
213. Neither does it deal satisfactorily with the cumulative impact of this scheme on the character and appearance of the place which is largely defined by the relationship of these individual assets. The Councils Conservation officer considers the assessment of harm in relation to the historic environment to be inadequate.
214. There is unquestionably a degree of harm arising from development of this site and in the absence of any evidence to support an alternative position it has to be concluded that the level of harm is at least of a 'significant' or 'considerable' scale which is reflected in the advice of Historic England.

215. Overall it can be concluded that in policy terms for the scheme to be acceptable it should be of exceptional quality and deliver quite exceptional public benefits if the presumption in favour of preservation is to be overridden.

216. It is also necessary to consider whether the benefits of the proposal can be delivered in less harmful ways. This forms the substance of the following sections.

### **3. Is the scheme of exceptional quality and will it drive regeneration forward?**

217. For a scheme to drive genuine regeneration it has to deliver both in terms of the building and its setting. This is well demonstrated by the Abbey Sands development where the quality and extent of the new public realm is of equal importance in terms of creating a sense of place as the building itself.

218. The delivery of a scheme of exceptional quality and a transformative scale of regeneration is a key policy requirement. Policy SDT2 explains that 'high quality development is needed which improves the public realm'.

219. If delivered, it would fall to be considered as a defined public benefit due to the long term beneficial impact it could have on the quality of the place. It may also be sufficient to mitigate some of the harm described on the historic environment. The DRP in their assessment of proposals stressed the need for an exemplar scheme and setting to offset any harm on the historic environment.

#### **a) The quality of the building**

220. The quality of the building design is a product of satisfying broad principles of scale, form and mass along with ensuring that the detailed appearance and use of good quality robust materials is fully resolved and secured.

221. Setting aside issues of size, there have been ongoing discussions regarding challenging elements of the design that could be improved on to better meet the anticipated levels of quality. These were:

- The harmful impact of the 'fifth storey'
- The detail in relation to north elevation of the terrace building.
- Means of better integrating the bedroom link.
- The need to pick up more strongly the character of the adjacent Vaughan Parade in terms of the window detailing, scale, proportion and relief.
- Measures to reduce the visual impact of the Tower.
- Establishing a base line quality in terms of the use of materials and detailed design matters.
- Further information/revised plans have now been submitted which clarify that;
- The 'fifth' storey cannot be removed for viability reasons or its impact on views mitigated by setting it back. The choice of materials to be used will be important as



will be the detailed design in terms of achieving a recessive appearance. This could be secured by condition.

- Options testing in relation to the north elevation show it to be broadly acceptable providing the large scale detail demonstrates sufficient quality in terms of relief, detailing and signage which can be secured by condition.
- The bedroom link has been marginally improved by the inclusion of a glazed set back at the western end of the link where it joins the new building to match the lightweight glazed box which separates the link from the listed building. This provides a more balanced appearance to the link. There is still a need to ensure that in terms of detail it is acceptable and that its underside is treated in a way that will lighten and add interest to pedestrians passing beneath. This can be secured by condition.
- The Design Review Panel were anxious to ensure that in terms of the detailed handling of the façade to the new building, the relationship to Vaughan Parade was fully reflected in terms of proportions, relief and solid to void ratios to provide 'an ordered and finessed façade'. Larger scale sections have been provided but there is still some need for further detail to ensure a wholly satisfactory approach particularly in terms of achieving relief and shadowing across the scheme. This can be secured by condition.
- It is considered that the distinctive framework to the tower is shown to be adequate in terms of relief although the use of aluminium as a material rather than render needs to be fully demonstrated through detailed drawings showing how a continuous curve can be maintained and that joints are properly handled. On a similar point, there is some concern that the glazed balconies which are shown to be frameless are nonetheless sectional or faceted rather following a continuous curve as secured at Abbey Sands and this should be remedied. If the applicant is agreeable, this detail can be secured by condition.
- The upper storeys of the tower have been revised to reduce its dominance although the change to the roof profile does expose the lift shaft to view. It is confirmed by Historic England that the geometry of the roof profile is less assertive although it does not change their advice.
- Whilst sections through the façade have been supplied in relation to the hotel building and the apartment building larger scale details in relation to key features of the building are required before the quality of appearance can be confirmed. The specification of materials show a commitment to the use of good quality materials but there are some notable omissions which will need to be satisfied before this matter is assured. This matter could be left to appropriate conditions.
- The impact of external plant in relation to the Pavilion is not fully resolved and requires further information to be submitted which is picked up in more detail in the listed building application.

b) Quality of the public realm

222. As originally submitted, the only public realm improvements included were a 'new' harbour side walkway as a replacement for the existing public right of way and the delivery of good quality stone paving immediately adjacent to the front elevation of the Pavilion building

and the new hotel building extending only across to the proposed car park on Cary Green.

223. A 'public square' was included in the submitted landscape proposals occupying the area between the rear of the Pavilion and the Promenade but this was only to be half completed up to the 'redline'.
224. There were no other proposals to lift the quality of the adjacent public realm and attempts to remedy this lack of a more comprehensive approach to secure wider regeneration objectives were met with resistance on the grounds of viability.
225. The submitted LVIA specifically recommends a strategy for mitigation of harm to reflect guidance in the Councils Urban Design Guide to create a landscape design that 'alleviates negative visual impacts and integrates the site within the urban fabric of Torbay'. It states that the design of external spaces shall be integrated into the wider landscape setting to reinforce local distinctiveness and that the design of the public realm shall create successful places that respect natural features and are accessible to all. Particular regard it says should be paid to Princess Gardens anticipating improvements to the quality of this open space through 'improvements to the spatial design of areas adjacent to the Pavilion and to Cary Green which forms a visual extension to the Gardens reinforcing the connectivity between these green spaces that will strengthen both the visual and physical quality'. It is fair to say that the submitted scheme fell far short of this ambition.
226. In an attempt to move this forward, Officers identified where enhancements should be secured. Some of these improvements are 'site related' and should be delivered as a matter of course due to the impact of the proposed development. Others are related to wider regeneration aspirations which should be funded either through S106 contributions or from the surplus profit identified through the IVA to mitigate the impact of the scheme on the wider area.
227. As a result of the 'viability gap' identified through the IVA and the fact that good quality and extensive public realm improvements are vital to any successful scheme officers have pushed for significant improvements to the scale, range and quality of the public realm improvements.
228. It has recently been agreed that the following additional public realm improvements are to be delivered 'up front'.
- **Princess Gardens:** The applicant has offered a financial contribution of £30,000 towards enhancements in Princess Gardens. A Conservation Management Plan is in the process of being put together to direct investment in the Gardens and this document will clarify the most appropriate way for this money to be spent. The Gardens are 'at risk' and as the significance of the heritage asset is diminished as a result of the development it is wholly appropriate that there should be some mitigation arising as a consequence of this development.
  - **Cary Green:** Setting aside issues of principle, there had been ongoing debates about the quality of the proposed surface treatment of the car park area and the 'patchwork quilt' effect of not dealing with the whole area on a comprehensive

basis. In order for this space to function as a key public space when not used for parking and for it to form an appropriate setting to the key listed buildings that directly overlook it a high quality and more holistic approach was considered vital. A revised scheme has now been submitted which extends granite paving across the whole of Cary Green and includes replacement of the brown herringbone paving adjacent to the rear of properties on Vaughan Parade. It would be preferable if this extended further to pick up the area between the new stone setts at the foot of north elevation of the proposed building and Offshore and included the area alongside 1 Palk Street and the SoHo Bar. Although this represents a significant improvement on the submitted scheme, the further extensions should be secured. The former should be delivered 'upfront' as part of the Cary Green revised scheme and the latter as a 'deferred contribution' as it is not so critical to the delivery of a quality setting to the Pavilion. The revised layout for the most part confines hotel car parking to the west of the site adjacent to the road leaving the eastern side adjacent to the Vaughan Parade listed terrace for seasonal overspill parking and for the most part available for public use. It presents a far more attractive, consistent and coherent approach in terms of delivering a space that will be of public value and will provide an appropriate setting to key listed buildings.

- **The Promenade to the rear of the Pavilion:** It has been agreed that the short stretch of the old hexagonal paving slabs that are still in place here will be replaced with granite paving to match that which exists to the west of the site.
- **The public square to the rear of the Pavilion:** It has been agreed that this will be completed in accordance with the submitted detail rather than left half finished.
- **Fish Quay:** The loss of the traditional railings arising from construction of the new harbour walkway is of concern. The applicant has agreed to mitigate this by relocating these railings to South Quay to replace the existing poor quality galvanised railings. In order to provide a cohesive public realm adjacent to the new development and along Fish Quay they have also agreed to replace the poor quality galvanised railings which extend along Fish Quay to the bridge and introduce a more modern form of enclosure to match that on the new development which would provide some visual integration between the application site and the bridge. Details to confirm an acceptable approach have not as yet been supplied.

229. In terms of deferred contributions, the following is agreed:

- **The Ziggurat:** The removal of this structure is identified as a key element in the Torquay Town Centre Master Plan in terms of public realm enhancements. Its removal and appropriate treatment would to some degree compensate for the loss of Cary Green as a public space. A contribution of £100,000 towards this ambition has been offered but only as a deferred contribution.
- **Fish Quay:** Whilst resurfacing of this would be better 'upfront' it was agreed that if the proposals for Cary Green fully delivered in terms of scope and quality then this could be considered as a deferred contribution.

- **Cary Green:** As explained above, the extension of the granite paving adjacent to SoHo should be secured as a deferred contribution depending on the resources available and the priorities at the time. This option can be reflected in the s106 agreement.

230. The proposals in relation to the public realm have been considerably upgraded since submission and now begin to meet the ambition identified in the LVIA to deliver integrated improvements to the public realm. One of the identified benefits of development on this site is to act as a catalyst for regeneration and it is considered that is now reasonably met.

231. This scheme now delivers appropriate enhancements to lift the quality of spaces around it and achieves 'place making' regeneration to offset some of the harm to the historic environment.

#### **4. What are the public benefits of the scheme?**

232. As has been explained, the public benefits of the proposal can outweigh the strong presumption against approval which arise from concerns about the scale of harm on the historic environment identified in the sections above.

233. However, by law, the harm has to be given considerable weight and therefore the public benefits also need to be considerable to outweigh the harm.

234. The public benefits are:

- The restoration of the Pavilion and for a use that will guarantee its long term future and maintenance,
- The delivery of a 4\* hotel and the contribution this will have to maintaining Torbay as a premier tourist resort.
- The creation of jobs and associated economic activity.
- The regeneration of the harbour side and wider public realm improvements.
- Provision of new homes in a town centre location.

235. The Pavilion is in a poor state and its restoration has been a key driver in pursuing development proposals on the site. It was an innovative building at the time of its construction, conceived as a complete steel frame from the foundations upwards. The steel frame was then built into the external walls which were constructed of faience blocks and brickwork. Many of these first generation steel framed buildings have corrosion issues. It was identified as being in need of substantial investment in the draft Torquay Harbour Area Action Plan in 2006. An assessment of the current condition of the building was carried out in 2013 by Alan Baxter Associates who are specialist structural engineers.

236. The building suffers from severe water penetration which has led to corroded steelwork and cracked faience. The costs of correcting these defects to give the building a robust

25 year 'life' has been recently estimated at £2.76 million. There is no grant aid available to rectify the faults whilst the building remains under private control. A repairs notice, which the LPA could serve would only achieve basic weatherproofing to arrest further decline, it could not require the fundamental intervention that is needed to secure the long terms future of this listed building.

237. Restoring the Pavilion and identifying a robust long term future for the building is a key public benefit. Use as a front of house for the proposed hotel is a very good use for the Pavilion. It secures public access and gives the building a long term future. This satisfies two public benefit tests in that it saves a listed building at risk and it secures a use that will ensure its long term maintenance.
238. The delivery of a good quality hotel in a prime location can be seen as a public benefit as it delivers jobs, promotes economic activity and generates vitality. The anticipated future occupier is the Harbour Hotel group owned by the applicant the Nicholas James Group. This is a 'high end' chain operating mainly 4\* hotels and it would have a significant impact on visitor attraction putting Torbay firmly on the map.
239. An economic impact assessment submitted to support the application, evaluates the potential of the scheme to benefit the local economy by looking at three measures of impact, employment generated, wages and Gross Value Added (GVA) which is a measure of how much value the proposed development adds to the local economy.
240. These impacts arise from the construction of the development, the ongoing operation of the hotel, the ongoing operation of the commercial uses. The report estimates that, based on the £32m costs of construction, the equivalent of 20 FTE jobs will be created though the building of the scheme, the operation of the hotel will create around 98 FTE jobs averaged over the year, 81 jobs are estimated to be generated by the operation of the bars and restaurants, cumulatively this will generate wages in the order of £3.7 m per annum and the GVA (i.e. the value of the scheme to the local economy) is in the order of £4.27 m per year.
241. The report also looks at the 'net additional local impact'. This considers a range of factors that will have an impact on the contribution that this scheme makes to local economy such as how much employment and economic impact is displaced from elsewhere in the bay, how much of this will leak outside the local area and the multiplier effect of the spending practices of the operator. Based on the Harbour Hotels policy of local sourcing of produce and services it estimates this to add in the order of 136 jobs, £2.5 m in wages and an estimated GVA of £2.9m to the overall scale of benefit.
242. The report also points out the unquantified impacts of the scheme in terms of encouraging regeneration of the harbour, helping to deliver the wider proposals set out in the Town Centre Master Plan and meeting the various economic objectives embodied in the Economic Development Strategy, the 'Turning the Tide' Tourism strategy and the newly Adopted Local Plan.
243. The need for jobs and economic growth is one of the Councils key objectives and the

recent data in relation to increasing poverty levels reinforces the need to put the creation of jobs as a high priority. The Indices of Multiple Deprivation (IMD) is the means by which the wellbeing of a community is measured. Torbay performs poorly when compared to the country as a whole. The Community Investment Areas (CIA's) included in the Local Plan are based on the top 20% most deprived areas relative to England and the 2015 data show that deprivation is worsening across the Bay with CIA's growing in extent and the scale of deprivation.

244. The most up-to-date tourist data confirms that visitor numbers and turn over has increased and 'Turning the Tide' indicates that there is a shortage of the higher ranking hotels in the 4 and 5\* categories. Torbay's economy relies heavily on tourism. In 2013 the value of tourism to the local economy was £445m with the equivalent of 9234 full time jobs which is 22% of all employment in Torbay. This confirms that there is a demand for new and tourist improved facilities.
245. The report concludes that employment and GVA generated by the development are estimated to be an equivalent of around 1% in the tourism sector of Torbay and it would suggest that a good quality hotel with all the spin off benefits entailed will deliver a significant boost to the local economy.
246. In view of the nature of appraisals, the centrality of the economic argument and the disputes about the methodology used the LPA has sought a review of the Economic Appraisal submitted in support of the application. This confirms a substantial economic benefit although it points out that the number of jobs likely to be generated in the hotel is less than the average 98 FTEs suggested in the HJA Economic Appraisal. Based on the HCA Employment Density Guide a figure closer to 60 FTE's would be expected. However the study concludes that it would make little difference to the overall prediction of economic benefit as the consultants used 'conservative' GVA multipliers and omitted to include additional new visitor spend in their calculations. Their verdict is that the overall employment and GVA impacts predicted is robust.
247. It should be noted that a range of figures have emerged from various studies and appraisals used to help inform a judgment about the overall economic benefit of the proposal and the viability of the scheme itself. Construction costs have varied between studies along with discrepancies in likely values. Whilst these differences have been identified and where possible resolved they are not of a scale to undermine any decision and it should be recognised that economic appraisals and IVA's are predictions based on best practice and not an exact science.
248. The Chamber of Commerce support the scheme on the grounds of the benefit to the local economy as do other businesses in the Bay. Some hoteliers notably the Rew Group and Richardson Hotels consider the economic benefits overplayed and that further hotel development would be damaging to the economy when there are so many hotels struggling and in need of investment. The point has been made in responses to consultation that a new hotel here will simply divert investment from other hotels in the area. The argument is that the Bay is not short of hotels but of good quality ones and surely it is better to invest in existing business than to build new hotels particularly given

the harm arising.

249. In this context it is useful to note that the Imperial Hotel has been sold to a quality operator who clearly wasn't deterred in his investment decision by the prospect of a competitor setting up on the harbour side.
250. In relation to wider benefits, the applicants have agreed to include within the commercial space an adult changing facility to the 'Changing Places' standard which will be of significant benefit to people who need this kind of facility and to their carers.
251. The delivery of new housing would be beneficial from an economic point of view, it would contribute to delivery of a five year land supply and deliver new homes bonus.
252. To sum up, the scheme delivers in terms of achieving restoration of the Pavilion and for a use that will secure its long term future. It will be of significant benefit to the local economy.

#### **5. Can the delivery of the public benefit be guaranteed?**

253. In terms of the delivery of the restored Pavilion and the hotel building, the lease the applicant has negotiated with the Council indicates that an agreed schedule of works would be undertaken prior to occupation of any of the apartments on the site. It also indicates a commitment to construct the hotel to shell and core prior to occupation of the 20th apartment on the site. This can be secured by condition.
254. Given the condition of the building, more detailed discussions will be needed about the scope and scale of these works which should be more fully specified and should reflect the recommendations of the specialist engineer and include implementation of the range of works included in the submitted listed building application. A prompt start should be secured and if there is a delay in implementation a further review maybe necessary of the scope of works needed.
255. A 'performance bond' to ensure delivery in the event of any unforeseen financial difficulties may be of benefit.
256. It would also be necessary to ensure that the hotel to be delivered is of the promised quality that will have the best chance of securing the anticipated spin offs in terms of economic growth and regeneration.
257. The Harbour Hotel Group are a good quality high end operator. Members visited the Salcombe Harbour Hotel to assess the quality of the offer and the facilities. It has a policy of local procurement both in terms of construction and sourcing of produce. This was stressed in the HJA Economic Impact Report and contributed to scale of economic benefit predicted. The S106 should therefore include a signed lease or other means of confirming occupancy on completion of the scheme and a commitment to local procurement included. Given the potential impact of construction works on the harbour a clearly and tightly defined phasing programme would be required.

258. Whilst economic benefits of the scale suggested cannot be guaranteed, the HJA Economic Impact Report was independently reviewed and despite some quibbles about methodology, it found the predictions regarding the likely economic benefit to the town to be sound.
259. The public realm improvements could for the most part be secured through a S278 notice and appropriate conditions. The financial contribution towards the Princess Gardens enhancements and any deferred contributions will need to be secured through the S106 agreement.

## **6. Can this benefit be delivered in other less harmful ways?**

260. This is a key test in assessing the acceptability of a scheme that is harmful but predicated on the need to fund, in this case, restoration of a listed building.
261. A common theme in Enabling Development Guidance and explicit in Historic England's consultation response is that the LPA needs to be confident that it has been clearly and convincingly demonstrated by the applicant that the perceived wider public benefits offered by the proposals cannot be delivered by a means that reduces the harm identified.
262. The work carried out as part of the IVA to assess whether this scale of development was necessary to deliver this hotel led scheme identified that the low value ascribed to the hotel was driving the large number of flats to effectively subsidise its delivery and to pay for restoration of the Pavilion.
263. It is therefore evident that harm might be minimised by deleting the unprofitable bit of the development and replacing this with a higher value land use. The applicants were asked to look at what sized building would be needed if it was to deliver ground floor commercial uses with residential flats in place of the hotel and derive enough profit to restore the Pavilion.
264. This produced a smaller building, much closer in form and size to that identified in the Urban Design Assessment as capable of being accommodated in this location with minimal impact on the historic environment.
265. The Pavilion would lend itself to a variety of alternative uses that would become more feasible once fully repaired although its use as a 'front of house' facility for an established high end hotel chain does provide a long term guaranteed use and resolves future maintenance liabilities.
266. The inclusion of a hotel delivers evident economic benefit although this has to be set against the harm identified to the historic environment.
267. The 'residential option' would clearly not deliver the same scale of economic benefit as inclusion of a hotel but it would still deliver some economic growth during construction and from the operation of the commercial uses on the ground floor. This has been assessed by the consultants appointed by the LPA to review the economic benefits of the scheme who conclude that in terms of a summary of all benefits, the number of jobs would be



reduced from 116 to 47 this would generate £1.4m less in wages and £1.7m less GVA per year. This would on a proportionate basis reduce the economic benefit by over a half.

268. Such a scheme may have the capacity, through greater profitability, to deliver more in the way of wider regeneration enhancements. It also needs to be recognised that achieving investment and new hotel accommodation in this location may act in a way to deflect investment from other hotel sites. After all, there is no shortage of hotel sites in Torbay just a lack of interest in bringing them forward.
269. This point emerged as a common theme in consultation and the consultants were asked to consider to what extent deflection of investment was likely to affect other players in the tourist sector. They did not consider it significant: in an extreme case a competitor operating at their margins might be forced to close but it may also spur existing hotels to 'up their game' and respond with renovations of their own.
270. The transformation secured by the development of Abbey Sands shows that a similar essentially residential scheme can secure economic benefits and regeneration. It must be acknowledged however that there is no certainty that such an application would be forthcoming, it would introduce further delay in resolving the future of the Pavilion and would not secure such a robust future use for the building.
271. To conclude, the benefit of restoring the Pavilion (albeit with a less secure future) can be achieved in a less harmful way although it won't deliver the same scale of economic benefit and may involve further damaging delay in securing the future of the Pavilion.

## **7. Is the harm mitigated by the scale of public benefits?**

272. The report has so far concluded that the scheme will have a significantly harmful impact on the historic environment. S 66 and S 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 impose a duty on LPAs to give considerable weight and importance to the desirability of preserving the settings of listed buildings and preserving or enhancing the character of Conservation Areas and that there is a strong presumption against planning permission being granted in the event of harm whether it is substantial or less than substantial. This has to be the first consideration.
273. Paragraph 134 of the NPPF does allow, once this duty has been fully taken into account, to weigh the harm against the scale of benefit and to make a decision accordingly. In this context, it has to be accepted that delivery of a scheme on this site of a tourism related use will guarantee the future of the Pavilion and deliver clear economic benefits. The quality of the scheme has been improved particularly with regard to the range of public realm improvements and its capacity to drive a 'place making' or transformative scale of regeneration. It has also evident that a different package of uses would achieve some of those key benefits but in a way that would minimise the impact on the historic environment.
274. Approval can be justified providing the decision maker is satisfied that the scale of harm is outweighed by the public benefit. If the scale of harm is less than substantial then the test is less onerous. This is a matter of judgement and there is no consistent view

emerging from consultees. Historic England consider the harm to be less than substantial but still significant, The Victorian Society consider it to be substantial. The Devon Gardens Trust find it unacceptable but for different reasons to the others. Officers concur with Historic England that the degree of harm is less than substantial although still significant.

275. It is necessary therefore to weigh the public benefits against the harm.
276. A compelling case for the development has to be:
- A more speedy resolution to the future of the Pavilion and its more robust and guaranteed future as the 'front of house' serving the hotel.
  - The delivery of a 4\* hotel and new commercial space with all the attendant economic benefits this will bring. It will help put Torquay on the map, deliver jobs, increase visitor numbers and drive local economic growth and vibrancy.
  - The regeneration of the currently rather run down and unattractive harbour edge and wider public realm improvements which will help deliver place making regeneration.
277. Against the development is the very real harm to the historic environment.
278. This arises essentially from the fifth storey of the 'terrace building' and the top 3/4 stories of the tower building. If these elements were removed the building would be similar in form and size to that which emerged from the initial Urban Design Study as forming an acceptable form of development compatible with the character of the conservation area. It also reflects that which would be delivered if a wholly residential scheme were pursued on the site. It would also be more consistent with suggestions made by consultees about a more suitable scale of development.
279. Is the fifth storey on the terrace building and the top 3/4 stories of the tower building a price worth paying for the hotel with its attendant economic benefits and a confident long term future for the Pavilion?
280. This is a very hard judgement call and Officers find on balance, given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.
281. However this is a very finely balanced judgement and it is entirely legitimate, having considered all the matters raised in this report for Members to decide to give greater weight to the need to preserve and enhance the character of the Torquay Harbour Conservation Area, the settings of adjacent Listed buildings and the Registered Park and Garden and to consider that the development should be refused planning permission.
282. There is no right or wrong answer, it is a judgement based on the scale of harm against the public benefit and reflects whether priority should be given to a proposal that will

generate economic benefit over preservation of the historic character of the town.

283. There are, however, a number of other matters to consider in terms of reaching a decision on this application.

#### **8. Is the loss of Cary Green to provide car parking acceptable?**

284. The loss of Cary Green to provide car parking is a hugely significant issue particularly for local people. The objections in summary relate to the physical loss of the green space, its replacement by car parking, the impact this will have on the character of the Conservation Area and the setting of adjacent listed buildings, it is questioned why it is necessary given the existing MDL car park is not often used to capacity as evidenced by the fairly consistent use of the existing top deck of the car park for public pay and display parking, why more 'shared use' of MDL's existing car park has not been considered to meet the needs for car parking and why spaces in adjacent underused car parks could not be used.
285. The scheme provides for the removal of all planting and structures within Cary Green. It is proposed to be resurfaced, include some tree planting and laid out to provide, in the revised scheme, 69 car parking spaces. 32 spaces are allocated for the hotel to use on a permanent basis and the balance for MDL to use on a seasonal basis.
286. The applicant contends that the provision of this scale of parking is essential to delivery of this project.
287. Cary Green is not within the curtilage of the Registered Park and Garden nor does it benefit from any statutory landscape protection.
288. In relation to the value of open space per se, it is recognised as being of intrinsic value from a health perspective and paragraph 74 of the NPPF indicates that 'open space, sports and recreational buildings and land should not be built on unless there is an assessment to show it is surplus to requirements and it would be replaced by other better provision. The focus of this policy is in relation to retaining land and buildings which encourage sports and associated activity which is not the primary function of this site. It is also not lost beneath buildings but could remain in use as public space for a proportion of the year.
289. Nonetheless, its 'value' in terms of the contribution it makes to the recreational needs of the area has been assessed by the Principal Natural Environment Officer as part of a wider review who finds that Cary Green is essentially a 'transition' rather than destination space and given its future use, which includes public access and its proximity to Princess Gardens he does not consider the development to cause detriment to the availability of open space. He does point out some design changes and refinements which would help the area to continue its function as a transition space and makes suggestions which would enhance its use for events and markets.
290. The main value of the site is its contribution to the character and appearance of the Conservation Area and in creating a valued setting to the adjacent listed buildings which

frame it on three sides. These are 1 Palk Street, 3-15 Vaughn Parade and the Pavilion itself. It is therefore of heritage significance.

291. Historic England raise no objection to its loss nor did the DRP in considering the various proposals for the site. The Victorian Society consider its loss to be of significant concern as does the Theatres Trust although it is not their statutory function to comment on townscape issues.
292. In policy terms, the assessment is the same as that for the development as a whole. Development should 'preserve or enhance' but some harm can be weighed in the balance if the harm is deemed to be less than substantial and there are key public benefits.
293. It is also necessary to consider what local plan policies suggest in respect of car parking in relation to these specific uses and what provision there should be in a town centre location such as this.
294. Policy TA3 indicates minimum thresholds for car parking for the uses comprised within this application. Overriding this however, the policy states that there is no specified minimum threshold for town centre uses. It says that in general, existing car parks and on-street car parking will be able to service new development and that car free development will be permitted within town centres where there is good access to public transport and the potential to utilise spaces within existing car parks. On site provision would only be in exceptional circumstances where a change of use could lead to problems with overspill and discriminate parking.
295. There are a number of issues to consider therefore, is the parking necessary to the delivery of the development, is it acceptable in terms of the thrust of town centre parking policies, is the character of the Conservation Area and the setting of listed buildings adversely affected, what is the scale of harm, can this be mitigated and does it secure a public benefit?
296. It is claimed to be necessary from the applicant's point of view and essential for delivery.
297. MDL currently have 235 car parking spaces on two decks. 126 on the lower deck and 109 on the upper deck. This serves 300+ berthholders and in in peak months, a minimum of 214 spaces is apparently needed.
298. Following redevelopment of the site, 134 spaces will be available on the lower deck and only 81 on the upper deck. 43 of these are allocated to serve the residential flats leaving 38 'residual' spaces which will, as is currently the case, be used either for MDL berthholders or public pay and display if not needed for operational purposes.
299. To meet the minimum 214 spaces MDL claims is necessary to meet berthholders needs, it was proposed to include 42 overspill spaces for MDL on Cary Green along with 32 spaces for the hotel.
300. Evidence has been requested for many months now to support the underlying claim that

214 spaces is an operational minimum for the Marina in peak weeks and to help define when their peak demand is. This should be fairly easy to confirm from MDL's own records and from occupancy levels for the existing car park.

301. Observation suggests there are very few occasions even during the busiest part of the summer period when the existing MDL car park is used to capacity for operational purposes. This would suggest that there would be periods of time, particularly out of these peak weeks when there is capacity within the existing MDL car park for more shared use of spaces.
302. The use of spaces in nearby underused car parks such as Fleet Walk is also promoted in the Local Plan. The applicant considers this would be inconvenient to beholders potentially affecting the long term viability of the Marina.
303. The inclusion of parking to serve the residential flats is considered, by the applicant to be important from a viability point of view as convenient secure parking will increase the value of the flats. The future success of the hotel is claimed to be heavily reliant on the availability of car parking close by.
304. Whilst these requirements might be valid, there is no reason why a more effective use of the existing MDL car park should not be given greater consideration as it would substantially reduce the scale and frequency of occupation of Cary Green, would thus comply more closely with local plan requirements and to some extent mitigate local objection.
305. Notwithstanding in principle objections to the level of car parking, Highway Officers have raised specific concerns about pedestrian/cycling conflicts which are generated by the use of Cary Green for car parking and have requested design modifications to reduce conflict. They also raise a need for modelling of traffic flows in relation to the mini roundabout if car parking is included on the site.
306. Any parking will need to satisfy requirements in relation to disabled drivers and the provision of electric charging points and there will be a need to include provision for cycling to ensure that the site is developed in as sustainable way as possible.
307. In terms of the impact on the Conservation area and setting of nearby listed buildings, and in recognition of the strength of public feeling, officers sought to find a compromise to the future of Cary Green in terms of its design and management to deliver more of a public space and to confine its use to those times that were shown to be operationally necessary.
308. The concept of a 'French Square' with a good quality hard and soft landscape scheme, trees and good quality street furniture would create a space that could accommodate overspill car parking when required but would otherwise lend itself to recreational use, allow it to be used for events and markets and would, depending on the quality of the final scheme and the extent and nature of the parking deliver a place that would not harm the Conservation Area or the setting of listed buildings.

309. It is essential therefore to consider whether the quality of the scheme is good enough and whether the public use of the space is guaranteed in any meaningful way.

**9. Is this loss mitigated by the quality of the replacement scheme, the proposed public use of the space and is this secured in any meaningful way?**

310. There have been long term outstanding issues with regard to the quality of the space, the degree to which the public are guaranteed access to it and the heads of terms to secure this.

a) Quality of the Replacement Space.

311. As originally submitted the design of the replacement space did not lend itself to public use and enjoyment at times when not in use for parking. It left an irregularly shaped area which would have been the space the public would have had the ability to 'use' as a public space and for events. It did not have any of the qualities that a successful public space should have. It had no relationship to its surroundings, no focus and was simply 'left over' space. In terms of finish, it was proposed to use bound gravel for surfacing the car park and to do little to the adjacent areas of public realm leaving a 'patchwork quilt effect' of varying surface treatments.

312. It was not considered that this approach was good enough. The gravel finish was neither robust enough for the likely use or visually appropriate for this context and the lack of a comprehensive response to the treatment of this new space meant the visual quality of the space was poor with adverse impacts on the historic environment.

313. In response to this concern the applicant suggested an alternative of 'conservation grade tarmac' across a wider area which was even less suitable as an approach for this sensitive location. It was suggested to the applicant that the resurfacing should be extended to include the wider area in a more comprehensive and cohesive approach to improve the setting of listed buildings and that it should include natural stone setts and granite paving to tie in more closely with the local palette of materials and those to be used immediately adjacent to the Pavilion.

314. Such an approach was supported by the Principal Natural Environment Officer but the applicant considered this unaffordable and unnecessary.

315. This position has recently been modified and the resurfacing is now to be wholly in granite setts and paving and the treatment is to be extended to the frontages of adjacent listed buildings replacing the existing herringbone setts and overcoming concerns about the 'patchwork quilt' effect. Whilst this is acceptable as a matter of principle there are a number of design matters that need further thought, for example, whether a darker colour

stone would be preferable in terms of reducing staining, the species and layout of hedging and trees, the quality of the street furniture and some physical means of controlling random parking. These matters could be secured by condition.

316. As has been noted in previous sections, the extent of resurfacing could be usefully extended to include the area between Offshore and the new stone work abutting the northern elevation of the proposed building and alongside 1 Palk Street. As explained above, it is suggested that the extension of resurfacing abutting the northern elevation of the new building is delivered upfront whilst the latter is included as a 'deferred contribution' to be delivered if the profitability of the scheme is better than anticipated.
317. The design of the space is also rationalised to provide a better relationship to existing routes and focal points which will facilitate and encourage public use of a majority of the space when not needed for car parking. This revised layout concentrates hotel car parking to the west of the site adjacent to the busy road and on an axis with the Pavilion and the more sporadic MDL berthholder parking to the eastern part of the site.
318. Following agreements in relation to the car parking strategy this space will only be available to MDL for parking during the Easter weekend, June July and August and only then when the whole of the MDL car park is fully occupied by MDL berthholders. Thus the eastern part of the new space will be available for the public to use for a majority of the year.
319. The previous layout generated conflicts between the car park layout showing 74 spaces and the proposed landscape scheme with insufficient space available for trees to be planted yet alone survive. These concerns have been ameliorated in the revised layout and the design now reinforces the public nature of the space and underpins the 'overspill' nature of the car parking.
320. In terms of highway comments, they consider that the revised scheme eases conflicts inherent in the previous layout but wish to see provision for disabled users and electric charging points introduced along with adequate provision for cycle parking. They consider that pedestrian safety needs further thought and can be achieved with bollards/changes in surface material. They have no in principle objections to the kerb modifications but require modelling/more detailed plans for confirmation.

b) Proposed public use.

321. The use of the space for parking needs to be tied to that which is shown to be necessary for operational reasons and for as restricted a period as possible in order to comply with town centre car parking policies. The submitted car park strategy indicated in summary that Cary Green could be used for car parking by MDL during peak months defined as March- October when the existing car park was 80% full and by the hotel for 12months of the year.
322. A more detailed assessment of operational need was requested to help define when peak months were and to assess whether the needs for car parking could be met though more

shared use of the existing car park. This information has been requested since the original application was submitted in 2014.

323. In the absence of any reliable data confirming the scale of use of the MDL car park it was put to the applicant that the peak weeks should be confined to those times that are
324. demonstrably busy i.e. Easter weekend June July and August (rather than March-October) and that MDL should not occupy any spaces on Cary Green unless both decks of the MDL car park are 100% occupied by berthholders (i.e. no pay and display use) and that outside this defined period these areas are primarily devoted to public use. It was also suggested that the hotel car parking should only take place on Cary Green during the defined summer period and that outside this time hotel car parking should be accommodated within the existing MDL car park. This would free the whole of Cary Green for public use and enjoyment for a more substantial part of the year.
325. The applicant has agreed to the more restrictive periods of occupation for MDL but has not agreed that the hotel car parking should use the existing MDL car park outside the defined peak weeks. The applicant claims it is essential that hotel guests can park on the spaces allocated for hotel use on Cary Green all year long and the matter is non-negotiable.
326. It must be noted that no firm evidence has been supplied regarding the ability (or otherwise) of the MDL car park to accommodate the hotel car parking outside the peak weeks which would lend some support for the need for Cary Green for hotel car parking during the winter months. However the revised strategy, whilst not ideal, does mean that the eastern part of Cary Green is only used for car parking for restricted periods and only when there is a clear operational need as Cary Green cannot be used unless berthholders occupy 100% of both decks of the existing car park.
327. This revised strategy would in effect exclude public 'pay and display' use of Cary Green which would be significant from a planning point of view. The loss of this valued green space would be difficult to justify to provide public car parking which is not exactly in short supply in the area.
328. There will be a need to monitor the use of Cary Green to ensure compliance with the strategy and to ensure that 'valet parking' does not result in the hotel spaces being 'bank parked' to allow inclusion of more than 32 vehicles. This will need to be dealt with by conditions and an appropriate monitoring contribution to be included in the s106 agreement.
329. The use of Cary Green for parking is only supportable in policy terms if the quality of its design is exemplary, if there is evidence to support operational need that cannot be accommodated through shared use of existing facilities, it shown to be clearly necessary for delivery of this scheme and the use of Cary Green for overspill car parking is minimised.
330. It is considered that following recent improvements to the quality of the scheme and the revised car parking strategy which secures use of Cary Green (generally) when



operationally required then the scheme is now acceptable and represents a significant improvement on the original submission.

331. Whilst the scheme in relation to Cary Green is now considered broadly acceptable it could be improved if the grass verge alongside Cary Parade were included within the application site. This would allow the permanent hotel car parking to be shifted towards the Cary Parade which would maximise the amount of space to be made available primarily for public use. It would be important however to introduce hedging and substantial tree planting along the back edge of pavement to screen the visual impact of vehicles. The inclusion of this additional space would also allow better provision to be made for bin storage for the commercial units on Vaughan Parade which currently occupy the foot of the Ziggurat.
332. It may also be possible to re-use some of the existing Palm Trees in the proposed soft landscape scheme which would provide some landscape continuity.
333. In addition to the major issues as set out in sections 1-9 above, there are a number of design and functional concerns, these are:
- 10. Does the height of the structure result in unacceptable 'shadowing' of the harbour and adjacent premises or create wind funnelling?**
334. This has been a key concern for many respondents and climatic studies have been requested for many months to show to what extent the building will overshadow nearby premises and whether there will be any impact on wind funnelling.
335. The impact of shadowing on the harbour and on adjacent premises was originally evaluated using the 3D model for a series of times throughout the day for the 21st June and the 21st September. The images show little overshadowing in mid-summer with the lower terrace block shading only the car park and the new walkway.
336. According to this study, the shadow of the tower element passed over a corner of the Pavilion in the early morning and only shaded the development itself without affecting other properties.
337. The shadow of the tower was shown to reach across the inner harbour only after 7.00 pm an hour before the sun retreated behind Waldon Hill. This appeared to confirm that only a small part of Victoria Parade was shaded for a relatively limited period of time in the late evening with all areas north of Harbour Point unaffected.
338. However it was considered necessary to have this more robustly tested due to the scale of concern.
339. More detailed climatic studies were submitted in January 2017.
340. In relation to daylight, it is shown that adjacent properties are generally not adversely affected but that five window locations on the south facing façade of Offshore are affected

by the development along with three window locations on the south east elevation of the Pavilion. The report concludes that the degree of harm is low with only 1% of assessed locations not meeting minimum guidelines. In terms of sunlight, the report concludes that all window locations tested are acceptable when judged against industry guidelines. However, this does not deal with the impact of daylight or sunlight on public spaces only the impact on windows.

341. In relation to wind funnelling, this finds that the tower represents an obstruction to prevailing south westerly winds over open water and that faster moving upper level winds 'impact the façade' and are drawn to ground and podium levels as downdrafts and subsequently channelled along the building front and accelerated locally around building corners. It finds that the impact of this is mainly felt within the development itself on the car park deck, some balconies and on the public route at the podium of the tower. It suggest mitigation in the form of increased landscaping, raised balustrades, balcony dividing screens. It suggests that the areas removed from the building are little affected by the impact of wind.
342. It is disappointing that the information supplied particularly in relation to shadowing doesn't deal with the impact of the development on the enjoyment of 'spaces' given the harbour side is valued by the public for its wider amenity value. Specifically the impact on the outside 'café' space associated with Offshore was asked to be investigated along with any shadowing of Victoria Parade. The applicant has been requested to provide some updated information in relation to this so that the full impact is understood. However, it is unlikely based on the preliminary studies considered that it would be of a scale to justify a refusal of planning permission.

**11. Is the construction likely to adversely affect the listed quay walls?**

343. Piled foundations were installed when the existing car park was constructed and it is anticipated that these can largely be used to support the new development minimising any impact on the listed quay wall. The same structural engineers, Ove Arup, have been commissioned to provide advice and there is no suggestion that this will present any threat to the quay. However a geotechnical report should be secured by condition.

**12. Is the design of the 'bedroom bridge' linking the Pavilion to the proposed harbour side hotel acceptable?**

344. An advantage of this scheme is that it provides a new use for the Pavilion as front of house for the hotel. Clearly this requires it to be physically linked to the hotel and numerous options have been considered for minimising the visual impact of this structure. The current location for the link is acceptable as it has minimal impact on the fabric of the listed building being attached to a more modern extension constructed in the 1980's and is largely viewed in the context of a modern car park.
345. The link however does include displaced bedrooms which are attached to both sides of the pedestrian link thus creating a more dominant structure than originally anticipated. The quality of the design is therefore crucial and to lighten the impact of the structure, the

link is separated from the listed building by a lightweight glass box and the sides are decorated with vertical copper fins.

346. The applicant has agreed to include a similarly recessed glazed box to the opposing end of the link to give a more balanced appearance. It is important to review the effectiveness of the copper fins in terms of visually integrating this structure. It is also important to carefully consider the underside as this will be widely viewed. The plant previously located on the roof has been relocated.

### **13. Is the width and design of the new waterside walkway acceptable?**

347. The existing walkway along the harbour side is quite narrow and bounded by the existing car park. One of the potential benefits of this scheme is the opportunity to upgrade the quality of this experience. It is proposed to include A3 restaurant uses opening onto an elevated terrace at a half storey above the existing walkway and to link the two with a series of terraced timber steps and ramps. It is also intended to widen the existing walkway by 300mm through a small extension of the walkway over the Harbour wall. This will introduce a more modern finish to this part of the harbour in terms of materials and enclosure. The principle and design is not favoured by several objectors on the grounds of its untraditional appearance and the creation of pinch points.
348. The applicant has supplied further information in respect of the pinch points which shows that the existing walkway reduces down to 1.7m in places which is approximately the same as the narrowest points in the proposed walkway. The width cannot be increased due to the constraints set by the building. It is also the case that over a significant part of its length there is greater width (albeit on varying levels) than exists currently and it presents a much improved pedestrian experience.
349. The detailed design of the walkway is in need of clarification and a key area of concern, the loss of the traditional bollards can be mitigated as explained in section 3.
350. In summary, the bollards, which are attached to the quay have to be removed as the new walkway is elevated above and extends 300mm out from the existing harbour edge. This necessitates the use of a more modern lightweight enclosure to the harbour more akin to that used along Beacon Quay.
351. If these bollards are used to replace the existing poor quality galvanised railings that enclose the southern edge of the harbour and the opportunity taken to rationalise the poor quality railings running alongside Fish Quay to create a more visually consistent and integrated form of enclosure extending up the bridge then the impact of the loss of the bollards in this location would be fully mitigated.

### **14. Does the scheme generate Highway concerns?**

352. The impact of the scheme on the highway network has been assessed and it was requested that modelling of the roundabout should be carried out if parking took place on Cary Green. Any modifications necessary to its layout can be secured via a S278 Notice.

The revised layout for Cary Green better resolves cycling and pedestrian conflicts and the need for cycling, electric charging points and spaces for disabled users can be secured via condition.

- 353. Provision for servicing and storage of waste are reflected in the submitted plans and is mainly accommodated within the remodelled MDL car park but a servicing plan, along with tracking information is required which will ensure that deliveries, collections and waste removal are carried out in a way that minimises impact on the public highway.
- 354. There a number of technical issues that need to be briefly considered.
- 355. In respect of flood risk, the EA and the Councils Drainage Engineer are satisfied that if the scheme is constructed in accordance with the submitted Flood Risk Assessment then the risk of flooding is not worsened.
- 356. In respect of the relationship to the Marine SAC and the need for a Habitat Regs. Assessment, Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitat.
- 357. An EA screening exercise has been carried out which confirms that an EA is not required.
- 358. There are no outstanding contamination issues. The site was largely cleared of all possible contaminants when the car park was constructed in the 1980's.

**S106/CIL -**

- 359. The scheme should, if shown to be viable, deliver on site Affordable Housing and Community Infrastructure Contributions in line with Policy H2 in the Torbay Local Plan the Adopted SPD 'Planning Contributions and Affordable Housing'. This should deliver 20% affordable housing to be policy compliant. The cost of this if an off-site contribution was agreed coupled with the community infrastructure contributions would amount to approximately £2m.
- 360. The IVA demonstrated that the viability of the scheme precludes meeting this requirement. Any increase in the size of the building to generate the extra profit would increase the harm on the historic environment.
- 361. As explained in the body of the report it was considered more appropriate in view of the need to achieve regeneration of the site, that any surplus profit should be invested in delivering an improved public realm which is the course followed.
- 362. As the scheme will not be providing Affordable Housing or other sustainable development contributions as required by the SPD, viability must be re-assessed towards completion of the scheme, when actual figures are available. If the scheme turns out to be more profitable than originally anticipated, 'deferred contributions' will be payable. In order to mitigate the effects of the scheme the deferred contributions will be used by the Council as contributions towards future public realm enhancements in the vicinity of the site.
- 363. The site would be liable for CIL if the decision is not issued by the 9th May. This would

amount to £260,000 which would probably prevent the scheme being implemented. This does mean that matters have to progress quickly.

364. As has been identified in the text of the report, the s.106 will ensure that the high end hotel user is guaranteed along with securing local procurement and labour/service agreements.
365. Securing public access to and use of Cary Green for events should be reflected in the s106.
366. Given the condition of the Pavilion, it would be preferable to see renovation works started earlier in the process than currently offered. It may be necessary to consider a Performance Bond or other means of ensuring delivery in the event of financial problems.
367. The public realm improvements can largely be secured via a S278 notice and suitable conditions, the financial contributions towards the Princess Gardens enhancements will have to be secured via the S106 agreement as will any deferred contributions towards resurfacing Fish Quay and/or extending the resurfacing of Cary Green and/or the removal of the Ziggurat and its treatment or other town centre public realm improvements.
368. A monitoring contribution towards ensuring the use of Cary Green is in accordance with the conditions and terms of the car parking strategy will be needed as will an agreement to ensure that the developer permits use by the public
369. Any works deemed necessary to the mini roundabout to accommodate parking on Cary Green will either have to be secured through the terms of the S106 agreement or via a s278 notice.

### **Conclusions**

370. The fact of harm to the historic environment cannot be disputed. It is evident in the responses of statutory consultees, concerns from local residents and the applicants own consultants who acknowledge a level of harm.
371. There is a debate about whether this is 'substantial' or 'less than substantial' but whatever the level of harm decision makers must understand that there is a duty on them to preserve and enhance listed buildings, their settings, Registered Gardens and Conservation Areas all of which are compromised to some degree by this proposal. There is therefore a strong presumption against planning permission being granted.
372. Paragraph 134 of the NPPF does allow some harm to the historic environment providing the harm is outweighed by the public benefits of the proposal. The level of benefit necessary to justify overriding the presumption against granting approval should be broadly commensurate with the degree of harm. Substantial harm to the historic environment would require wholly exceptional public benefit, less than substantial harm a lower scale of public benefit. However it is not a simple balancing exercise but the need for a clear justification to override the presumption in favour of preservation.
373. The extent of harm is a matter of judgment. Officers concur with Historic England that the

harm is 'less than substantial' but still significant and therefore requires quite an exceptional scale of public benefit to justify approval.

374. In terms of public benefit the scheme delivers:

- The restoration of the Pavilion for a beneficial purpose that will secure its long term future.
- A top end 4\* hotel that will significantly enhance the tourist attraction of the town, deliver jobs and economic growth.
- Creation of a more active edge to the western flank of the harbour in place of the existing poor quality car park.
- This in turn will facilitate further investment and confidence in an area in need of regeneration.
- 43 new dwellings that will provide new homes bonus income to the Council
- The predicted provision of 179 jobs and an uplift of 1% in the tourism sector of Torbay.

375. In terms of 'harm' the scheme would:

- Have a 'significant' impact on the quality of the historic environment though impact on the setting of listed buildings, on the Registered Princess Gardens and on the character of the Conservation Area.

376. This impact largely arises from the fifth storey of the terrace building which impedes public views between the harbour and Princess Gardens and the top 3/ 4 stories of the tower element of the proposal which creates an imposing presence and inevitably impacts on a range of public views.

377. The IVA identified that there wasn't sufficient profit in the scheme to appreciably reduce the scale or bulk of the building but there was enough profit to achieve a full developer return and to deliver a 'better' scheme particularly in terms of the quality of spaces surrounding the building.

378. It was considered essential, if a scheme of this size was to be acceptable that it delivered a place making or transformative scale of regeneration. This has now been secured which helps tip the balance.

379. In line with tests in the HE Enabling Guidance and Historic England's advice, consideration was given to whether these public benefits could be secured in a way that minimised the level of harm on the heritage asset. The IVA identified that the hotel is relatively low value which drives the need for a large number of higher value flats to subsidise the development. This assessment did produce a smaller building which would have a better fit with its surroundings and subject to design had the potential to positively enhance the historic environment by replacing the poor quality edge to the harbour but in a more contextually appropriate way.

380. On the down side, such an option may not come forward and it would inevitably introduce further delay in resolving the future of the Pavilion. Whilst it would fund the structural repairs to the Pavilion it would not have secured such a robust long term future use as front of house for a high end hotel nor would it have delivered the scale of economic benefit in terms of jobs and growth of the local economy.
381. In respect of Cary Green, the recently revised scheme for this space, which involves extensive new granite paving across the whole of the site and the agreement to confine the MDL overspill parking to a defined period and then only when the existing MDL car park is 100% occupied by berthholders overcomes concerns about the visual quality of the space and ensures that public access to and use of the majority of the space is maximised.
382. This is a significant improvement from the initial proposal for the use of Cary Green which involved it being fenced and tarmacked to provide virtually unrestricted car parking for both the hotel, MDL and 'pay and display' parking.
383. There is a clear emphasis on the need to achieve economic growth in the Local Plan (and in the NPPF) which identifies the crucial need to create jobs to lift the economic profile of the Bay. The advice from the TDA about the impact of a refusal of permission on investor confidence is relevant. Recent figures about increased poverty levels and deprivation reinforce the need to put economic growth high up the agenda.
384. Officers are therefore, on balance, of the opinion that the scale of public benefit justifies setting aside the presumption against approval being granted.
385. This position has not been reached easily and reflects the need to achieve a speedy response to the future of the Pavilion and securing a robust and guaranteed future use for it, the importance of securing a 4\* hotel and the vital need for investment, jobs and reinforcing the Bay as a premier tourism destination.
386. It is fully recognised in reaching this decision however that the wrong scheme has the potential in the long run to be hugely damaging to the special quality of the place. Whilst officers have sought to deliver the best scheme possible bearing in mind issues around viability and the need for a defined scale of development it is quite legitimate to take the view that the cost of this development on the historic environment is just too high and that the application should be refused and the applicants encouraged to submit an alternative proposal that excluded the hotel and delivered a smaller building that was easier to accommodate in such a sensitive location.
387. On balance, it is the recommendation of Officers that the application be approved subject to further clarification with regard to design detail as explained in the body of the report, conclusion of a s106 agreement and conditions as detailed below.

### **Recommendation**

388. The recommendation covers two options; the officer recommendation which is that on balance approval should be granted and a second option in case Members are minded to

refuse permission.

389. A. On balance, it is the recommendation of Officers that planning permission should be granted for the proposal subject to clarification of the impact of 'shadowing' on the amenity of public spaces, revised plans/clarification of detailed design matters relating to:
- Opportunities for mitigating the impact of the lift shaft.
  - Confirmation that the balconies will be constructed as a continuous curve.
  - Detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.
  - Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.
  - External plant in relation to listed building.

390. And to the conclusion of a S106 agreement at the applicants expense to secure the following matters and to conditions as detailed below.

391. In terms of the S106 agreement:

- To secure deferred contributions towards future public realm enhancements as defined in the body of the report namely re-surfacing of Fish Quay, an extension of the granite paving adjacent to SoHo to an agreed specification and/or a contribution of £100,000 towards removal and treatment of the Ziggurat or an alternative key public realm master plan proposal. The amount of deferred contributions to be assessed and paid in stages and calculated on the basis of a 50:50 split between the developer and the Council of any increase in income generated from the site over that predicted in the IVA. The contribution to be assessed either in relation to uplift in projected sales values of the residential units (based on Appendix B of the IVA dated 31st August 2016, specifically the Savills estimates of values); or such other method agreed with the applicant (e.g. open book accounting of the entire scheme)
- The maximum deferred contribution will equivalent to the full amount of off-site Affordable Housing and Sustainable Development Contributions that would ordinarily be payable in accordance with the adopted SPD after deducting any contributions/costs paid by the developer towards improvements to the public realm.
- To ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed)
- A commitment, in the operation of the hotel, to procurement of local goods and services as described in the HJA report
- A commitment to use of local labour both during the construction of the development and in the ongoing operation of the hotel
- To secure a financial contribution of £30,000 towards enhancements to Princess Gardens.
- To secure the terms of the car parking strategy, public access to Cary Green and agreement for public use of eastern part Cary Green for markets/events



for a minimum of 28 days in any September – May period, consent not to be unreasonably withheld by the developer, calculation of fees for use to be agreed.

- To secure an annual monitoring contribution towards ensuring that Cary Green is used and managed in accordance with the agreed car parking strategy and that the hotel car park is not 'bank parked' as explained in the body of the report.
- To secure modelling of the mini roundabout and implementation of any highway works deemed necessary via a S278 Notice prior to any occupation.
- Performance bond (if required).

392. B. However, if Members are minded to refuse the application, due to concerns about the impact of the proposal on the character of the Conservation area and on the setting of adjacent listed buildings, it is suggested that the following reflects the key reasons why the scheme could be judged to fail when considered against national and local plan guidance.

393. It is considered that the development is harmful to the setting and significance of key listed buildings, to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. It will harm key public views of listed buildings eroding their significance in the townscape and will act in a way to limit views between the harbour, the Pavilion and the Registered Park and Garden to their detriment. The public benefits included in the scheme comprising the restoration of the Pavilion, delivery of a hotel with attendant economic benefits and provision of new dwellings are, on balance, not sufficient to outweigh the presumption against approval embodied in s66 and 72 of the 1990 Act As such the scheme is contrary to paragraphs 133 and 134 of the NPPF and policies SS10 and HE1 of the adopted Local Plan 2012-2030.

#### **394. Conditions**

1. Prior to commencement of development the submission and approval of an agreed and specified schedule of works to fully repair and restore the Pavilion based on the submitted specialist engineers report and the schedule of works included with the application drawings. The works to be completed in full prior to occupation of any of the proposed residential units.
2. No more than 19 residential units to be occupied until the core and shell of the hotel is completed.
3. Submission and approval of a phasing agreement which includes a timetable for delivery of the public realm enhancements as identified in the report and as included in Plan No.3152-1-17 SK2 rev A (subject to revised plans and any detail required by condition) through a S278 Notice. No occupation of any of the residential units until the public realm enhancements have been completed unless

- a revised phasing plan is agreed in writing with the LPA.
4. Submission of a Conservation Management Plan to provide relevant detail with regard to internal and external works of repair, reinstatement of key features along with a timetable for delivery. It should also include measures to deliver a 30 year maintenance programme.
  5. Prior to commencement of development to secure a signed lease or other legally enforceable means to ensure occupation of the hotel by the applicant (or such other suitably-qualified hotel operator as shall be agreed).
  6. Large scale details of key features
    - A) Windows/Doors
    - B) Shopfronts
    - C) Aluminium framework confirming construction as a continuous curve rather than faceted and detailing joints/relationship with main structure
    - D) Balconies confirming construction as a continuous curve rather than faceted and detail of handrails/ fixings
    - E) Eaves/roof profiles
    - F) Fascia's/Soffits/rainwater goods
    - G) Elevations of fifth storey
    - H) Underside of balconies/bedroom link
    - I) Louvres/screens
    - J) Screening measures for bedroom link.
  7. Samples or detailed specification of all materials to be used in construction of the building and all hard surfacing.
  8. Full details of all public realm enhancements included in Plan No. 3152-1-17 SK2 rev A and full details of the proposed harbour walkway including strategy for mitigating loss of traditional railings. The detail to be based on the submitted concept plans.
  9. Full details of works to Cary Green to include:
    - a) Specification of materials to be used including colour and treatment to avoid staining
    - b) Specification, size and species of tree and hedge planting including 10 year maintenance regime. Proposals to include more substantial tree planting along Cary Parade and relocation of the trees provided to screen views of the car park to fully enclose the proposed car parking spaces. Consideration of re-using existing planting
    - c) Details of tree pits and all street furniture
    - d) The means of managing fly parking through appropriate design
    - e) Inclusion of measures to protect pedestrian safety, provide for disabled users, include electric charging points and satisfy cycle parking standards.
  10. Full landscape details including species, sizes densities and 10 year management

regime and securing implementation in line with agreed schedule.

11. The restriction of use of Cary Green in line with agreed strategy, namely to only allow the use of the area allocated for MDL overspill car parking during the Easter weekend and throughout June, July and August only and then only when both decks of the MDL car park are 100% occupied by berthholders.
12. To ensure that hotel car parking is restricted to defined car parking bays only and that valet or bank parking on this space is prevented from occurring.
13. Implementation of all vehicle parking including cycle parking, provision of spaces for disabled users and electric charging in line with adopted Local Plan policy prior to operation of the hotel or occupation of the proposed flats.
14. Full details of all plant and extract systems in relation to the use of the site for hotel and commercial purposes including external appearance and measures for satisfying the EHO with regard to odour control and noise emission.
15. Details of soundproofing of the residential flats to mitigate noise nuisance from the operation of A3 uses.
16. Details of shopfronts including a strategy for consistent signage across the entire site.
17. Servicing and refuse plan across the whole site including tracking information to confirm access by larger service vehicles.
18. Submission of revised Travel Plan to reflect the 30% target required by Strategic Transport and including measures to secure implementation and review.
19. Modelling of roundabout and implementation of any works deemed to be necessary to ensure highway safety via a S278 Notice prior to use of the car park.
20. Construction Management Plan to be in place prior to any works including permitted hours for demolition, piling or clearance taking place on the site.
21. Submission of a Geotechnical Report in relation to the impact of development on the quay walls.
22. The submission of details to secure the provision of adult changing facilities within the scheme in accordance with 'Changing Places' guidelines as agreed in the applicants email of the 25<sup>th</sup> January 2017.
23. Implementation of the approved FRA.
24. Submission of sustainability statement to demonstrate how the proposal meets the requirements of policy SS14 in the Local Plan.

25. Timetable for re-instatement of statue.
26. Any mitigation required to balcony design/soft landscaping to deal with wind impact.
27. Sample panel of stone to be made available for approval.
28. Restriction of the use of commercial floor space i.e. A1, A2, A3.
29. Prohibition on the siting of satellite dishes on the building by flat owners.
30. Lighting strategy for the building and public realm.

**Application Number**

P/2017/0226

**Site Address**

Wheatridge Lodge  
Wheatridge Lane  
Torquay  
TQ2 6RA

**Case Officer**

Mr Scott Jones

**Ward**

Cockington With Chelston

**Description**

Double garage with workshop/storage over (retrospective).

**Executive Summary / Key Outcomes**

The application is retrospective and seeks approval for a garage with storage space above, which has been built larger and in a different location to the structure that was granted consent under planning reference P/2015/0939, to the rear of Wheatridge Lodge, Wheatridge Lane, Torquay.

The application follows the submission and subsequent refusal of an application to amend planning permission reference P/2016/0840. An enforcement notice requiring the removal of the structure has been issued by the Council.

The application has been referred to Development Management committee due to the historic number of objections that have been received and to ensure consistency in decision making as the previous two applications have been determined by the DM committee.

The applicant has resurveyed the site and submitted the current "as built" application for consideration. Officers are content that the submitted drawings accurately reflect the difference between the approved scheme and the "as built" structure as shown on the comparable site plan.

The "as built" structure is located further south and further west than the consented scheme. This results in a building that is closer to Number 14 Woodleys Meadow and to the Public Right of Way to the south and east.

The width of the structure is similar to that originally approved. The depth of the structure has been increased from 7.34m to 8.06m. The slab level is set 0.36m higher than approved and the eaves height and ridges heights are 0.5m and 0.7m higher respectively than approved from datum level.

The form of the building has changed slightly with two extra rooflights and solar panels provided in the roof. The submitted plans show one of these rooflights (closest to No.14) is to be removed and the opposite north facing rooflight closest to East and West Winds to be obscure glazed, together with the side gable window.

Four surrounding, unprotected, trees have been removed since the original decision was made (in addition to the fir identified for removal within the previous application). Replacement trees are shown on the plans.

The submitted drawing does not identify the detail of the vehicular access despite requests by officers to do so.

Because of the various amendments and the change in context e.g. the removal of a number of trees, the building is considered to be demonstrably more prominent and more dominant than that which was originally approved. On balance, officers consider that the development is materially and significantly different to the approved scheme and causes harm to the character and visual amenity of the area, due to the resulting increase in its height, massing and prominence in the locality.

Consequently the development as proposed is contrary to local plan policy DE1 (Design) and advice contained within the NPPF where great importance to the design of the built environment and good design is acknowledged (Paras 17, 56 and 64).

### **Recommendation**

Subject to no new issues not already considered being raised during the consultation period that expires on 10th May, refusal, for the following reason:

The alterations to the approved scheme, which result in an increase in the height of both the eaves and the ridge, together with the repositioning of the footprint which brings the building closer to the boundary with Woodleys Meadow, results in a building with an unduly bulky and prominent roof. The roof has a visually intrusive appearance and does not relate well to the surrounding built environment in terms of scale, height and massing, which has a detrimental impact upon the character and visual amenities of the area contrary to Policy DE1 (Design) of the Local Plan and advice contained within the NPPF that seeks to secure good design (Paras 17, 56 and 64).

It should be noted that under the previous application reference P/2016/0840 which was to regularise the 'as built' development a second reason for refusal was included relating to a detrimental impact on the amenity of the adjoining occupier. This current submission includes a number of revisions to the building to manage the relationship with adjoining properties and for this reason it would not be appropriate to refuse the application on this ground.

If Members agree this recommendation for refusal, then Members are also asked

to reaffirm their support of continued enforcement action by the Council to ensure the development accords with the plans previously approved.

### **Decision Level / Determination period**

The application is before Members as a resubmission of an earlier proposal considered by Members.

The determination date is the 2nd June 2017.

### **Site Details**

The site accommodates a large two-storey detached dwelling set off the east side of Wheatridge Lane, Torquay, where the building is currently accessed via a short level drive and steps down to the main entrance.

The dwelling is contained within the front half of the plot and to the rear there is generous private garden space that is largely laid to lawn.

Since the consideration of the original application that was granted planning permission a number of trees have been removed from the rear of the site.

The rear border of the plot abuts a public right of way that links Wheatridge Lane with Woodleys Meadow. Adjacent to this now sits a substantially complete garage structure.

There are no built or landscape designations over the land or land immediately adjacent.

### **Detailed Proposals**

The application is retrospective and seeks approval for a substantially complete "as built" garage and store, which has been built larger and in a different location to the structure granted consent under planning reference P/2015/0939.

The application follows the submission and subsequent refusal of an amendment that sought approval of a revised size and siting of the building under planning reference P/2016/0840. An enforcement notice requiring the removal of the structure has been issued.

Previously there was some disagreement between the applicant and the Authority in terms of the precise size and siting of the "as built" structure. This has prompted the applicant to resurvey and resubmit an "as built" application for consideration. Officers are content that the submitted drawings accurately reflect the difference between the approved scheme and the "as built" structure.

The approved double garage was a gabled structure 8.6m wide by 7.25m deep with an eaves height of 2.2m and a ridge height of 6.3m. The approved structure was set in to the gentle garden slope with a ground floor slab level 0.3m above the adjacent highway to the southeast. A mature fir tree was identified to be removed

as it sat within the footprint of the proposed building but a number of trees were shown to be retained around the building.

The proposal seeks consent for a larger and repositioned building, as outlined below.

The building is located further south and further west than the consented scheme. This results in a building further away from the residential border with East and West Winds to the north, but closer to Number 14 Woodleys Meadow and the Public Right of Way to the south.

The width of the structure is similar to that approved. The depth of the structure has been increased from 7.34m to 8.06m. The slab level is set 0.36m higher than approved and the eaves height and ridges heights are 0.5m and 0.7m higher respectively than approved from datum level.

In terms of position the building line fronting Woodleys Meadow is 1.65m further forward (towards the southern boundary) than that approved when taken on the parallel from the western side elevation of the consented building line. As the building has been pushed and twisted the comparable southern corner (left hand rear corner when viewed from Woodleys Meadow) of the "as built" scheme is 1.9m further south than the approved position. In regard to the other side of the rear elevation (closer to No.14) the "as built" structure is set 0.9m further forward from the building line of the approved structure where the two intersect on plan view. As the building is twisted the comparable right hand rear corner of the "as built" structure is 0.5m closer to No.14 than the approved building.

The form of the building has changed slightly with two extra rooflights and solar panels provided in the roof. The submitted plans show one of these rooflights (closest to No.14) is to be removed and the opposite north facing rooflight, closest to East and West Winds, is to be obscure glazed.

The setting has changed slightly with four surrounding, unprotected, trees having been removed since the original decision was made (in addition to the fir identified for removal within the previous application). Replacement tree planting is shown on the submitted plans.

### **Summary Of Consultation Responses**

*Highways Department* Previously recommend that the applicant make allowance for a 2m visibility splay exiting the new access, on the south-west side, for the safety of pedestrian movement.

### **Summary Of Representations**

The period for public representation runs from 19th April until 10th May.

There are currently no public representations and as the period has time to run an



update will be presented to Members.

Previously 11 representations with the following key issues were raised:

- Loss of privacy from the additional openings
- The re-siting and additional size of the structure make it unduly prominent and visually harmful to the area
- The loss of the trees makes it more prominent
- Safety concerns in regard to pedestrians using the footpath
- Concern over the potential to use the structure for business or habitable purposes
- Impact of additional parking and vehicular movement in Woodleys Meadow
- Appears a building designed for residential use
- Impact of vehicles across the land adjacent
- Impact from business use of the building
- Loss of privacy from inter-looking
- Remains an overdevelopment of the site

### **Relevant Planning History**

P/2016/0840            Variation of Condition re P/2015/0939 (Detached double garage with workshop and storage above to rear of property) Condition P1 Approved plans to increase size of garage and insertion of two additional rooflight - Refused. 19.10.2016. Enforcement notice issued that seeks the removal of the unlawful building.

P/2015/0939            Detached double garage with workshop and storage above to rear of property (as revised by plans received 01.03.2016) - Approved 19.04.2016.

### **Key Issues/Material Considerations**

It is not an offence to build without planning permission or to fail to comply with the terms of a planning permission. However anyone who does build without necessary consent does so at their own risk that the local planning authority can decide to take enforcement action to remedy any harm that has been caused. A decision on any application for retrospective planning permission must be made on planning merit alone, taking into account the provisions of the development plan and all relevant material considerations.

Planning permission P/2015/0939 is extant, this is a material consideration.

An application made under reference P/2016/0840 to amend the plans approved under permission P/2015/0939 so that they accorded with the "as built" structure was refused. An Enforcement Notice to remove the unlawful structure has been issued by the Council.

The key issues are the continued comparison between the scheme that was

approved under permission P/2015/0939 and that which has been built in regard to visual impact, impact upon adjacent occupiers and local amenity, and highway and movements impacts.

### **1. Visual impact**

The changes that alter the character and appearance of the structure and its resultant visual impact upon the area are discussed below.

In terms of scale, the building is bigger and higher than that originally approved. The depth has increased by approximately 0.7m to just over 8 metres which presents an increase in the footprint of around 11% to that approved. The base of the building is 0.36m higher than approved and the resultant as built eaves and ridges heights are 0.5m and 0.7m higher respectively than approved.

In terms of prominence, aside from the increase to the height and massing of the building, there are two further factors to consider.

Firstly the building has been repositioned further south and west than the approved siting. This results in the building being closer to the rear boundary of the plot and the adjacent Public Right of Way. In terms of comparable positions, the building line fronting Woodleys Meadow is 1.65m further forward (southwards) than that approved when taken on the parallel from the western side elevation of the consented building line. As the building has been pushed and twisted the comparable southern corner (left hand rear corner when viewed from Woodleys Meadow) "as built" is actually 1.9m further south than the approved position. To the other side of the rear elevation (closer to No.14) the building is set 0.9m further forward from the building line of the approved structure where the two intersect on plan view. As the building is twisted the comparable corner of the "as built" structure is 0.5m closer to No.14 Woodleys Meadow than the approved building, due to the drift westwards away from this building reducing the difference.

The relocation towards the rear boundary naturally makes the building more prominent within the locality, with the impact heightened by the increased massing of the building.

The second factor to consider is that there has been the removal of a number of trees that were present when the previous proposal was considered and which were identified to be retained within the approved plans. The removal of these trees has resulted in the loss of the natural screening that was previously present and has made the structure far more visible and prominent within the locality. Replacement planting has been detailed on the submitted plans to seek to rectify this.

In addition solar panels have been installed in the roof of the building and these elements add clutter and increase the number of materials previously approved (which constituted a simple palette of materials). However, the solar panels could

have been added, under Permitted Development rights, to the approved structure once built and hence their presence is considered acceptable in the as built proposal.

Having considered the various amendments and the change in context following the subsequent removal of a number of trees, the as-built structure is more prominent and more dominant than that which was approved. The combined impact of these factors causes unacceptable harm to the character and visual amenity of the area.

Having considered matters of scale, design and setting the revised proposal conflicts with the aims and objectives of Policy DE1 (Design) of the Torbay Local Plan 2012-2030 and advice contained within the NPPF where great importance to the design of the built environment and good design is acknowledged (Paras 17, 56 and 64).

## **2. Amenity impact**

The changes that alter the likely impact upon local amenity are discussed below.

The provision of a larger domestic garage with secondary workshop/storage space above that is solely used for purposes that are incidental to the occupation of the associated dwelling is still considered unlikely to affect neighbour amenity in terms of noise and general activity.

The increase scale and height of building in the revised location is unlikely to result in an overbearing structure that would result in loss of outlook or light when considering the distance to and arrangements of plots and building.

In terms of overlooking and loss of privacy the upper floor void space is to be served by five rooflights rather than the four within the approved scheme (with one of the currently installed six rooflights being removed), together with the two gable windows. Previously it was considered that adjacent amenity could be appropriately managed through the retention of the screening and by obscuring certain openings in order to remove sensitive sightlines. As built, there is demonstrable harm to adjacent amenity through direct overlooking from the upper floor openings as there is no obscure glazing present within the upper floor. The proposal seeks to address this harm by removing the rooflight closest to No.14 and also seeks to lessen the impact upon East and West Winds by obscuring the side gable window and the nearest north facing rooflight. Neighbouring amenity could be appropriately protected by these amendments which would remove the most sensitive of the sightlines.

Should members decide to grant consent for the scheme it is recommended that a condition is imposed to ensure that, prior to the first use of the building, the rooflight is removed as detailed and that obscure glazing is fitted within the north-east gable window and the adjacent north facing rooflight, and then maintained at

all times thereafter .

Subject to the above, the development is considered to retain suitable levels of amenity and would comply with Policy DE3 of the Torbay Local Plan 2012-2030.

### **3. Highway and movement impact**

The impact of the changes on the highway network and related issues are discussed below.

The proposal retains garage parking that exceeds the minimum size standards for garages as outlined within the Local Plan and hence they will comfortably fit a car and provide adequate manoeuvring space around the vehicles within the building.

The revised siting of the building has reduced the length of the driveway below that which is generally sought by Highway Engineers, which is considered to be 5.5m for driveways as a minimum and ideally 6m to ensure that there is no conflict with an up and over door (or similar). This seeks to ensure against the use of land for car parking which is not in the applicant's ownership. In the circumstance this is unlikely to present conflict as the access and boundary is not bordering a traditional or narrow footpath where there will be movement close to access point. However, the situation is not ideal.

A second point of concern previously raised was that the amended footprint presented an oblique entry point to the left hand garage space that appeared challenging if not unworkable. This appears to have been addressed by the applicant widening the access point however in doing so this has created a layout where the drive access is in closer proximity to the narrowing footpath route, which could create conflict between pedestrians and vehicles and increase the risk of danger.

Previously the Highway Authority recommended that the applicant make allowance for a 2m visibility splay exiting the new access, on the south-west side, for the safety of pedestrian movement. This has not been achieved.

As the plot benefits from a combined parking arrangement that will exceed the requirements of the local plan the amended layout is, on balance and notwithstanding some concern in terms of the servicing and access to the spaces, considered acceptable and broadly compliant with Policies TA2 and TA3 Torbay Local Plan 2012-2030. Should Members seek to approve the application it is recommended that prior to the first use of the building that a detailed access arrangement, to include a 2m visibility splay and gate detail, is submitted and approved in writing.

**S106/CIL**

N/A.

### **Statement of Pro-active Working**

The Council has sought to work positively and proactively with the applicant through pre-application discussions and through open dialogue including requests for further information.

### **Local Finance Considerations**

The local finance impact of the proposal is diminimus due to its scale.

### **Human Rights and Equality Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### **Conclusions**

On balance the proposal is recommend for refusal, due to the impact of the changes in comparison to the approved scheme upon the character and visual amenities of the area caused by the additional height, massing and greater prominence of the structure in the locality. This is due to its re-siting closer to the edge of the plot and also through the loss of the trees that would have provided some screening and softening of the structure).

Cumulatively the amendments are considered to result in a demonstrable negative impact between it and the previously approved structure in terms of visual amenity.

As it stands that structure presents demonstrable harm to amenity through direct overlooking of adjacent properties. However this could be suitably managed through achieving the amendments proposed and hence it is not considered reasonable to refuse the application on this ground.

Should members decide to grant approval, officers recommend that a condition requiring the removal of the identified rooflight and the obscure glazing of the identified openings be achieved prior to the buildings first use.

As a result of the changes the building is considered to have a visually intrusive appearance and does not relate well to the surrounding built environment in terms of scale, height and massing, which has a detrimental impact upon the character and visual amenities of the area. The application is therefore considered contrary to Policy DE1 (Design) of the Local Plan and advice contained within the NPPF that seeks to secure good design (Paras 17, 56 and 64).

### **Condition(s)/Reason(s)**

01. The alterations to the approved scheme (Planning Reference P/2015/0939), which result in an increase in the height of both the eaves and the ridge, together with the repositioning of the footprint which brings the building closer to the boundary with Woodleys Meadow, results in a building with an unduly bulky and prominent roof. The roof has a visually intrusive appearance and does not relate well to the surrounding built environment in terms of scale, height and massing, which has a detrimental impact upon the character and visual amenities of the area contrary to Policy DE1 (Design) of the Local Plan and advice contained within the NPPF that seeks to secure good design (Paras 17, 56 and 64).

**Relevant Policies**

- DE1 Design
- DE3 Development Amenity
- ER1 Flood Risk
- TA2 Development access
- TA3 Parking requirements

**Application Number**

P/2017/0259

**Site Address**

42 Whidborne Avenue  
Torquay  
TQ1 2PQ

**Case Officer**

Mr Robert Pierce

**Ward**

Wellswood

**Description**

Resubmission of application P/2016/0932/PA- Demolition of dwelling and proposed replacement dwelling with associated works.

**Executive Summary/Key Outcomes**

This is a slightly modified re-submission of a full planning application which seeks permission to demolish the existing bungalow and replace it on part of the original plot with a new dwelling. It has been submitted in tandem with an outline application (all matters reserved except access) for a second dwelling within the sub-divided plot (42 and 42a). This application relates to the construction of one detached dwelling on the western side of the site, noted as plot 42 on the submitted plan.

The original application was refused by Members at their meeting in November 2016 for the following reasons:

- 1) The proposed development by reason of its scale, bulk and design would constitute overdevelopment of the site and would result in a form of development that would be out of keeping with the established character of the area. The proposal would therefore be contrary to Policies DE1 and DE3 of the Torbay Local Plan 2012-2030 and Paragraphs 58, 60, 63 and 64 of the National Planning Policy Framework.
- 2) The site is within a Critical Drainage Area designated by the Environment Agency. Within this area all new development has to demonstrate that it would play its part in reducing current rainfall run-off rates. The applicant has failed in the application submission to demonstrate that surface water from the proposed development will be managed to ensure that an overall reduction in flood risk is achieved, and therefore the proposal is contrary to policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and paragraph 103 of the National Planning Policy Framework.

The proposed dwelling would sit within the western half of the plot and would be three storeys in height with a contemporary appearance. It would have a flat roof with its elevations being predominantly finished in white render. The first floor on the front elevation would be recessed into the dwelling. The rear elevation would

contain extensive glazing including the provision of balconies and terraces at lower ground, ground floor and first floor level. The proposed dwelling would be sited further forward than the main front building line of the existing dwelling. There would also be an increase in the scale of development on the site as a result of this proposal. Vehicular access to the site would be from the existing access. The proposal also seeks retrospective consent for the construction of a 2 metre high stepped garden wall on both the western and northern boundaries of the site which would be finished in render with a stone coping on top.

There have been a number of amendments to the previous scheme with the main differences as follows:

- 1) The replacement of corten steel on the projecting element to the front elevation with timber cladding
- 2) Further recessing of the glazed first floor to the front elevation
- 3) Main entrance re-arranged
- 4) Recessed front door and parapet wall over cladded projection
- 5) Colour of steel windows
- 6) Use of cedar wood for garage and main entrance doors.

The applicant has sought to overcome the reasons for the refusal of the previous application by providing a spatial and density analysis of the surrounding area, the submission of a design for surface water drainage and making a number of changes to the design of the dwelling.

The proposal is considered acceptable in this location and without any material detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality. As such the proposal is consistent with Policies DE1 (Design), DE3 (Development Amenity) and DE4 (Building Heights) of the Torbay Local Plan 2012-30. Further information is required in respect of drainage which is awaited.

The application has been referred to Development Management committee due to the number of objections that have been received. These refer to a number of issues including impact on amenity of the area, overlooking, the design and density of the proposed development.

### **Recommendation**

Conditional Approval (conditions at end of report) subject to the submission of the results of a third infiltration test to conclude the submitted geotechnical report, agreement of which and final drafting of conditions to be delegated to the Executive Head Business Services,

### **Statutory Determination Period**

8 weeks 7th May 2017.



### **Site Details**

The site is currently occupied by a vacant bungalow style of dwelling which has a limited amount of accommodation included at first floor within its roof form, that has a distinctive 'eye - brow' dormer to the front. A public footpath (which follows the steep slope down to Bishops Rise) and a wedge of vegetation runs alongside the western boundary of the site, with the vegetation providing effective screening to the property next door (44 Whidborne Avenue). The site has a broad street frontage with two existing vehicular driveways. The appearance of dwellings in the vicinity of the application site is not uniform, however the characteristic form of buildings along this suburban street is for them to be wide-fronted with their main roof pitches orientated parallel to the highway and smaller secondary gabled features presenting perpendicularly to the street.

Whidborne Avenue is sloping at the application site, and No 42 occupies a position that is slightly before a small summit in the street is reached (which occurs further to the west). The plots along this side of Whidborne Avenue have far reaching views to the rear and their roof line is clearly visible from certain locations on the other side of Ilsham Valley, in particular from Kent's Cavern and the lower end of Higher Warberry Road. More distant views are also present from Walls Hill above Ansteys Cove. A recently constructed 2 metre high wall runs alongside the footpath and defines the side (west) and rear (north) boundaries of the site.

The application site backs onto land identified in the Local Plan as an Urban Landscape Protection Area (Ilsham Valley/Lincombe Slopes)

### **Detailed Proposals**

This application is for full planning permission for the demolition of the existing dwelling on the site and the construction of a single detached dwelling on half of the plot.

The plans indicate that the proposed dwelling would be sited within the western half of the sub-divided site (plot 42) and would be set slightly further forward than the building line of the existing property. It would be split level with the site being excavated to allow the new dwelling to be partly set down. As a result the building would appear as two storeys from the front elevation and three storeys from the rear. The proposed dwelling would be of a modern flat roofed design and would be slightly lower than the ridge height of the existing property.

The resulting accommodation would be arranged on three levels as follows: Lower Ground Floor - Integral double garage, utility room and two en-suite bedrooms leading out onto a rear garden terrace, Ground Floor - entrance porch leading to a hall / reception area and open dining, kitchen and living areas with the latter leading out onto a balcony with steps leading down to the garden. First floor - master bedroom with folding patio doors leading out onto a roof terrace, large en-suite facilities and a dressing room.

The external finishes would be white smooth render with a feature timber clad box projecting out to the front elevation above the double garage. The windows would have grey steel frames. Vehicular access would be from the existing access off Whidborne Avenue. The driveway will be surfaced with permeable paving slabs. Details of the recently constructed boundary wall alongside the public footpath have also been submitted as part of this application. The drawings indicate that it will have a rendered finish with stone coping on top. In the interests of biodiversity the wall will accommodate bird nesting boxes with frog and hedgehog highways built in along the whole wall.

### **Summary Of Consultation Responses**

Highways Engineer: No objections.

South West Water: No objection.

Drainage Engineer: The submitted geotechnical report has been assessed but the applicant should provide the results of a third infiltration test.

Urban Design Consultant: No robust reason for objecting to the proposal. More detailed comments/advice below.

### **Summary Of Representations**

Several letters in support.

Numerous representations objecting.

Main issues raised:

- Impact on local area
- High density of the site
- Design will date quickly
- Impact on open aspect
- Increase in vehicular movements to and from the site
- Loss privacy from balconies
- Will alter the skyline
- Visual appearance of the new boundary wall
- Out of character with the area
- Will set a precedent for multiple builds
- Impact on immediate neighbour (No 40) -loss of light, noise from the terrace  
Closure of gap
- Noise from contractors (Not a planning issue)
- Loss of views (Not a planning issue)
- The style is out of keeping
- Flood Plain issues
- Forward of the building line
- Breach of covenants (Not a planning issue).

### **Relevant Planning History**

P/2016/0933 - Dwelling in Outline on Plot 42a - concurrent application.

P/2016/0932 - Replacement Dwelling - Refused 30.11.2016

P/2016/0933 - Sub division and form new Dwelling (in outline) - Refused 30.11.2016.

The following application relates to a nearby site and is considered relevant to the consideration of this proposal.

P/2012/0896 - Formation of two dwellings - 2 Whidborne Close - Approved 29.07.2013.

### **Key Issues/Material Considerations**

#### **General Principle and Planning Policy -**

The plot has an established residential use and sits within a wider residential estate that is mostly comprised of single dwellings set in defined plots some of which have already been sub-divided and redeveloped including a scheme for two modern houses currently under construction at 2 Whidborne Close. The sub division of the plot maintains the residential use of the site, which is commensurate with the established use and local character and which makes the best use of the built up area by providing an additional family home. It is noted that this plot is wider than plots to the east and its subdivision is not considered to have an adverse impact on the character of the area.

In support of the application the agent has produced a plan and planning statement which has analysed the width and densities of plots within the immediate surrounding area. This analysis indicates that the proposed sub-division of the plot would not be out of character with the area, there are a number of plots within the area which are as densely developed, if more densely than the proposed subdivision and also which have similar or shorter plot widths. The plots once subdivided would have plot widths of between 15.5 metres and 16 metres. The design advice to Officers is that this analysis shows that the development form is in general conformity with the plot density and plot widths elsewhere in the neighbourhood. As such the principle of subdivision of the plot would be consistent with the objectives in Policies DE1 and DE3 of respecting the local character and plot densities.

#### **Visual Impact -**

The flat roof design and modernist form to the elevations, which feature clean render and a timber clad projecting box to the front elevation reflects the regeneration genre that is becoming favoured in the area and noticeable in pockets throughout Whidborne Avenue, Whidborne Close, Thatcher Avenue and Ilsham Marine Drive.

The site will be partly excavated which will allow the integral garage to be set down and the upper floor will be further recessed above the timber clad projecting box. As a result it is not considered that the proposed new dwelling will be unduly prominent within the street scene.

The rear of the properties along Whidborne Avenue are visible from distant views from across Ilsham Valley. However because the proposed dwelling will be no higher than the ridge height of the existing property it is not considered that it will

be unduly prominent within this row of houses.

The proposal would increase the scale of the built form on this half of the site, particularly adjacent to the western boundary. It is considered that this increase in the extent of the built form would be acceptable in this location and would be consistent with the established character of the area. Due to the public footpath that runs along this boundary a visual gap between the site and number 44 Whidborne Avenue would be retained. The part of the proposed dwelling on the western side of the site would be two storeys in height and therefore would have an acceptable relationship with the adjoining property, and would not be out of character with the established form of development in the area.

The design advice/guidance that Officers have received notes that whilst clearly adopting a more contemporary and innovative style of architecture than its near neighbour, the proposed development is a detached family dwelling that is set to an imprecise/informal 'building line' back from the street edge providing good-sized front and rear gardens. The height is at the upper level of what might be considered to be appropriate but is similar to other examples nearby. Whilst the architectural style is a new departure (although some houses within the wider neighbourhood are similar) the fundamental characteristics of the context are respected.

The National Policy Framework (NPPF) generally discourages local policy and decision making that is based on stylistic preference except where Conservation Areas exist or perhaps where an adopted Neighbourhood Plan has a specific policy based on some careful analysis providing evidence of a locally distinctive approach. NPPF para 60 states that: Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness.

The proposal is therefore considered to provide residential development that is appropriately scaled and formed, would sit comfortably within its surroundings and thus preserve the character and appearance of the street scene. As such the proposal would accord with Policies DE1, DE3 and DE4 of the Torbay Local Plan 2012-30.

It is also proposed to plant a significant tree to the front of the middle of the plot next to the road frontage. The idea is to select a specimen which once fully matured will grow to a height above the two proposed dwellings. Its foliage would then be visible from across Ilsham Valley and add a verdant backdrop to the rooflines. It would also result in making a positive contribution to the public domain by introducing a mature specimen (as opposed to ornamental planting) within the street scene and would contribute to the creation of a high quality landscape.

**Residential Layout -**

The proposed detached dwelling has adequate separate parking and outdoor amenity space, offered through balconies, terraces and gardens. The internal space is considered spacious and features rooms of an acceptable scale with adequate natural lighting and outlooks in order to offer a good residential environment. The proposal is considered to offer an acceptable residential environment for future occupants. As such the proposal would accord with Policy DE3 of the Torbay Local Plan 2012-30.

**Neighbour Amenity -**

In terms of immediate neighbours, No 44 Whidborne Avenue is well separated from the west boundary of No 42 by a public footpath and an adjoining strip of woodland. This level of separation between the two plots is considered to be enough to avoid any overbearing impact or overlooking from the proposed balcony and roof terrace to the rear of the property. It is not considered that the proposed dwelling will have any negative impact on the residential amenity enjoyed by the occupiers of No 40 Whidborne Avenue because the gap between the two properties will be separated by the proposed dwelling on the other half of the plot which is subject of the Outline Planning Application. Also the proposed first floor terrace will be orientated to the opposite direction and will be screened from view due to the 'L' shape of the floorplan. Consequently the proposed dwelling will be consistent with the objectives of Policy DE3 (Development amenity) in the Torbay Local Plan 2012-30.

**Highway, Parking and Access -**

The proposed dwelling would utilise the existing vehicular and pedestrian access. It would have a large integral double garage which would be set down below the level of the road frontage following excavation of part of the site. The Highway engineer has raised no concern in regard to utilising this established access arrangement and the level of parking is considered in line with policy guidance.

Local residents have raised concern about the increase in traffic that would result from subdividing the existing plot. It not considered that the level of additional vehicular movements that would be generated from one additional dwelling in this location would be significant enough to justify refusing planning permission. Consequently the proposed development would be consistent with Policies TA1 (Transport and accessibility), TA2 (Development Access and TA3 (Parking requirements) in the Torbay Local Plan 2012-2030.

**Ecology -**

A Preliminary Ecological Assessment has been carried out and this has confirmed that no evidence of bat use or nesting bird activity was found in association with the roof or eaves of the property and therefore the proposed demolition of the existing bungalow will not impact on bats or nesting birds. The design of the retrospective garden walls on the north and west boundaries incorporate bird nesting boxes and frog and hedgehog highways and accords with Policy NC1.

**Flood Risk –**

A Surface Water Drainage Design Report has been submitted which has been assessed by the Council's Drainage Engineer. Before planning permission can be granted the results of a third infiltration test is required to ensure the proposals accord with Policy ER1.

**Statement on Human Rights and Equalities Issues-**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights.

In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests/the Development Plan and Central Government Guidance.

Equality Act - No issue

**Statement on proactive working -**

The Officers have worked closely with the agent and applicant from the pre - application advice stage through to discussions on the current scheme.

**Local finance considerations-**

Not applicable.

**Statement on CIL Liability-**

Not applicable.

**Conclusions-**

The principle of sub-dividing the plot to form two dwellings is considered acceptable as the plot is of sufficient size and has enough natural frontage to accommodate them, without having a harmful impact on the character of the area. The proposed dwelling will sit quite comfortably within one half of the site.

The scale and design of the proposed dwelling reflects the style of recently approved redevelopment proposals in the area for clean-lined 'marine' inspired properties. It respects the roofline of properties along Whidborne Avenue and will not be visually prominent along the ridgeline from distant views across the valley to the rear.

The design and orientation of the proposed dwelling has addressed any issues of overlooking and loss of privacy to the immediate neighbours.

Highway safety for all users is protected by utilising the existing vehicular access with onsite parking at a level that would mitigate any additional pressure for on-

street parking (which is however low in this area).

All matters considered the scheme is considered to sit comfortably with the provisions of the development plan and national guidance for the presumption in favour of sustainable development and is therefore recommended for conditional approval.

**Condition(s)/Reason(s)**

1. The development shall not be used/occupied until the vehicle parking areas shown on approved detailed plans have been provided and made available for use. The areas shall be kept permanently available for parking purposes to serve the development.

Reason: To ensure that adequate off-street parking is provided in accordance with policy TA3 of the Torbay Local Plan 2012 to 2030

2. Implementation of an approved surface water drainage scheme prior to occupation of the dwelling.
3. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Classes A, B, and C of Part 1, Schedule 2 (which includes enlargement, improvement or other alteration, shall be constructed (other than hereby permitted, or unless the prior written consent of the Local Planning Authority has been obtained).

Reason: To ensure that the character and appearance of the locality are protected and to avoid overdevelopment in the interests of local amenity. This is in accordance with Policies H1, DE1, DE3 of the Torbay Local Plan 2012-2030.

4. Prior to construction above the damp proof course level, an External Materials Schedule shall be submitted to and approved in writing by the Local Planning Authority showing full details of all external materials of the dwellings, including specification and images. Development shall be carried out in accordance with the approved details.

Reason: In the interests of preserving the character and appearance of the conservation area in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

5. Notwithstanding drawing reference No 01 Rev B, prior to the occupation of the dwelling, full details of hard and soft landscape works, the details of the proposed specimen tree to the front boundary, together with an

implementation and management plan, shall be submitted to and approved in writing by the Local Planning Authority. Details of hard landscape works shall include means of enclosure, boundary and surface treatments. Details of soft landscape works shall include retention of any existing trees and hedges; finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. In terms of biodiversity, details shall include measures for biodiversity mitigation and enhancement, such as retention of hedges and trees where possible, replacement habitat features for any lost, planting schemes of benefit to biodiversity, incorporation of bird and bat box features; information shall also be provided on how these features are to be maintained in favourable condition to support biodiversity. The proposed landscaping scheme shall be implemented in full in the next planting season (October to March) following the approval of the submitted details. In the event of failure of any trees/plants, planted in accordance with any approved scheme, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees/plants shall be replaced.

Reason: In the interests of biodiversity and to secure a landscape scheme that will complement the development in the interests of visual amenity in accordance with Policies DE1 and NC1 of the Torbay Local Plan 2012 to 2030.

6. No vegetation removal shall be undertaken during bird nesting season (March-September) unless a pre-works check is carried out by a suitably qualified ecologist to ensure that nesting birds are absent.

Reason: To prevent harm to nesting birds in accordance with Policy NC1 of the Torbay Local Plan 2012 to 2030.

7. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
  - (a) the parking of vehicles of site operatives and visitors
  - (b) loading and unloading of plant and materials
  - (c) storage of plant and materials used in constructing the development
  - (d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
  - (e) wheel washing facilities
  - (f) measures to control the emission of dust and dirt during construction
  - (g) a scheme for recycling/disposing of waste resulting from demolition and construction works
  - (h) measures to minimise noise nuisance to neighbours from plant and



machinery. The approved Statement shall be adhered to throughout the construction period.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users.

### **Informative(s)**

1. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

### **Relevant Policies**

H1 - New housing on identified sites  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
TA2 - Development access  
TA3 - Parking requirements  
NC1 - Protected sites - internationally import  
ES1 - Energy  
SS1 - Growth Strategy for a prosperous Torbay  
SS3 - Presumption in favour of sustainable dev  
SS11 - Sustainable Communities Strategy  
SS12 - Housing  
SS13 - Five Year Housing Land Supply  
C5 - Urban landscape protection areas

**Application Number**

P/2017/0260

**Site Address**

42 Whidborne Avenue  
Wellswood  
Torquay  
Torbay  
TQ1 2PQ

**Case Officer**

Mr Robert Pierce

**Ward**

Wellswood

**Description**

Resubmission of application P/2016/0933/OA - Demolition of dwelling and proposed replacement dwelling shown as 42A (in outline).

**Statutory Determination Period**

8 weeks 7th May 2017

**Site Details**

The site forms the eastern half of a plot that is currently occupied by a predominantly single-storey dwelling which has a limited amount of accommodation included at first floor within its roof form which has a distinctive 'eye - brow' dormer to the front. The site has a broad street frontage with two existing vehicular driveways. The characteristic form of buildings along this suburban street is for them to be wide-fronted with their main roof pitches orientated parallel to the highway and smaller secondary gabled features presenting perpendicularly to the street.

Whidborne Avenue is sloping here and No. 42 occupies a position that is slightly before a small summit in the street is reached (which occurs further to the west). The plots along this side of Whidborne Avenue have far reaching views to the rear and their roof line is clearly visible from certain locations on the other side of Ilsham Valley, in particular from Kent's Cavern and the lower end of Higher Warberry Road.

**Detailed Proposals**

The application is for outline planning permission which seeks approval for the principle of developing plot 42a. The applicant has applied only for the details of access to be agreed. Layout, scale, appearance and landscaping would be agreed at reserved matters stage. The access into the site would utilise the existing vehicular and pedestrian opening onto Whidborne Avenue. In order to set out the design parameters of any subsequent reserved matters application, a Design Guide and indicative plans have been submitted. The indicative plans show that after the sub division there would be a gap between the two properties with the party boundary being defined by a proposed griselinia hedge. The footprint of the

additional dwelling would be set back from the highway by approximately 11.35 metres with a building height defined by the roofline of the existing bungalow and natural slope of the site. The design would be as a "mirror" to compliment the style of the proposed replacement on the other half of the plot and will incorporate similar external materials.

### **Summary Of Consultation Responses**

Highways Engineer: No objections.

South West Water: No objection.

Drainage Engineer: The submitted geotechnical report has been assessed but the applicant should provide the results of a third infiltration test.

Urban Design Consultant: No robust reason for objecting to the proposal. More detailed comments/advice below.

### **Summary Of Representations**

Several letters in support.

Numerous representations objecting.

Main issues raised:

- Impact on local area
- High density of the site
- Design will date quickly
- Impact on open aspect
- Increase in vehicular movements to and from the site
- Loss privacy from balconies
- Will alter the skyline
- Visual appearance of the new boundary wall
- Out of character with the area
- Will set a precedent for multiple builds
- Impact on immediate neighbour (No 40) -loss of light, noise from the terrace
- Closure of gap
- Noise from contractors (Not a planning issue)
- The style is out of keeping
- Flood Plain issues
- Forward of the building line
- Breach of covenants (Not a planning issue).

### **Relevant Planning History**

P/2017/0259 - Replacement dwelling Concurrent application.

P/2016/0932 - Replacement Dwelling - Refused - 30.11.2016

P/2016/0933 - Sub division and form new Dwelling (in outline) - Refused 30.11.2016.

The following application relates to a nearby site and is considered relevant to the consideration of this proposal.

P/2012/0896 - Formation of two dwellings - 2 Whidborne Close - Approved 29.07.2013.

## **Key Issues/Material Considerations**

### **General Principle and Planning Policy**

The plot has an established residential use and sits within a wider residential estate that is mostly comprised of single dwellings set in defined plots some of which have already been sub-divided and redeveloped including a scheme for two modern houses currently under construction at 2 Whidborne Close. The sub division of the plot maintains the residential use of the site, which is commensurate with the established use and local character and which makes the best use of the built up area by providing an additional family home. It is noted that this plot is wider than plots to the east and its subdivision is not considered to have an adverse impact on the character of the area.

In support of the application the agent has produced a plan and planning statement which has analysed the width and densities of plots within the immediate surrounding area. This analysis indicates that the proposed sub-division of the plot would not be out of character with the area, there are a number of plots within the area which are as dense, if not denser than the proposed subdivision and also which have similar or shorter plot widths. The plots once subdivided would have plot widths of between 15.5 metres and 16 metres. The design advice to Officers is that this analysis shows that the development form is in general conformity with the plot density and plot widths elsewhere in the neighbourhood. As such the principle of subdivision of the plot would be consistent with the objectives in Policies DE1 and DE3 of respecting the local character and plot densities.

### **Visual Impact -**

The layout, scale, and appearance of the proposed dwelling are reserved matters and are not for consideration as part of this application. However the Design Guide which has been submitted to inform the proposal indicates that there is an opportunity to construct an additional dwelling which will mirror the style and design of the replacement dwelling.

There is a linear form of development along Whidborne Avenue. There would be sufficient room on the application site for a dwelling that reflects the established grain and form of development in the area to be provided.

As a result it is not considered that the principle of constructing the proposed new dwelling would result in a form of development that would be visually prominent within the street scene.

The rears of the properties along Whidborne Avenue are visible from distant views from across Ilisham Valley. Providing the proposed dwelling would be lower than the ridge height of the existing property it is not considered that it will be visually prominent within this row of houses.

As such the proposal would accord with Policy DE1 (Design) and DE4 (Building

Heights) of the Torbay Local Plan 2012-30.

**Residential Layout -**

There would be sufficient space on the site for a detached dwelling to provide adequate parking and outdoor amenity space which would offer an acceptable residential environment for future occupants. As such it would be consistent with Policy DE3 (Development Amenity) in the Torbay Local Plan 2012-2030.

**Neighbour Amenity -**

The existing dwelling on the site is located a minimum of 2.5 metres from the boundary with 40 Whidborne Avenue. There would be sufficient space on the site to maintain this level of separation to the adjoining dwelling. Subject to sensitive design a new dwelling could be provided that would have an acceptable relationship with the neighbouring property.

Consequently the principle of constructing a dwelling on this site would be consistent with the objectives of Policy DE3 (Development amenity) in the Torbay Local Plan 2012-30.

**Highway, Parking and Access -**

The proposed dwelling will utilise the existing vehicular and pedestrian access which will serve a large integral double garage. The Authority's Highways Department do not raise any concern in regard to utilising this established access arrangement and the site is capable of providing a level of parking that would be in line with policy guidance.

Local residents have raised concern about the increase in traffic that would result from subdividing the existing plot. It is not considered that the level of additional vehicular movements that would be generated from one additional dwelling in this location would be significant enough to justify refusing planning permission. Consequently the proposed development would be consistent with Policy TA1 (Transport and accessibility) in the Torbay Local Plan 2012-2030

**Ecology -**

A Preliminary Ecological Assessment has been carried out and this has confirmed that no evidence of bat use or nesting bird activity was found in association with the roof or eaves of the property and therefore the proposed demolition of the existing bungalow will not impact on bats or nesting birds.

It is noted that the proposed garden wall on the north boundary would incorporate bird nesting boxes and frog and hedgehog highways.

It is considered that the proposals accord with Policy NC1 (Biodiversity and Geodiversity)

**Flood Risk -**

A Surface Water Drainage Design Report has been submitted which has been

assessed by the Council's Drainage Engineer. Before planning permission can be granted the results of a third infiltration test is required to ensure the proposals accord with Policy ER1.

**Statement on Human Rights and Equalities Issues-**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - No issue

**Statement on proactive working -**

The Officers have worked closely with the agent and applicant from the pre - application advice stage through to discussions on the current scheme.

**Local finance considerations-**

Not applicable.

**Statement on CIL Liability-**

Not applicable.

**Conclusions**

The principle of sub-dividing the plot to form two dwellings is considered acceptable as the plot is of sufficient size and has enough natural frontage to accommodate them without having a harmful impact on the character of the area. The site is of sufficient size to allow a dwelling that would respect the character and appearance of the existing townscape and not result in harm to the residential amenity of adjoining occupiers.

Highway safety for all users is protected by utilising the existing vehicular access and on site parking at a level that would mitigate any additional pressure for on-street parking (which is however low in this area) is achievable.

The scheme is considered to sit comfortably with local policy guidance and national guidance for the presumption in favour of sustainable development and is therefore recommended for conditional approval.

**Condition(s)/Reason(s)**

1. Details of the reserved matters set out below ("the reserved matters") shall be submitted to the Local Planning Authority for approval within three years

from the date of this permission: (i) layout; (ii) appearance (including schedule of external materials to include hard-surfaced areas) and (iii) landscaping (to include soft landscaping, boundary treatments and all means of enclosure)The reserved matters shall be carried out as approved. Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

2. The Access of the development to which the permission relates shall not be carried out other than in accordance with the following approved Drawing No: 2289.01A.

Reason: For the avoidance of doubt and in the interests of the appearance of the site and the amenity of neighbouring premises. In accordance with Policy TA2 of the Torbay Local Plan 2012-2030.

3. Notwithstanding the provisions of Article 3 of the Town & Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development of the types described in Classes A, B, and C of Part 1, Schedule 2 (which includes enlargement, improvement or other alteration, shall be constructed (other than hereby permitted, or unless the prior written consent of the Local Planning Authority has been obtained).

Reason: To ensure that the character and appearance of the locality are protected and to avoid overdevelopment in the interests of local amenity. This is in accordance with Policies H1, DE1, DE3 of the Torbay Local Plan 2012-2030.

4. Implementation of an approved surface water drainage scheme prior to occupation of the dwelling.
5. The development shall not be used/occupied until the vehicle parking areas shown on approved detailed plans have been provided and made available for use. The areas shall be kept permanently available for parking purposes to serve the development.

Reason: To ensure that adequate off-street parking is provided in accordance with policy TA3 of the Torbay Local Plan 2012 to 2030.

### **Informative(s)**

01. In accordance with the requirements of Article 35(2) of the Town and

Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

**Relevant Policies**

SS1 - Growth Strategy for a prosperous Torbay

SS3 - Presumption in favour of sustainable dev

SS11 - Sustainable Communities Strategy

SS12 - Housing

SS13 - Five Year Housing Land Supply

TA2 - Development access

TA3 - Parking requirements

H1 - New housing on identified sites

DE1 - Design

DE2 - Building for life

DE3 - Development Amenity

DE4 - Building heights

ER1 - Flood Risk

ER2 - Water Management

ES1 - Energy

C5 - Urban landscape protection areas



**Application Number**

P/2017/0280

**Site Address**

31 Loxbury Road  
Torquay  
TQ2 6RS

**Case Officer**

Mrs Saffron Loasby

**Ward**

Cockington With Chelston

**Description**

Side extension, extended balcony, porch and new hardstanding for provision of a revised parking layout at Sunnyvale, 31 Loxbury Road, Torquay, TQ2 6RT

**Executive Summary/Key Outcomes**

The application proposes a two storey side extension to the south elevation of the existing property comprising a lounge at ground floor level with access onto an extended balcony and stairs leading down to a 'snug' at lower ground level leading out on to the rear garden.

The scheme proposes a new front porch, conversion of the existing roof space (which is permitted development) and a revised parking layout. The scheme takes into consideration the extant planning permission for a detached dwelling to the north northwest of the application site approved under planning reference P/2015/0171. The existing vehicular access and on-site parking provision is reconfigured to ensure vehicular access is provided to the approved plot.

The application has been referred to Development Management committee due to the number of objections that have been received. These refer to a number of issues including impact on amenity of the area, overlooking, noise, traffic impact, trees/wildlife and drainage.

The applicants' agent has worked positively with the Council to produce a form of development that has would be acceptable on the site. As such the proposal represents a development that carefully balances the issues of design, neighbour amenity, highways, landscape and drainage. The proposal is considered to accord with Policies DE1, DE3, TA2, ER1 and ER2 in the Torbay Local Plan 2012-30 and is therefore recommended for approval.

**Recommendation**

Conditional Approval. Conditions to relate to materials, provision of privacy screens and drainage. Final drafting of conditions to be delegated to the Executive Head of Business Services.

### **Statutory Determination Period**

The eight week target date for determination of this application is 13th May 2017.

### **Site Details**

The application site relates to 31 Loxbury Road, a detached two storey dwelling located on a residential plot that sits at the end of a cul-de-sac on the hillside overlooking the adjacent Cockington Valley/Cockington Country Park and the Cockington Conservation Area, which is land also designated as a Countryside Zone and Area of Great Landscape Value.

The site itself does not sit under any built or landscape designations, however the tree belt on the southwestern boundary is subject to a Tree Preservation Order (TPO) and forms part of a wider linear protected belt. The proposed scheme does not impact on this TPO.

The site currently holds a single dwelling, although there is extant consent for an additional dwelling to be built to the northwest of the application site.

In terms of physical detail the existing building sits on a steeply sloping plot, the front elevation appearing as single storey only with a lower ground floor level facing towards Cockington Valley. Access to the site is already established and a single garage is located beyond a driveway that is approximately one car deep. The existing property sits low at the end of the cul-de-sac allowing for views across the valley above the existing ridgeline and to the open countryside beyond. There are no public footpaths across the application site.

### **Detailed Proposals**

The proposed two storey side extension to the southeast elevation of the existing property would measure 5m from the outside wall towards No.29 and 9.6m from front to back in footprint. It would have a deeper footprint than the existing dwelling. It would have a hipped roof and there would be projecting gables at both the front and rear. From the front elevation the extension will retain the perception of being single storey. The new gable end matches the existing eaves height and the proposed roof would slope away from the neighbouring property.

To the rear the extension would comprise 2 storeys, matching the existing eaves height and ground floor levels of the existing property. New openings are proposed in the new extension facing over the valley and a galleried roof in the lounge comprises roof lights on the southwest facing roof slope thus removing the need for openings that look toward the adjoining neighbour (No.29).

The distance between the proposed extension and No.29 varies as the existing house is set at an angle on the plot. The closest part of the extension measures 2m from the shared boundary which currently comprises a thick hedge. This part of the extension measures 4.5m in height at this point. The furthest part is 5.2m from the boundary and is approximately 7.4m in height.

A new balcony area is proposed projecting beyond the rear element of the proposed extension. A privacy screen 1.7 metres high is proposed on the southern boundary of the balcony to avoid overlooking to No.29.

A new front porch is proposed and a replacement flat roof over the existing forward projection which will be reconfigured to comprise a utility/boot room as well as a WC. This is proposed to comprise a sedum/wildflower flat roof.

The roof space to the existing dwelling is also being converted. This could be achieved under permitted development as the two bedrooms would be lit by roof lights only

Parking provision is improved on site by creating 3 off road spaces for the property whilst still retaining access to the plot that has extant consent. A revised plan was submitted reference 7195 P011 issue D2 to ensure the parking provision for the existing and proposed dwellings does not conflict.

### **Summary Of Consultation Responses**

*Ecology Consultant* No evidence of Bats/nesting birds found - no objection

*Drainage* The additions are under 100m2 and therefore standing advice will be provided as part of a condition to ensure the applicant discharges surface water in accordance with the submitted Flood Risk Assessment dated 14th March 2017.

*South West Water* No objection subject to standing advice.

*Highways* Highways would have no objections, we would regard the new proposed as a betterment to the previous approved application.

### **Summary Of Representations**

11 Representations against the application have been received which raise the following issues:

- Drainage
- Impact on Local Area
- Noise
- Not in keeping
- Over development
- Privacy/overlooking
- Residential
- Traffic/access
- Trees/wildlife
- Loss of light

These representations have been sent electronically for Members consideration.

### **Relevant Planning History**

P/2015/0171	Dwelling - Approved at Committee - 08.06.2015
P/2010/1397	Dwelling - Approved at committee - 17.07.2012
P/1991/1081	Detached dwelling and integral garage, plot between 27 & 31 Loxbury Road - Approved
P/1992/1252	Detached dwelling and integral garage, plot between 27 & 31 Loxbury Road - Approved
P/1993/0061	Detached dwelling & integral garage, plot between 27 & 31 Loxbury Road - Approved
P/2006/0346	Dwelling with combined vehicular/pedestrian access (in outline) - Refused
P/2009/1129	Single detached dwelling within curtilage; Demolition of existing garage and formation of two new garages and access - Refused

Considering the proposal and the context, the key considerations are;

1. the visual implications of the scheme upon the built and landscape settings,
2. impact upon neighbouring amenity
3. Highway parking/access
4. Drainage
5. Ecology and trees

#### **1. Visual implications**

Although not under any built or landscape designations the plot sits adjacent to and can be viewed from the Cockington valley, which is subject to a number of such designations. The wider visual impact, in addition to the impact of the local streetscene, is a key consideration.

In respect to the local streetscene it is considered that the extension would sit comfortably within what is a mixed character, where there is a varied form of building type from the mid and late 20th Century. Although absent of a defining character, the proposal is considered to accord with scale, general form and setting of existing property. It is therefore likely to sit comfortably within the street with little detriment to the local visual qualities.

In regard to any wider impact upon the visual qualities of the multi-designated Cockington Valley which it overlooks, it is concluded that the visual impact will be minimal. The proposed extension will sit against the backdrop of the existing building line when viewed from Cockington Lane. The proposal is considered to

sit comfortably with the aims and objectives of Policies DE1 and SS9 of the Torbay Local plan 2012-2030.

## **2. Impacts upon neighbour amenity**

There are no new windows proposed in the side elevations of the proposed extensions that would have an adverse impact on neighbour privacy. The proposed balcony will run along the length of the rear elevation but privacy screens on either end will overcome any potential overlooking. This can be conditioned accordingly.

At present there are several windows on the elevation of No.29 that overlook the side and rear garden of the application site. These comprise two kitchen windows and a utility window at ground floor level, a bedroom window and a dressing room/additional bedroom window at lower ground floor). The existing balcony position of No. 29 also affords views across to the lounge window and into the side and rear garden of No. 31 and vice versa) and the new extension will give the occupants of the application site significantly more privacy as a result.

Concerns have been raised that, because of its proximity to the neighbouring dwellings the new extension will be overbearing and result in a loss of light, particularly to the occupiers of No.29.

The windows in question are primarily secondary windows to southwest facing openings. These are to the kitchen, a utility room, a lower ground floor bedroom and an associated dressing room (which has been used as a bedroom in the past). Given the orientation of the property to the south east of the application site the extension is not considered to have an adverse impact on loss of light loss to these northwest facing windows.

Additionally, as the majority of the rooms are not 'main habitable' rooms and those that are have alternative openings (other than the dressing room) the impact of the proposed extension is not considered to be so overbearing as to justify a recommendation of refusal.

The proposal is considered acceptable in respect of its likely impact upon local neighbour amenity and is consistent with the aims and objectives of Policies DE3 and DE5 of the Torbay Local Plan 2012-2030.

## **3. Highway / parking access matters**

The proposal utilises the existing vehicular access for the plot, albeit slightly widening the access, and reconfigures the parking facilities to provide off road provision for the existing and proposed dwelling, with enhanced manoeuvring within the plot.

The level of parking is considered commensurate for the form of development and the provision of two dwellings within the plot. The parking provision meets the

requirements of Policy TA3 and Appendix F of the Torbay Local Plan 2012-2030. The access and egress is considered safe in highway terms, with the turning facility. The proposed widened access possibly giving an improved relationship with the turning head of the cul-de-sac.

The arrangements are satisfactory and no objection has been raised due to acceptance of the level of parking proposed and the access and egress arrangements. Consequently the proposed development accords with Policies TA2 (development access) and TA3 (parking requirements) in the Torbay Local Plan 2012-30.

#### **4. Drainage and flood risk**

The proposal details that surface water run-off from the development shall be served via soakaways. As the site is within the Critical Drainage Area as designated by the EA it is appropriate to impose a condition requiring the development to accord with the submitted flood risk assessment.

The proposal accords with Policies ER1 (flood risk) and ER2 (water management) in the Torbay Local Plan 2012-30.

#### **5. Ecology and Trees**

No trees are being removed as part of this application. There is an area of trees on the neighbouring site that are to be protected as part of the already approved dwelling on the adjacent land.

An ecological assessment on nesting birds and bats was submitted with the application and advises that no evidence of birds and bats have been found. It also advises on good working practice should any be found during construction.

#### **Human Rights/Equalities**

The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

#### **S106/CIL**

The application is for an extension to an existing dwelling and not a new dwelling. Following a Court of Appeal Decision in May 2016, Section 106 tariff style contributions are no longer required for new developments of less than 10 units.

#### **Conclusions**

The proposal is considered to offer an acceptable form of residential extension that

would sit comfortably within the immediate streetscene and sit as a natural addition to the existing ribbon development as viewed from further afield from the adjacent Cockington Valley below.

With supportive conditions to secure similar materials, privacy screens and drainage details the proposal is considered to accord with the provisions of the development plan and is therefore recommended for conditional approval.

**Condition(s) / Reason(s)**

The conditions should ensure the development covers the following:

- Materials
- Drainage
- Privacy Screens

Final drafting of conditions to be delegated to the Executive Head of Business Services.

**Relevant Policies**

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