



Friday, 6 October 2017

DEVELOPMENT MANAGEMENT COMMITTEE

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

Monday, 16 October 2017

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Torquay

Members of the Committee

Councillor Kingscote (Chairman)

Councillor Barnby
Councillor Doggett
Councillor Hill
Councillor Lewis (B)

Councillor Morey
Councillor Pentney
Councillor Tolchard
Councillor Winfield

A prosperous and healthy Torbay

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

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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** (Pages 4 - 6)
To confirm as a correct record the Minutes of the meeting of this Committee held on 11 September 2017.
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. **76 Bluewaters Drive, Paignton (P/2017/0904/HA)** (Pages 7 - 14)
Erection of ancillary self-contained unit.
6. **30 Torwood Street, Torquay (P/2017/0661/PA)** (Pages 15 - 24)
Change of use from taxi rank (sui generis) to takeaway food shop (A5).
7. **46 Tamar Avenue, Torquay (P/2017/0882/HA)** (Pages 25 - 29)
Rear and side extension with flat roof.

8. 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 before 11 am on the day of the meeting.

9. 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, 11 October 2017. Site visits will then take place prior to the meeting of the Committee at a time to be notified.



Minutes of the Development Management Committee

11 September 2017

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Doggett, Hill, Lewis (B), Morey, Pentney, Tolchard and Winfield

(Also in attendance: Councillors Amil)

25. Apologies for absence

It was reported that, in accordance with the wishes of the Liberal Democrat Group, the membership of the Committee had been amended for this meeting by including Councillor Doggett instead of Councillor Stringer.

26. Minutes

The Minutes of the meeting of the Development Management Committee held on 14 August 2017 were confirmed as a correct record and signed by the Chairman.

27. 17 Cleveland Road, Paignton (P/2017/0445)

The Committee considered an application for demolition and redevelopment to form 22 retirement apartments for the elderly including communal facilities, access, car parking and landscaping.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available to members on the Council's Website. At the meeting Simon McFarlane addressed the Committee in support of the application.

Resolved:

That the application be deferred to allow the following to be submitted and reported back to the Committee:

- i. revised plans to demonstrate an acceptable scheme in terms of design, heritage, landscaping and access;
- ii. additional information in relation to sun light and daylight and health impact;
- iii. the resolution of matters relating to affordable housing, including deferred contributions;
- iv. additional information in relation to drainage; and
- v. CIL and Section 106 obligations.

28. Premier Inn, Inn On The Quay, Tanners Road, Paignton (P/2017/0549)

The Committee considered an application for demolition of the single storey public conveniences. Erection of a three storey stilted annex to the west of the existing hotel (use Class C1) within the car park. Reconfiguration and extension of the car park. Installation of a plant enclosure containing 2 air conditioning units.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available to members on the Council's website. At the meeting Katie Harley addressed the Committee in support of the application.

Resolved:

Approved subject to the receipt of additional design and drainage information and the final drafting of conditions being delegated to the Executive Head of Business Services (to include a condition to protect trees which are on the western boundary from damage while works are carried out).

29. Land Off Brixham Road - Former Nortel Site, Long Road, Paignton (P/2017/0571)

The application was withdrawn at the request of the applicant.

30. Land adjacent to Brixham Road South of The Premier Inn Hotel (P/2017/0685)

The Committee considered an application for the development of an Innovation Centre (Use Class B1a and B1b) with associated parking and landscaping.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available to members on the Council's website.

Resolved:

Approved, subject to:

- i. the expiry of the consultation period and no new issues being raised;
- ii. submission of revised plans to show the additional cycle parking and a revised landscaping scheme;
- iii. consideration of the submitted ecological surveys and resolution of the mitigation measures required;
- iv. in consultation with Highways Officers, the submission of a transport assessment, clarification regarding deliveries and refuse collection;
- v. the submission revised drainage information and completion of a HRA screening;
- vi. the final drafting of conditions to be delegated to the Executive Head of Business Services; and

- vii. the receipt of written confirmation from the applicant that the required financial contribution will be provided to Torbay Council to provide the Torbay Coast and Countryside Trust with funding to provide biodiversity offsetting for the loss of the semi-improved grassland currently on the site.

Chairman

Application Number

P/2017/0904

Site Address

76 Blue Waters Drive
Paignton
TQ4 6JF

Case Officer

Gary Crawford

Ward

Churston With Galmpton

Description

Erection of ancillary self-contained unit

Executive Summary/Key Outcomes

The proposal is for the erection of an ancillary self-contained unit to the rear of No.76 Blue Waters Drive, Paignton. The unit would be occupied by the applicant's disabled daughter who is currently living at No.76 Blue Waters Drive.

The proposal is considered to be acceptable in this location and without any overriding detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality. Consequently the proposal meets Local Plan policy requirements, specifically Policies DE1 (Design), DE3 (Development amenity) and DE5 (Domestic extensions).

Recommendation

Conditional approval (conditions at end of report) subject to a Section 106 legal agreement to prohibit severance of the self-contained accommodation from the main dwelling.

Statutory Determination Period

8 weeks, the determination date is 30th October 2017. Due to the number of objections received, the application is being reported to committee.

Site Details

The site, 76 Blue Waters Drive, Paignton, is a detached bungalow with an attached side garage. The host property is located within a spacious plot and there is an existing shed in the rear garden.

Detailed Proposals

The proposal is for the erection of an ancillary self-contained unit in the rear garden, approximately 13m from the main dwelling. The self-contained unit would be 8.5m in width, 4.5m in depth, 2.65m to eaves level and 3.8m in height with a dual-pitched roof. Within the unit there would be a sitting room/dining area, bedroom, bathroom, kitchen and WC. Access to the unit would be from the rear of the main dwelling house.

Summary Of Consultation Responses

Senior Environmental Health Officer: Verbally advised that he has no objections as the proposal is unlikely to result in excessive levels of noise and disturbance.

Summary Of Representations

Representations of objection from 11 households and a petition of objection containing 56 signatures have been received. Issues raised:

- Impact on local area.
- Impact on property values. Officer comment: Representations regarding the impact on property values have been noted but this does not constitute a material planning consideration.
- Loss of light.
- Loss of views. Officer comment: Representations regarding the loss of views have been noted but this does not constitute a material planning consideration.
- Increase in noise.
- Loss of privacy.
- Overdevelopment
- Sets precedent.
- Not in keeping with local area.
- Impact on parking.
- Increase in traffic.
- Impact on drainage.
- Impact on trees.
- Access for emergency services.
- The annexe could be sold or let separately as an independent dwelling.

Relevant Planning History

P/2013/0266: Alterations and extensions to existing dwelling to form new porch to front of property with pitched roof. Approved 19/4/2013.

P/2014/1204: Alterations and additions to existing dwelling. Approved 24/2/2015.

- P/2016/0558: Extension to rear of approved structure by 600mm with amendment to velux roof lights, side door to garage and French doors to rear. Approved 29/7/2016.
- DE/2016/0490: Single storey annexe. Response sent 30/1/2017.

Key Issues/Material Considerations

The key issues to consider in relation to this application are:

1. Principle of the development
2. Visual impact
3. Impact on amenity
4. Whether the building would remain as an annexe
5. Housing for people in need of care
6. Impact on parking
7. Drainage
8. Impact on trees

1. Principle of the development

Dwelling houses generally have permitted development rights that allow them to add extensions or outbuildings within the curtilage of the property without having to obtain planning permission. In this case, under Schedule 2, Article 3, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, an outbuilding in the rear garden of the property, is deemed to be permitted development, and therefore not requiring planning permission, providing the building does not exceed certain stipulations. The size of the proposed annex is marginally larger than the regulations allow, (as explained in more detail below). Therefore the principle of constructing an outbuilding in the rear garden is acceptable.

In this proposal, the structure would not be incidental to the house, as it results in a self-contained unit, and therefore planning permission is required. To ensure that the unit remains ancillary to the main dwelling and not used, let or sold separately as an independent dwelling, a legal agreement is required in the form of a S106 which states that the use of the annex shall remain ancillary to the main dwelling. As such, given the size of the plot, it is considered that there is scope for further development within the plot, and subject to a S106, the principle of the development is deemed acceptable.

2. Visual impact

Under Schedule 2, Article 3, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, the provision within the curtilage of a dwellinghouse of a building for a purpose incidental to the enjoyment of the dwellinghouse, is deemed to be permitted development, and therefore not requiring planning permission, providing the building does not exceed the following stipulations:

- No outbuilding on land forward of a wall forming the principal elevation.
- The outbuilding shall be single storey with a maximum eaves height of 2.5 metres and maximum overall height of four metres with a dual pitched roof or three metres for any other roof.
- Maximum height of 2.5 metres in the case of a building within two metres of a boundary of the curtilage of the dwellinghouse.
- No verandas, balconies or raised platforms. No more than half the area of land around the "original house" would be covered by additions or other buildings.

The proposed self-contained unit to the rear of No.76 Blue Waters Drive would comply with all of the above stipulations with the exception that the eaves height would be 15cm higher than the 2.5m allowed under permitted development. As such, given that the proposed building could be constructed as permitted development and therefore not requiring planning permission, providing the eaves height of the building was reduced by 15cm, it is considered that the visual impact of the proposal is acceptable. Given that a structure of the same footprint as the proposed annexe could be constructed as permitted development, it is not considered reasonable to refuse the proposal in terms of overdevelopment of the site. There is a distinct local character and pattern of development within Blue Waters Drive which is characterised by detached bungalows within spacious plots. The proposed materials of the annexe of rendered walls and a slate roof are deemed to be acceptable in terms of their visual appearance. The proposal is unlikely to be visible within the streetscene. As such, the proposal would be consistent with Policy DE5 (Domestic extensions) in the Torbay Local Plan.

3. Impact on amenity

Policy DE3 (Development amenity) of the Torbay Local Plan 2012-2030 states that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses. Whilst the proposed structure may result in an element of overbearing and overshadowing impacts upon neighbouring rear gardens, in particular No.77, given that a structure of the same footprint and height, but with an eaves height 15cm less than the eaves height of the proposed annexe, could be constructed under the permitted development criteria, it is not considered reasonable to refuse the application on these grounds.

Although there is a window located in the north west elevation of the structure, facing towards the side boundary with No.77, this window would be situated at a high level and it is deemed that it would not result in any significantly harmful overlooking impacts upon No.77 or any detrimental intervisibility impacts between the proposed annexe and No.77. The windows in the north east and south east elevations of the proposed annexe would be located approximately 10m from neighbouring plot boundaries. Due to the distance between these windows and neighbouring plot boundaries, it is considered that the proposal would not result in

any significantly harmful overlooking or loss of privacy impacts upon neighbouring properties.

It is acknowledged that the proposed annexe may result in some noise and disturbance impacts upon neighbouring properties. However, given that the annexe would be for one person, it is considered that noise levels are unlikely to be excessive. Furthermore, much of the noise from the future occupier of the annexe is likely to be contained within the building. The sitting room of the proposed annexe, which is likely to generate the most noise e.g. from a TV, features French doors which face towards the rear elevation of the host dwelling and a window which is situated approximately 10m from the side boundary with No.75 Blue Waters Drive. As such, it is considered that proposal would not result in a detrimentally harmful impact upon neighbouring properties in terms of noise and disturbance.

The proposal is therefore deemed to have an acceptable impact upon the amenity of neighbouring properties and would comply with Policy DE3 in the Torbay Local Plan.

4. Whether the building would remain as an annexe

Representations have been received which raise concerns that the proposed annexe could be let or sold separately as an independent dwelling. The applicant has stated that the proposed annexe would be occupied by their disabled daughter who currently lives at No.76 Blue Waters Drive. The applicant has detailed that the proposed annexe would enable their daughter to develop her level of independence.

Whilst the proposed self-contained unit would be self-sufficient in terms of facilities and it would be separate from the main dwelling. There are a number of reasons why the proposed accommodation would not be suitable to be used as a separate dwelling which include; the access to the annexe and driveway would be shared with No.76 Blue Waters Drive. Whilst the rear garden of No.76 is fairly spacious, it would be difficult to achieve a workable curtilage without also having a significantly adverse effect on the setting and quality of amenity area for the host property. The shared driveway would additionally cause inconvenience for the occupiers of No.76 and with the annexe positioned to the rear of the host property, there would be potential for unacceptable levels of intervisibility between the annexe and the host property. It is considered that all these factors make an aspiration for separation less likely.

To ensure the unit remains ancillary to the main dwelling and not used, let or sold separately as an independent dwelling, and to ensure that the proposed building does not depart from the settlement pattern of the area through the establishment of a separate dwelling, a legal agreement is required in the form of a S106 that the use of the annex remains ancillary to the main dwelling.

5. Housing for people in need of care

The provision of accommodation for a disabled person is a material consideration in this application, although it does not outweigh other planning considerations. Policy H6 (Housing for people in need of care) of the Torbay Local Plan states that the Council will support measures to help people live independently in their own homes and to live active lives within the community. The aim of Policy H6 will be achieved through a number of measures which includes all new dwellings being capable of adaptation for disabled people. Furthermore, Policy H6 details that disabled adaptations or annexes for relatives will be supported unless they significantly and demonstrably conflict with other Local Plan Policies.

In addition, Policy SC1 (Heathy Bay) of the Torbay Local Plan specifies that all development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal. Policy SC1 outlines further that development can contribute to creating healthier communities in a number of ways, for example, by providing decent accommodation. Policy SS11 (Sustainable communities) states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay, and especially the way in which it closes the gap between the most and least disadvantaged neighbourhoods. Policy SS11 details further that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle. Policy SS11 is assessed against 11 criterion which includes meeting the needs of residents and enhances their quality of life.

The proposal is for an ancillary self-contained annexe for the applicant's disabled daughter which would enable their daughter to develop her level of independence and enhance her quality of life. As such, it is deemed that proposal would comply with Policies H6, SC1 and SS11 of the Torbay Local Plan.

6. Impact on parking

Appendix F (Car parking requirements) to Policy TA3 (Parking requirements) of the Torbay Local Plan details that for domestic extensions and ancillary buildings, one car parking space shall be provided per two bedroom. As the proposed ancillary self-contained unit would have one bedroom only, no additional parking spaces are required and the proposal would accord with Policy TA3. Whilst the applicant has detailed in a letter accompanying the application that additional support staff for their daughter will attend on a daily basis, given that their daughter is currently living at No.76 Blue Waters Drive, it is considered that the proposal would not result in any worse impacts on parking than the existing situation.

7. Drainage

The application site is located within a Critical Drainage Area and a Flood Risk

Assessment (FRA) has been submitted which states that surface water drainage will be dealt with by soakaways. A condition will be imposed to ensure that drainage accords with the submitted FRA. As such, the proposal would be consistent with Policy ER2 (water management) of the Torbay Local Plan.

8. Impact on trees

Representations regarding the impact of the proposal on trees on the site have been noted. However, these trees are not subject to Tree Preservation Orders and therefore could be removed without requiring permission from the Local Planning Authority.

S106/CIL

This application is for a self-contained unit which would be ancillary to the main dwelling. To ensure the unit remains ancillary to the main dwelling and not used, let or sold separately as an independent dwelling, a legal agreement is required in the form of a S106, which should be completed before planning permission is granted.

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 - The proposal would provide an ancillary self-contained unit for a disabled person.

Conclusions

In conclusion, the proposed development would not harm the appearance and character of the area or have an adverse effect on the amenity of nearby occupiers, therefore the proposed development is considered to be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations.

Condition(s)/Reason(s)

01. Drainage to accord with submitted flood risk assessment.
02. No additional openings shall be inserted into the north west elevation of the annexe.
03. The self-contained accommodation shall only be used ancillary to the main dwelling and not to be used as a separate dwelling.
04. Annexe not to be let or sold separately from the host dwelling (via Legal Agreement).

Relevant Policies

DE1 - Design

DE3 - Development Amenity

DE5 - Domestic extensions

H6LFS - Housing for people in need of care

SC1 - Healthy Bay

SS11 - Sustainable Communities Strategy

TA3 - Parking requirements

ER1 - Flood Risk

ER2 - Water Management

C4 - Trees, hedgerows and natural landscape

Application Number

P/2017/0661

Site Address

30 Torwood Street
Torquay
TQ1 1EB

Case Officer

Mrs Saffron Loasby

Ward

Wellswood

Description

Change of use from taxi rank (sui generis) to takeaway food shop (A5) with if possible a small(4 or 5) Chairs (A3).

Executive Summary

The proposed development is for a change of use from taxi rank (sui generis use) to a takeaway food shop (A5). The original application included an A3 restaurant use, however this has since been removed.

The scheme is considered to be acceptable subject to changes to the shop front to ensure the redevelopment of the property is in keeping with the wider Torquay Harbour Conservation Area and is appropriately conditioned to ensure the ongoing mitigation of noise and odour.

Hours of operation should also be conditioned but should be considered against the opening hours of similar uses in the facility in order to meet the relevant tests as detailed in paragraph 206 of the NPPF.

Recommendation

Approval subject to acceptable revisions to the shop front in line with Conservation requirements and conditions regarding opening hours and noise and odour mitigation.

Reason for Referral to Development Management Committee

Chairman recommendation

Statutory Determination Period

14th September 2017.

Site Details

The site is a narrow, but long, business premises situated outside of the designated Shopping Frontages close to Torquay Harbour. The site lies within the Torquay Harbour Conservation Area, the town centre within the Core Tourism Investment Area for Torquay and the Community Investment Area. At present the property is used as a taxi rank. There are parking restrictions located along this stretch of Torwood Street which is part of the Major Road Network in Torbay.

The application site sits close to development site CDST33 the Former Royal Garage site located to the west which has planning permission for 131 bedroom hotel, 1 retail unit and 3 restaurants and office/gym use. This was granted consent in October 2015. Development site TNPH45 'Terrace Car Park' is located to the north. This has been identified in the Local Plan as a possible Neighbourhood Plan housing site. No specific planning permission has been granted for this site.

The site is within the night time economy area, which is popular at night due to the presence of night clubs and bars in this part of the town centre.

Date of Officer Site Visit: 3rd August 2017

Detailed Proposals

Change of use from taxi rank (sui generis) to takeaway food shop (A5). The original submission proposed an A3 use also, however the applicant has removed this element of the proposal. It is proposed that 2 full time equivalent members of staff will be employed at the premises.

Summary Of Consultation Responses

Conservation and Design - The present shop window is rather nasty, not to put too fine a point on it. Can we get a wider, simpler, wooden thin-mullioned style as on Jingles, and the former Christian Science Centre next door. A pity because these early 19C two-storey buildings have much less frontage to show that their later 3-storey neighbours so the shopfronts are disproportionately more important. (No. 24 was given permission due for demolition 8 years ago).

At the very least, with the removal of the ATM, the front should be drawn back to the original line and the bulge of the supporting structure removed.

Building Control - No comments received

Community Safety - Takeaway premises can be a considerable concern for local residents with noise arising from patrons, delivery vehicles and odour from

cooking being some of the issues that they can cause. I also note that it is not unusual for problems with littering to arise with takeaway premises. The proposed development is within the night time economy area, which has contracted in recent years, with the closest night club being the premises locally known as the Foundry. This contraction has seen an improvement in the area, particularly late at night as the current food businesses in the area are restaurant type premises resulting in a reduction in the amount of noise generated in the area, particularly that generated by revellers leaving the night clubs etc, who tend to move down to the harbour-side to take taxis home etc. The area is still busy at night. The really late night traffic is not encouraged to the area.

I am concerned that the proposed takeaway use will draw people to the area in search of food, particularly late at night i.e. past midnight and particularly when the nightclubs close. I would therefore recommend that the hours of operation be limited to ensure the premises is shut by 01:00 am and that the following condition be placed on the consent in relation to any kitchen extraction equipment being installed.

A Risk Assessment as identified in the document "Guidance on the Control of Odour and Noise from Commercial Kitchen Exhaust Systems" shall be submitted and approved by the local planning authority prior to commencement of works. The applicant shall identify the intended cooking processes and style of cuisine, the location of the nearest sensitive accommodation and the proposed location of the exhaust.

Calculations shall be provided that identify that the requisite air flow is achieved for a safe environment in the kitchen area, together with the required level of treatment specified in the above document taking into account the type of cooking and location of the flue.

An assessment of noise generated by all plant and equipment operating on the site and an assessment shall be made of the noise at the nearest sensitive receptor. The system shall be designed so that noise at the nearest receptor does not exceed more than 10dB below background noise levels when measured and rated with BS4142: 2014 Methods for rating and assessing industrial and commercial sound.

Summary Of Representations

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement
Three representations have been received 1 objection, 1 support and 1 neutral.

Issues raised:

- o Seating proposed is not practical
- o Commercial extraction will impact on neighbour amenity

- o Saturation of fast food outlets and impact on area
- o Impact on neighbour amenity
- o Waste problems
- o Intensification of people in constrained area
- o Parking concerns
- o Slow redevelopment in the area
- o Failure of the Council to advertise properly

SRM Procedure:

Outcome: Chairman of Development Management Committee referred application to DM committee for resolution given concerns regarding the saturation of takeaway uses in Torquay town centre.

Relevant Planning History

- P/2006/1414 - Removal of Condition 1 (Ref app P/2005/1006/PA) To allow use to continue after 30 September 2006 - PER
- P/2005/1006 - Change of use to taxi booking office - CONDITIONAL PER TEMP 1 YEAR
- 91/1564/PA - New shop front - CONDITIONAL PER
- 79/3401/PA - Formation of second floor flat - CONDITIONAL PER
- 78/3587/PA - Hairdressers - CONDITIONAL PER
- 77/2394/PA - Use as a fish and chip shop - REF

The following applications although not relating to the application is considered relevant;

Mixed use development of hotel, 1 No A1 unit, 3 No A3 units, 3 No B1 office use units and 1 No B1 office use or D1 gym use unit at former Royal Garage site, involving the demolition of property Nos 4-24 Torwood Street, Torquay, former Royal Garage Site, 4-24 Torwood Street. A minor material amendment was subsequently granted under P/2015/1108.

Key Issues/Material Considerations

The key issues to consider in relation to this proposal are principle of development, impact of the design on the Torbay Harbour Conservation Area, neighbour amenity, highway safety and noise and odour mitigation.

Principle of Development

The site is located inside the Strategic Delivery Areas of the adopted Torbay Local Plan. Adopted Policy SS3 'Presumption in Favour of Sustainable Development' of the Local Plan advises that planning applications that accord with the policies in the Local Plan (and where relevant, with policies in Neighbourhood Plans) will be approved unless material considerations indicate otherwise. This policy follows the advice within the

National Planning Policy Framework (NPPF), specifically paragraph 14 that sets out a presumption in favour of sustainable development. For decision taking, unless material planning considerations dictate otherwise, this means approving proposals that accord with the development plan without delay.

With regard to planning policy the Torbay Local Plan and accompanying Supplementary Planning Document (SPD) Heathy Torbay hold the most relevant and up to date policies.

The site is in a sustainable location within the town centre. Planning Policy SS11 'Sustainable Communities' aims to support developments, in principle, that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay, and particularly within Community Investment Areas.

The existing use of the building as a taxi rank is sui generis therefore specific planning permission is needed to change the use of the building. Historically, as detailed above, the property has seen a number of uses, primarily an A1 use because this area used to be designated as secondary shopping frontage. Under the adopted Local Plan 2012-2030 it is not designated as either primary or secondary shopping frontage, although located in a Town Centre location. A temporary change of use to a Taxi rank was granted planning permission in 2005. It was later granted permanent consent in 2006.

Based on the information above, the use of the premises cannot be considered as retail and therefore Policy TC4 'Change of Retail Use' of the Torbay Local Plan 2012-2030 is not applicable.

With regard to Policy TC5 'Evening and night time Economy' the Council aims to support, in principle, development that helps to create a vibrant, diverse, evening and night time economy within town centres, seafront and harbour areas of the Bay. To be acceptable, a development must provide the following:

- o add vibrancy and a complementary offer to that currently available in the centre of the area, attracting all ages,
- o it will support the creation of a balanced range of evening and night time uses through provision of new activities and venues
- o it will not add to the cumulative impact of licenced premises; and those providing late night entertainment and services, in an unacceptable manner; and
- o It will not damage the vitality and viability of the centre, impact on amenity or cause disturbance to nearby and neighbouring uses (including residential properties).
- o Uses or developments that have an impact upon town centre monitoring, maintenance or policing will be required to make contributions towards the cost of any such monitoring, maintenance or policing arising from the development.

The proposed scheme proposes a takeaway use that will be amongst other eating and drinking establishments in the town centre. Whilst concern has been raised about the saturation of this type of use in this area it is not considered to be an unacceptable proposal when assessed against the criteria within Policy TC5. With regard to

monitoring, maintenance or policing to address cumulative impact on these services consideration must be given to what is being proposed and be proportionate to the scale of the development.

Torquay has a Purple Flag accreditation which is a recognised status for towns and city centres that meet or surpass the standards of excellence in managing the evening and night time economy (ENTE). As a significant accolade it requires ongoing management to ensure it is retained, for example to keep public toilets open and clean, clear up litter and provide policing and pastoral support. Where new developments put demands on these services they will be expected to make appropriate contributions and to partake in strategies and initiatives to mitigate the cumulative impact of venues.

Planning policy SC1 'Healthy Bay' aims to support development that contributes to improving the health and well-being of the community reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.

The Supplementary Planning Document (SPD) 'Healthy Torbay' aims to build upon and provide more detailed advice on the policies in the Local Plan. It focuses on matters of health and wellbeing being addressed through the development planning process. There have been a number of studies carried out and detailed within this document, interestingly in paragraph 4.3.1 it states:

'Evidence from Public Health England indicates that Torbay has approximately 160 'fast food' outlets. This figure means that there are approximately 120.3 outlets per 100,000 population in Torbay, a figure which shows Torbay having the highest concentration of fast food outlets of any local authority in the South West region and in the highest 7% of local authorities in the whole of England (23rd out of a total of 324).'

Torbay Council has undertaken its own mapping and analysis of hot food takeaways within Torbay. Hot food takeaways have a specific classification under the Use Classes Order. That is to say they are classed as A5 uses ('Hot Food Takeaways') which can sell hot food for consumption off the premises. There are well over 100 premises which fall into the A5 category in Torbay. In addition, Torbay has a significant number of A3 Restaurants which have elements of hot food takeaway as part of their offer. When these A3 establishments are added to the A5 premises the number of places which hot food takeaway meals can be purchased in Torbay rises to well over 200.

The SPD states that applications for new A5 hot food takeaways will be approved within existing town, district and local neighbourhood shopping centres (as identified in the Local Plan) where they do not harm the health and wellbeing of the community through impacting upon the delivery of healthy lifestyles. Outside of these centres, A5 uses should also be managed in accordance with Policy TC3 of the Local Plan with respect to retail development.

It is expected that new A5 facilities will not lead to an over-concentration of A5 uses within any one individual centre. In particular, A5 uses should not overly dominate the retail offer within district, local and neighbourhood shopping centres so that they encompass more than 10% of the overall retail frontage within those centres. In accordance with Policy SC1 of the Torbay Local Plan, evidence should be submitted alongside a planning application for an A5 use (e.g. a proportionate Health Impact Assessment) outlining the measures taken to ensure that providing an A5 use will not lead to any worsening in the overall rate of hot food takeaway concentration and/or the opportunities to promote health lifestyles. This is required for developments over 30 dwellings and smaller scale developments where there are reasons to indicate that a proposal may give rise to a significant impact on health. A Health Impact Assessment (HIA) for this application has not been submitted and is not normally required for a change of use such as that proposed. However the applicant will complete a screening for the proposed use and the results will be presented verbally.

The proposal does promote a new takeaway use in the town centre, however based on the location, being outside of the primary and secondary shopping areas and the due to the scale of the proposal the change of use is not considered to be disproportionately out of character and context with a town centre use. A map showing the locations of both A3 and A5 uses is included in the presentation. This clearly shows that the addition of the use proposed will not lead to an over concentration of takeaways in this location. It is not contrary to the policies of the Torbay Local Plan 2012-2030 and the re-use of the building is of a public benefit.

Whilst the principle of the development is considered to be acceptable based on the above information, development is also directly linked to a number of other material considerations. These include impact on the character of the area, impact on the neighbouring occupiers and highway safety. The assessment of these matters are considered in more detail below.

Impact of the design on the Conservation Area

The Council's Conservation Officer would like to see the front window reverted to a more original format, more akin to the other more traditional shopfronts in this street. The removal of the large unsightly signage and projecting element housing the cash point will improve the visual impact of this unit on the street scene. This can be carried out quite simply through amendments and revisions, of which the applicant is willing to address. Subject to these amendments in accordance with the advice of the Conservation Officer the impact of the shop front on the Conservation Area will be significantly improved and meet the requirements of policy SS10 of the Torbay Local Plan 2012-2030.

Impact on Neighbour Amenity

Concern has been raised by local residents and other business owners in the immediate vicinity that the impact of an additional takeaway use will have an adverse impact on the local residents. The closest residential property is located above the commercial unit.

Other residential dwellings are located at first floor above neighbouring shops and to the rear.

With regard to odour this can be addressed by including an appropriately worded condition to ensure that adequate ventilation and odour mitigation is installed prior to commencement of the use.

With regard to noise it is not unreasonable to restrict opening hours. This would have to be carefully considered against neighbouring opening hours to ensure the condition meets the relevant tests. The Council's Environmental Health Officer has advised that the hours of operation should be limited to ensure that the premises are shut by 1.00am.

In light of the above potential adverse impact on neighbour amenity can be mitigated by condition and meet the requirements of Policy DE3 of the Torbay Local Plan 2012-2030.

Highway Safety

There are no allocated parking spaces for the existing use. Parking is based on a first come/first served basis and tickets are available from a machine located a few metres to the west of the application site. Parking restrictions are in place on the surrounding roads and due to being located on a major road network, traffic along this stretch of road is busy.

It would be difficult to insist that the new use has specific parking provision given that the existing use does not have any and the use was vehicle orientated. In addition the site is in a town centre location.

No objections have been raised by the Council's highway officers and due to the town centre location is considered to be sited in a sustainable location, easily accessible by foot, bicycle or public transport. The proposal is considered to meet the requirements of policy TR1 and TR2 of the Torbay Local Plan 2012-2030.

Community Safety - Noise and Odour

Comments from the Community Safety officer advise that the noise and odour resulting from the development can appropriately be mitigated by condition. It is therefore considered to meet the requirements of policy DE3 of the Torbay Local Plan 2012-2030.

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 - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. 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.

S106/CIL and Affordable Housing -

Provision for further waste facilities or services monitoring may need to be provided. This will be confirmed verbally to Committee.

CIL:

The CIL liability for this development is Nil as the CIL rate for this type of development is Nil and therefore no CIL is payable.

EIA:

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

Proactive Working

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions

The proposed change of use is considered acceptable in this town centre location subject to conditions relating to hours of opening and provision of an extract ventilation system. Use of the property as a hot food takeaway would not lead to an overconcentration of A5 uses in the area and this use would not encompass more than 10% of the overall retail frontage in this section of Torwood Street. Given that there are already hot food takeaways in the town centre this change of use would not demonstrably have a negative impact on healthy lifestyles or efforts to reduce health inequalities.

The proposals are considered to accord with the provisions of the Torbay Local Plan 2012-2030 and all other material considerations.

Conditions

1. Opening hours
2. Noise and odour mitigation

Application Number

P/2017/0882

Site Address

46 Tamar Avenue
Torquay
TQ2 7LP

Case Officer

Mr Robert Pierce

Ward

Shiphay With The Willows

Description

Rear and side extension with flat roof

Executive Summary

The proposal is for a single storey flat roof extension to the side and rear of the existing dwelling. The extension would be situated adjacent to the eastern boundary of the plot, adjacent to number 44 Tamar Avenue. The proposal is considered to be acceptable in this location and without any overriding detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality. Consequently the proposal meets Local Plan policy requirements, specifically Policies DE1 (Design), DE3 (Development amenity) and DE5 (Domestic extensions).

Recommendation

Conditional approval

Reason for Referral to Development Management Committee
The applicant is employed by the Council in the Spatial Planning Unit.

Statutory Determination Period

8 weeks, the determination date is 18th October 2017.

Site Details

The application site is a two storey semi-detached property which stands in an elevated position on the south side of Tamar Avenue. It forms part of a residential development of similar properties. The property has a covered external storage area and outbuilding to the side and rear which stand alongside the party boundary.

Date of Officer Site Visit:
6th September 2017

Detailed Proposals

The proposal is to remove the existing covered storage area and outbuilding and form a new flat roofed single storey side and rear extension that would extend up to the site boundary of the dwelling. The extension would be built off the existing boundary wall which would be raised in height (in part) by approximately 0.5 metres along the rear element in order to form a parapet. The front and rear sections of the extension would each be lit by roof lanterns with the one to the rear being set behind the parapet. The rear elevation would have French doors leading out onto a level area of proposed decking at existing ground level. It is also proposed to extend at the same level an existing area of decking at the rear by removing an existing flower bed. The external walls will be rendered to match the existing with doors and windows being UPVC. The plans also indicate the removal of the dining room window and its replacement with triple folding patio doors leading out into the garden.

Summary Of Consultation Responses

None

Summary Of Representations

Publication type: Neighbour notification letters and Site notice

No representations received

Relevant Planning History

P/2012/0053: Excavation of front garden to form off street parking for 2 vehicles with vehicular access. Approved 14.03.2012.

Key Issues/Material Considerations

The key issues to consider in relation to this application are:

1. Impact on the character and appearance of the existing property and streetscene
2. Impact on amenity
3. Flood Risk

1. Impact on the character and appearance of the existing property and streetscene

Policy DE1 (Design) of the Torbay Local Plan 2012 - 2030 states that development proposals should acknowledge local character. Policy DE5 (Domestic extensions) specifies that extensions to domestic dwellings will be permitted where the extension would not dominate or have other adverse effects on the character or appearance of the original property or any neighbouring properties, or on the streetscene in general.

Single storey flat roofed structures to the side of properties are a typical feature of Tamar Avenue with many forming part of the original design of the properties. The plans indicate that the extension will be slightly set back from the front elevation of the host property. The roof at the front will be very slightly higher than the existing but the parapet wall will stand further back from view. The proposed extension will remain subservient in appearance to the host property and it will sit quite comfortably in the street scene. As the extension is at ground floor level only the visual gap in between the application site and number 42 Tamar Avenue will be retained.

It is considered that the design of the proposal is acceptable in terms of its impact on the character and appearance of the existing property and streetscene, by reason of the scale of the proposed extension and its external appearance. As such it would be consistent with Policies DE1 and DE5 of the Torbay Local Plan.

2. Impact on amenity

Policy DE3 (Development amenity) of the Torbay Local Plan details that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.

The extension will be built off the existing party wall with the adjoining property. A section of the wall will be raised in height by approximately 0.5 metres. This is considered to be an acceptable increase and will not have any adverse impact on the neighbours by way of being over dominant, overbearing nor would it result in any loss of light. A condition will be attached to the decision requiring the eastern face of the parapet to be rendered to match the existing wall. The two roof lanterns will be set off the boundary and their positioning is considered to be acceptable.

The proposal is therefore deemed to have an acceptable impact upon the amenity of neighbouring properties and would comply with Policy DE3.

3. Drainage

The application site is located within the Critical Drainage Area. The submitted Flood Risk Assessment indicates that surface water will be discharged at a controlled rate to a combined sewer to be approved by South West Water. Because the proposed extension will be more than 20 square metres the Standing Advice allows for a pre-commencement condition requiring the submission of details of the means of surface water drainage.

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 - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. 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.

Local Finance Considerations

Construction of the extension will make a positive contribution to the local economy.

S106/CIL and Affordable Housing -

S106 contributions are not required from this development.

The CIL liability for this development is Nil as the CIL rate for this type of development is Nil and therefore no CIL is payable.

Proactive Working

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for conditional planning approval to enable the grant of planning permission.

Conclusions

The proposal is considered to accord with the provisions of the Torbay Local Plan 2012-2030 and all other material considerations.

Condition(s)/Reason(s)

01 Notwithstanding the submitted flood risk assessment dated 18st August 2017, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change. If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement of the development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the

submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 30% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 30% allowance for climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream. The development shall not be utilised until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests to adapting to climate change and managing flood risk, and in order to accord with saved Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and paragraph 103 of the NPPF. These details are required pre-commencement as specified as Torbay has been designated as a Critical Drainage Area and to ensure that a surface water drainage system is designed appropriately in light of this designation.

02. The section of parapet wall along the shared east facing boundary wall shall be finished to match the existing wall and shall thereafter retained in that condition.

Reason: To protect neighbour amenity in accordance with the requirements of Policy DE3 of the Torbay Local Plan 2012-2030.

Relevant Policies

DE1 - Design

DE3 - Development Amenity

DE5 - Domestic extensions