



Friday, 2 February 2018

## **DEVELOPMENT MANAGEMENT COMMITTEE**

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

**Monday, 12 February 2018**

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 Pentney
Councillor Darling (S)	Councillor Tolchard
Councillor Lewis (B)	Councillor Winfield
Councillor Morey	1 Independent member vacancy

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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**

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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 8 January 2018.
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. **Hoburne Ltd, Grange Court Holiday Centre, Touring Section (Woodland Glade), Grange Road, Paignton (P/2016/0633/MPA)** (Pages 7 - 14)  
Redevelopment of touring section (Woodland Glade) to holiday static caravans with 12 month holiday season.
6. **Land at White Rock Way, Paignton (P/2017/1019/MPA)** (Pages 15 - 38)  
Formation of supermarket including associated works.
7. **Cantina, Youngs Park Road, Paignton (P/2017/1160/PA)** (Pages 39 - 46)  
Single storey wraparound extension with two roof lights, front entrance ramp, new entrance doors and installation of storage unit.

8. **Pier Point Café, Torbay Road, Torquay (P/2017/0638/PA)** (Pages 47 - 58)  
First floor extension, terrace and alterations to restaurant and bar, solar PV and associated works (revised plans received).
9. **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 11am on the day of the meeting.
10. **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, 7 February 2018. 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

8 January 2018

-: Present :-

Councillor Kingscote (Chairman)

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

(Also in attendance: Councillors Hill, Lewis (C), Mills and Thomas (D))

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### 56. Apologies for absence

It was reported that, in accordance with the wishes of the Mayor's Non-Political Executive Group, the membership of the Committee had been amended by Councillor Excell filling the vacant seat.

### 57. Minutes

The Minutes of the meeting of the Development Management Committee held on 11 December 2017 were confirmed as a correct record and signed by the Chairman.

### 58. Urgent Items

The Committee considered the items in Minute 59, 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.

### 59. Land South of Yalberton Road, Paignton (P/2014/0983/MOA)

Further to the meeting of the Development Management Committee held on 11 December 2017, the Team Leader for Development Management advised the Committee that the applicant was seeking an extension of time to agree details of Cirl bunting mitigation until the end of March 2018.

Resolved:

That an extension of time be granted until the end of March 2018 for the Cirl bunting mitigation to be agreed, or the application be refused.

**60. Brixham Rugby Football Club, Astley Park, Rea Barn Road, Brixham (P/2017/0964/PA)**

The Committee considered an application for the erection of sports field floodlight (retrospective).

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

Resolved:

Approved with the condition set out in the submitted report, and final drafting of the condition being delegated to the Executive Head for Assets and Business Services.

**61. Land At White Rock Way, Paignton (P/2017/1019/MPA)**

The Committee considered an application for formation of a supermarket and associated works.

Prior to the meeting, written representations were available on the Council's website. The Team Leader for Development Management advised that the applicant had requested that the application be deferred to allow for the resolution of the objections to the application raised by the Council's Planning Officers and the submission of revised plans.

Resolved:

That the application be deferred to resolve the objections raised by the Council's Planning Officers to the application and the submission of satisfactory revised plans.

**62. 21 Victoria Parade, Torquay (P/2017/0714/PA)**

The Committee considered an application for demolition of the existing roof, extension at second floor level to form additional bar/restaurant/storage area with pitched roof over, to include increase in height of the building.

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

Resolved:

Approved subject to conditions regarding finished materials, scale details of the proposed second floor windows, privacy and noise and odour mitigation. Final

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

**63. South Devon Hotel, 10 St Margarets Road, Torquay (P/2017/0888/MPA)**

The Committee considered an application for refurbishment of existing building, including partial demolition of extensions, extensions and alterations to provide 10 residential units, and the provision of 14 new apartments and 6 houses within the grounds of the existing building with existing access off St Margarets Close to be relocated, together with the provision of parking facilities.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's website. In accordance with Standing Order B4.1, Councillor Hill addressed the Committee as Ward Councillor.

Resolved:

Approved, subject to:

- (i) the receipt of detailed ecological assessment and mitigation that will adequately safeguard protected species;
- (ii) revised or additional plans which demonstrate that all parking spaces can be adequately entered and exited;
- (iii) the submission of plans to demonstrate adequate cycle parking for the 14-unit apartment block is provided;
- (iv) the final drafting of conditions, including those set out in the submitted report and additional conditions relating to retention of the front doors and lamp posts, submission of a waste management strategy and provision of bird boxes, being delegated to the Executive Head of Assets and Business services;
- (v) the completion of a Section 106 Agreement that secures a policy compliant level of affordable housing or the necessary mechanisms to review viability in accordance with the Council's Adopted SPD.

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Chairman

# Agenda Item 5

**Application Number**

P/2016/0633

**Site Address**

Hoburne Ltd  
Grange Court Holiday Centre  
Touring Section (Woodland Glade)  
Grange Road  
Paignton  
TQ4 7JP

**Case Officer**

Mr Alexis Moran

**Ward**

Goodrington With Roselands

**Description**

Redevelopment of touring section (Woodland Glade) to holiday static caravans with 12 month holiday season

**Update**

At the DMC meeting on 11.12.2017 this application for the addition of 29 static caravans was recommended by the case Officer for approval and was subsequently unanimously approved by Members, subject to conditions.

Following the meeting an objection from the Environment Agency (EA) was received. As the site is within Floodzone 2 and the application is a Major Planning Application, by reason of the site area, the EA are a statutory consultee.

As the original officer report to DMC advised that there was no objection on drainage grounds, it is necessary to inform the DMC of the EA objection and for the application to be considered with an amended recommendation.

The objection from the EA is as follows;

“Whilst we support the proposed Developer Recommendations, as detailed in section 8 of the Flood Risk Assessment, we do raise the fact that the risk of flooding due to blockage of the culverts, these being culverts within and downstream of the site, has not been appraised. It is possible that a volume of water could accumulate within the site to a level and depth that would render the proposal unsafe.

In light of the above we advise that the applicants Flood Risk Assessment be revised to take into account the circumstances that can dictate the above scenario with a view to determining the likely maximum water level that could arise before waters could flow downstream away from the site.

This should not require the production of a hydraulic model, rather the gathering of survey evidence to quantify ground and culvert levels within, and downstream of the site and then portraying the findings in a format that demonstrates the potential maximum level of ponding that could occur.”

Subsequently the further information required to overcome the objection from the EA has been requested from the applicant. This information and confirmation from the EA of the withdrawal of their objection will be required prior to the issuing of the decision notice.

### **Updated Recommendation**

Subject to the receipt of additional drainage information as requested by the EA in their consultation response date 18.12.2017 and confirmation from the EA of the withdrawal of their objection, conditional approval with final drafting of conditions to be delegated to the Executive Head for Assets and Business Services.

### **Previous Officer report to DM Committee on 11.12.17[AH1]**

#### *Executive Summary/Key Outcomes*

*The development site, relates to an area known as Woodland Glade which is located to the south of Grange Court Holiday Centre, Grange Road, Paignton. The site area is approximately 1.5ha. The wider site is an existing 22 hectare acre holiday park.*

*It is surrounded by woodland, to the south, set up at a higher level, are properties in Fairlawns Park and to the east there is a golf driving range.*

*The site is designated as being within a Core Tourism Investment Area in the Torbay Local Plan. It lies approximately 6km (as a straight line) from the maternity roost at Berry Head and is therefore within the 'Sustenance Zone' for the Berry Head Component of the South Hams SAC and lies within a 'Strategic Flyway' that runs between Paignton Zoo and the coast.*

*The application seeks permission for the addition of 29 static caravans in an area used for touring caravans. Two types of static caravan are proposed, one which is 12m long by 6.1m wide and one which is 12m long by 4.3m wide. Each pitch would be sited on a concrete hardstanding base with two parking spaces. The parking spaces and internal access road would be finished with tarmac. The proposal will require the removal of 11 trees.*

*The proposal is deemed to cater for the current demand for improved holiday accommodation within a site which has good quality facilities. The provision of improved tourist facilities will help attract new visitors which, it is considered, will in turn provide an economic benefit to Torbay. The proposal therefore complies with Policy TO1 of the Torbay Local Plan 2012-2030 and accords with the site's designation in the Local Plan as a Core Tourism Investment Area.*

*The site will not be highly visible from the wider area as it is set down at a lower level than the land around it and is well screened by trees and woodland. Internally the character of the existing area will inevitably be altered by the addition of the static caravans which will be permanent fixtures. However this impact can be minimised by a landscaping scheme which would address the loss of the 11 trees and which integrates with the layout and existing landscape.*



*As the site lies on the western edge of the Greater Horseshoe bat sustenance zone and is partially within a strategic highway a HRA screening was undertaken. The result of this was that there is not likely to be a Significant Effect alone or in combination with other proposals or projects, on the Berry Head Component of the South Hams SAC. This conclusion is subject to the addition of appropriate conditions.*

#### Recommendation

*Conditional approval with final drafting of conditions to be delegated to the Executive Head for Assets and Business Services.*

#### Statutory Determination Period

*The decision on this application was due on 26.06.2016. Due to the requirement for updated ecological and arboricultural information and an HRA the proposal has exceeded this date. The applicant has agreed to an extension of time.*

#### Site Details

*The site relates to Grange Court Holiday Centre (Woodland Glade), Grange Road, Paignton. The total site area occupied by the holiday camp is 22ha. The site is accessed by a road connected to the centre of the holiday park.*

*The development site, relates to an area known as Woodland Glade which is located to the south of Grange Court Holiday Centre, Grange Road, Paignton. The site area is approximately 1.5ha. It is surrounded by woodland, to the south, set up at a higher level, are properties in Fairlawns Park and to the east there is a golf driving range.*

*The site is designated as being within a Core Tourism Investment Area in the Torbay Local Plan.*

#### Detailed Proposals

*The application seeks permission for the addition of 29 static caravans in an area used for touring caravans. Two types of static caravan are proposed, one which is 12m long by 6.1m wide and one which is 12m long by 4.3m wide.*

*Each pitch would be sited on a concrete hardstanding base with two parking spaces. The parking spaces and internal access road would be finished with tarmac.*

*The extent of the hardstanding surface would not encroach closer to the woodland boundary than the existing infrastructure.*

*The static caravans are intended to be operated for a holiday use for 12 months of the year.*

#### Summary Of Consultation Responses

*Drainage Engineer - No objection subject to the implementation of the submitted drainage scheme.*

*Arboricultural Officer -Recommends approval on arboricultural merit subject to the scheme*

*being implemented in accordance with the submitted details.*

*Highways - no objection*

*Ecological consultant - subject to the incorporation of suitable mitigation measures the HRA Screening Assessment advises that the development is not likely to have a Significant Effect on the South Devon SAC alone or in combination with other proposals or projects.*

*Summary Of Representations*

*None.*

*Relevant Planning History*

*P/2016/0625 - Redevelopment Of touring section (Hill View) to holiday static caravans for 12 month holiday season, the proposal is for 29 static caravans; Pending consideration*

*Key Issues/Material Considerations*

*The key issues in relation to the proposed development are the impact it would have on, the visual appearance of the area, tourism, ecology, highways, drainage and landscaping.*

*Visual appearance*

*The site is well screened on all boundaries by existing trees and woodland. The proposal would result in the loss of 11 trees however it is not considered that this would significantly open up the site visually from the wider area. There is also the opportunity to strengthen the exciting boundary planting through the submission of landscaping details via condition.*

*As the properties in Fairlawns Park are sited at a significantly higher level than the site, it is not considered that the addition of the static caravans would be detrimental to their outlook. The relationship between these properties and the static caravans would be similar to the current relationship with the touring caravans that use the site. The proposal is deemed to comply with Policies DE1 & DE3.*

*Tourism*

*The site is within a Core Tourism Investment Area. Policy TO1 (Tourism, events and culture) of the Torbay Local Plan 2012-2030 aims to enhance its role as a premier tourism destination. In order to do this tourist facilities and accommodation will require improvement and modernisation to attract new visitors, particularly overnight visitors and increase overall spend.*

*The Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services supporting, in principle, the improvement of existing and provision of new tourist accommodation and attractions; subject to other Policies.*

*The NPPF deals with tourism development in its rural policy paragraph 28 which notes:*

*To promote a strong rural economy, local and neighbourhood plans should support*

*sustainable rural tourism and leisure developments that benefit businesses in rural areas, communities and visitors, and which respect the character of the countryside. This should include supporting the provision and expansion of tourist and visitor facilities in appropriate locations.*

*The Local Plan advises that Torbay is seeing increased visitor numbers and value, lengthening of the tourism season, increased spend, increased occupancies and overnight stays, growth in overseas visitor numbers and new tourism related development.*

*This is backed up by visitor spend in Torbay which in 2011 was 8% higher than in 2006. Torbay's Tourism Strategy Turning the tide for tourism in Torbay, 2010-2015 states that in 2007 holiday parks in Paignton provided 5,800 of the total 18,500 bed spaces. Changing expectations mean an increasing number of visitors want to spend their holiday in good value, high quality modern accommodation.*

*The applicant wishes to cater for current trends in tourism as previously stated a demand for improved holiday accommodation is apparent and recent years have seen a reduced demand for touring pitches.*

*It is considered that the proposed static caravans provide an improved form of tourist accommodation within a site which has good quality facilities and a range of accommodation making good use of an area currently underutilised.*

*No details on whether the proposed caravans will be let or sold have been submitted. If they are to be sold, in order to encourage maximum levels of occupancy it is good practice to ensure that the holiday park operator promotes a sub-letting service. This can be achieved by imposing a condition to this effect on the grant of planning permission.*

*The proposal is deemed to help deliver the key requirements of Policy TO1 and complies with para. 28 of the NPPF, by providing improvements to the facility and helping attract new visitors; thus providing an economic benefit to Torbay. It is therefore considered that the proposal is compliant with Policy TO1 of the Torbay Local Plan 2012-2030.*

### Ecology

*The site is within a Greater Horseshoe Bat 'Strategic Flyway' that runs between Paignton Zoo and the coast. Accordingly Torbay Council undertook an HRA. The HRA Screening Assessment advised that the development is not likely to have a Significant Effect on the South Devon SAC alone or in combination with other proposals or projects subject to the following mitigation measures for greater horseshoe bats which should be secured through the imposition of conditions;*

- o Provision of a Dark Areas Map/Plan to show areas of the sites that will remain at or below 0.5 lux.*
- o Provision and implementation of a Construction Environmental Management Plan (CEMP) to address all necessary construction related mitigation including that required to protect breeding birds, reptiles and badgers (e.g. in accordance with BS42020; clause 10);*

- o *Provision and implementation of an Ecological Management and Enhancement Plan (EMEP) to secure long-term effective habitat management on site (e.g. BS42020; clause 11.1). This plan should also provide details for lighting design and installation (in accordance with the BSG recommendations in the EclA on page 23) to demonstrate that the proposed development can be implemented so that adequate areas that are to remain dark (e.g. with light levels less than 0.5 lux) can be achieved effectively.*

*The submitted ecological appraisal for this site advises that a badger sett was located within the woodland. However it states that the sett will not be affected by the scheme as the woodland provides an adequate buffer and would mitigate the effects of increased human disturbance. It is recommended that measures to protect badgers from accidental injury are adopted as part of a submitted EMEP.*

#### Highways

*Policy TA3 (Parking requirement) states that 1 parking space per chalet/lodge should be provided. The submitted layout plans confirms that two spaces per static caravan will be available which confirms that this standard will be met.*

#### Drainage

*The site is partially within flood zones 2 & 3. The proposed surface water system comprises of a combination of pipe networks and various SuDS features to ensure that surface water run-off from impermeable areas is properly managed. A drainage strategy and hydraulic calculations for the development have been submitted and deemed to be acceptable.*

*The Council's Drainage Engineer has confirmed that, providing the development is constructed in accordance with the submitted drainage strategy, there would be no objections on drainage grounds to planning permission being granted. It is considered that a condition confirming this is necessary.*

#### Landscaping

*The proposal would result in the loss of 11 trees, the Council's Arboricultural Officer has not objected to this loss. There is however the need to create a detailed landscape plan to address tree loss and integrate the proposed development into the existing landscape. It is considered that this should be required via a landscaping condition. The proposal is deemed to comply with Policy C4 in principle and mitigation planting has the potential to improve the natural features of the site.*

*The land to the north, west and south of the site is allocated as being within an Urban Landscape Protection Area (ULPA). The site is outside of the Urban Landscape Protection Area and it is not considered that the proposal would undermine it as an open landscape character. The proposal would comply with Policy C5.*

*There is an opportunity for a landscaping scheme to strengthen the character of the boundary of the site and the ULPA.*

### 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

*CIL*

*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.*

*S106*

*A contribution towards monitoring the holiday use of the units for a period of 5 years is required which equates to £720.00 based on 4 hours of monitoring per year has been paid via a unilateral undertaking.*

### 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 development would be consistent with Policies TO1, NC1, TA3, ER1, ER2 and C5 of the Torbay Local Plan 2012-203. The proposal is considered to be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations, subject to the conditions itemised below;*

- o The works shall be undertaken in accordance with the submitted Tree protection plan and special methodology for construction adjacent to trees to be retained.*
- o Detailed landscaping plan to include, but not be limited to, detailed watering prescription per tree type/ size, tree pit design, staking (2 stakes and cross bar), mulching, tie adjustment and formative pruning.*

- o *Landscaping to be implemented and retained*
- o *Provision of a Dark Areas Map/Plan to show areas of the sites that will remain at or below 0.5 lux.*
- o *Provision and implementation of an Ecological Management and Enhancement Plan (EMEP) to secure long-term effective habitat management on site.*
- o *Provision and implementation of a Construction Environmental Management Plan (CEMP) to address all necessary construction related mitigation including that required to protect breeding birds, reptiles and badgers.*
- o *Clearance of any potential bird nesting habitat should only be undertaken outside of the bird nesting season (undertaken between September and end of February) or following confirmation immediately prior to clearance from a suitably qualified ecologist that no nesting birds are present. If a nest(s) is found, works will have to be delayed until young birds have fledged and the nest(s) is inactive.*
- o *Details of cycle store to be submitted for approval and then implemented*
- o *Implementation of parking areas prior to occupation of chalets*
- o *Implementation of bin store area prior to occupation of dwellings*
- o *The development shall be undertaken in accordance with the submitted drainage details.*
- o *The approved accommodation shall be for holiday use only and not for permanent residential occupation.*
- o *The maximum number of 29 static caravans shall be stationed on the application site at any one time and in accordance with the approved layout.*
  - *Details of all boundary treatments.*
  - *Details of all external lighting*
  - *Details of external materials*
  - *Provision of a subletting service*
  - *Green travel packs.*

### **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**

- DE1 - Design
- DE3 - Development Amenity
- TO1 - Tourism, events and culture
- C4 - Trees, hedgerows and natural landscape
- C5 - Urban landscape protection areas
- NC1LFS - Biodiversity and Geodiversity
- ER1 - Flood Risk
- ER2 - Water Management
- TA3 - Parking requirements

**Application Number**

P/2017/1019

**Site Address**

Land At White Rock Way  
Paignton  
TQ4 7RZ

**Case Officer**

Miss Angharad Williams

**Ward**

Blatchcombe

**Description**

Formation of supermarket inc associated works.

**Executive Summary**

The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared.

The application seeks full planning permission for the erection of a Lidl retail store that is single storey in height, with a small element of the building raised in height to give the impression that the building is three storey. It would have a gross internal floor area of 2,206sqm which includes a sales area of 1,323sqm. The recently approved reserved matters application for a retail store on this site (P/2016/0411) had a floor area of 1,652sqm gross retail floorspace (1,188 sqm net floorspace). This constitutes an increase of 554 sq m gross and 135 sq m net.

Following the original submission design amendments have been undertaken to address Officer concerns of design, scale appearance, landscape and functionality.

It is considered that the revised proposal would provide a weak form of development in this location that would not be consistent with the strong 'principal frontages' to Brixham Road that have been approved and are under construction on adjoining sites. Therefore, the proposal would not to comply with the Local Plan policies and the ambition to create quality places and buildings.

The proposed building is located at the junction on White Rock Way and Brixham Road. The proposal will include provision of 121 parking spaces (6 of which are allocated for disabled people, 8 parent and toddler spaces, and 2 are electrical charging spaces). Cycle parking is proposed to serve the retail use, the plans indicate that 7 cycle loops are proposed. Materials include sandstone, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The application is also supported by a Landscaping Plan which propose a number of trees. Access to the site would be from Waddeton Close and White Rock Way.

The revised plans propose a single storey building with the elevation facing Brixham Road raised compared to the rest of the building to give the impression that the building is three

storey, therefore attempting to address the context of the existing street scene. This part of the building attains a height of 10.75m with the remainder of the building (as it moves west on White Rock Way) attaining a height of 6.7m. Due to the change in levels between the site and the Brixham Road, the floor level of the building is at a level approximately 1m lower than the Brixham Road.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant and proposed Innovation Centre developments to the north. Beyond White Rock Way to the south of the site is existing residential development approved under reference P/2013/1229 and P/2014/0071 which is currently under construction.

The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head and in a potential Cirl Bunting wintering/breeding activity area. The site is also situated within Flood Zone 1, Critical Drainage Area.

Reserved matters have been granted for a smaller retail store with student accommodation on first and second floors on the site under application reference P/2016/0411 in August 2017. This consent is extant.

The provision of retail uses at this site is supported by policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030. The principle of retail development of this scale in this location is considered acceptable subject to securing the retention of the existing Lidl store in the town centre for a minimum of 5 years from the commencement of any retail use at this store, in order to offset any impact on the town centre from the additional floorspace that is proposed compared to the previously approved scheme. However there are a number of concerns relating to the design of the proposal and whether it would provide a strong enough visual and legible presence on this important corner site, which when tested against the policies in the Torbay Local Plan 2012-30 would warrant the refusal of the application.

The applicant has worked with officers and sought to overcome the objections to the application. Whilst the revised plans have gone some way to improving the proposed development it is considered that the quality of the submission would not meet the requirements of Policy DE1 in the Torbay Local Plan. It is concluded that the proposed development fails relate well to the surrounding built environment and would fail to positively address the street with a strong character in this corner location with limited active frontages The elevational treatment lacks good proportion and composition, and has a poor relationship with the existing street scene Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and Policy DE4 of the Torbay Local Plan.



The application site is within a Critical Drainage Area as designated by the Environment Agency and Flood Zone 1. In the absence of a sufficiently detailed surface water drainage design, no proper assessment can be made of the impact of surface water run off or the drainage hierarchy. It is therefore unclear whether the proposed development or surrounding area could be kept safe from the effects of surface water. Therefore, the proposal would not comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030, and would be contrary to paragraph 103 of the NPPF.

Finally there are number of outstanding matters which require resolution, these relate to the number cycle spaces being provided, whether the additional trips generated by the development will require S106 contributions to mitigate the effects on the local highway network and whether the pedestrian routes through the development are acceptable in relation to criteria 22 of policy DE1 and policies TA1 and TA2 in terms of providing vehicular and pedestrian access to a safe standard. Since the submission of the revised plans, the Council's Strategic Transport Officer has been consulted and an update will be provided at Committee.

The proposal constitutes CIL liable development. A CIL contribution of approximately £264,720 would be required from the development.

### **Recommendation**

Refusal:

1. The proposed development would fail to deliver a good quality legible building on this highly visible corner site at the entrance to White Rock, which is commensurate to the role of the site as a local centre providing a strong focal point for the emerging new community. The scale of the building would have a limited localised effect and would present a weak form of townscape out of scale and proportion with new development on adjoining sites. The quality of the design would be poor with elevations that lack good proportion and composition. The proposal would fail to respond to local character and to reflect the identity of local surroundings. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 of Policy DE1, and DE4 of the Torbay Local Plan and para. 64 of the NPPF which states permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
2. The application site is within a Critical Drainage Area and Flood Zone 1. In the absence of a sufficiently detailed surface water drainage design, no proper assessment can be made of the impact of surface water run off or the drainage hierarchy. It is therefore unclear whether the proposed development or surrounding area could be kept safe from the effects of surface water. The proposal would not comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.
3. The applicant has not entered into a planning obligation to ensure that the Lidl store

in Victoria Square, Paignton remains open for a minimum of 5 years after any store on the application site opens for trading, to secure financial contributions to mitigate the detrimental effect of the proposals on the local highway network and financial contributions towards the cost of any necessary traffic orders on Waddeton Road

### **Reason for Referral to Development Management Committee**

The application is a major application and is therefore required by the Council's constitution to be determined by DM committee.

### **Statutory Determination Period**

13 weeks. An extension of time to determine the application has been agreed with the applicant to allow further consideration of the application and for it to be considered at the February Development Management Committee.

### **Site Details**

Outline consent was granted in April 2013 for approximately 37,000 square metres of employment space, 350 new homes and a local centre under reference P/2011/0197 and subsequent reserved matters applications were approved under application references P/2013/1009 for industrial buildings, P/2013/129 and P/2014/0071 for dwelling houses and P/2016/0188 for a sports pavilion and associated pitches. Reserved matters consent was granted for a smaller retail store with student accommodation on first and second floors on the site under application reference P/2016/0411 in August 2017. This consent is extant, but the outline consent for the wider White Rock site has now expired.

The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared. Part of the wider site is under construction under the approved reserved matters scheme P/2013/1229 and P/2014/0071 with a number of dwelling houses complete and occupied.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant developments to the north. In addition, to the north of the application site, is the site of the proposed Innovation Centre, which has been resolved for approval under application reference P/2017/0685, although the decision notice has not yet been issued. Beyond White Rock Way to the south of the site is existing residential development approved under reference P/2013/1229 and P/2014/0071 which is currently under construction.

The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head and in a potential Cirl Bunting wintering/breeding activity area. The site is also situated within Flood Zone 1, Critical Drainage Area.

## **Detailed Proposals**

The application is for full planning permission.

The proposal is for the erection of a retail store with associated parking and cycle storage provision. The building is proposed to have a gross internal floor area of 2,206sqm which includes a sales area of 1,323sqm.

Since the application has been under consideration, a number of concerns have been raised predominately in relation to the design, scale and functionality of the building proposed. Officers advised the applicant that the development would need to be of a scale that was more appropriate for the street context and scale of the plot. It was suggested that the scheme should incorporate either residential or student accommodation above in order to obtain more height, whilst also making good use of the site in providing multiple use. Such matters were agreed in the extant reserved matters application that has been noted above.

The applicant has advised that they have concerns about viability in respect of the request to include residential accommodation of any form above the supermarket. Due to the change in levels between the site and the Brixham Road, the building is already at a disadvantage being at a level approximately 1m lower than the Brixham Road. Nevertheless, it officers consider that the building needs to sit comfortably within the street scene and relate to the context in which it sits. The further revised plans are still not considered to be at the standard that is would provide a good quality building at this key location.

The proposed building is located at the junction on White Rock Way and Brixham Road. To the north of the building are 121 parking spaces (6 of which are allocated for disabled people and 2 are electrical charging spaces). Cycle parking is proposed to serve the retail use, the plans indicate that 7 cycle loops are proposed. Materials include sandstone buff brick, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The revised plans also include an updated Landscaping Plan which proposes a number of trees along Brixham Road, White Rock Way and along Waddeton Close. Access to the site would be from Waddeton Close and White Rock Way.

## **Summary Of Consultation Responses**

Environment Agency: Planning permission can be granted subject to the imposition of a condition relating to unsuspected contamination to ensure the protection of controlled water from any contamination on site that is encountered. Without this condition, the Environment Agency would object to the application.

South West Water: No objection.

Drainage Engineer: Hydraulic calculations have not been submitted for the surface water drainage system connecting to the attenuation tanks. These are required to confirm that there is no risk of flooding or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. No details of the proposed manhole cover levels,

invert levels, pipe diameters, pipe gradients and the impermeable areas discharging to each pipe length have been identified. All of this information is required within the hydraulic modelling. It must be demonstrated that the surface water drainage for the development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Hydraulic calculations for the entire surface water sewer system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 50% for climate change must be supplied. These details are required prior to the determination of the application.

Natural England: The proposal is unlikely to affect any statutorily protected sites.

RSPB: Recommends inclusion of 10 integral nest sites within the building to ensure enhancements to biodiversity in accordance with policy NC1 of the Torbay Local Plan and paragraph 118 of the National Planning Policy Framework.

Arboricultural Officer: The revised plans are acceptable.

Earlier comments received advised that there were not considered to be any arboricultural features of merit at the site given the previous site usage and clearance works.

Senior Environmental Health Officer: Concerns regarding noise from deliveries affecting residents in White Rock Way. Deliveries should only be made via Waddeton Close and no traffic to the site should arrive via White Rock Way between the hours of 23.00 and 08.00.

Police Designing Out Crime Officer: It is recommended that the store is constructed to achieve full Secured by Design compliance to ensure a consistent level of security throughout and opportunities for crime, the fear of crime, ASB and conflict are minimised.

Car parking areas appear to benefit from good natural surveillance from adjacent roads, paths and nearby dwellings but advise care is taken with planting to avoid impeding CCTV and creating short cuts. Vehicular access should be prevented to car parking areas when store is closed or car parking areas should be broken up with planters and landscaping to deter speeding and anti-social driving. Design of features and smooth surfaces should deter skateboarding etc. CCTV should form part of an overall security plan.

Senior Strategy and Project Officer (Retail): The store, when completed will be designated as a local centre (TC2.3.19) and therefore the relevant test in the Local Plan is set out in Policy TC3(B) which indicates stores should be of a scale appropriate to the centre and provides a range of services and facilities. The site has outline permission for a convenience store. On this basis a sequential test is not considered necessary. The Local Plan does not provide any guidance about the size of store that would be appropriate within a local centre, but the site has outline permission P/2011/0197 for a food store of up to 1652 sq m gross retail (of which 1,188 sq m is convenience), plus a smaller shop/café of 392 sq. m). A critical consideration in seeking to limit the extent of retail at local centres is to ensure that they do not grow to such an extent that they have

a serious effect on town centres. On this basis it is appropriate to consider town centre impact. Given White Rock's local centre designation, it is not considered that there is sufficient evidence to object to the proposal per se. However, it is appropriate to seek safeguards that Lidl will retain a town centre store. The Impact Statement indicates that this is intended (para 5.26). It is considered that 10 years would be a reasonable period of time. If Lidl do not wish to enter such an agreement, then a more detailed assessment of town centre impact than is provided at Section 5 of FirstPlan's assessment is required.

**Following the submission of additional information the following comments were provided**

There are no objections to the principle of the proposal but it is still appropriate to seek a safeguard to retain a town centre store within Paignton. Seeking to safeguard a town centre presence is important and has strong Neighbourhood Forum support. Subject to robust requirements for Lidl to retain a town centre presence and given the local centre status of the application site, there is no objection to the requirement for Lidl to remain in the town centre for 5 years rather than 10 as previously suggested.

Urban Design Consultant: As noted above, there have been two events where revised plans have been submitted, and the Council's Design consultant has reviewed each set of plans on each occasion.

The professional opinion of the consultant has not altered significantly since the submission of the most recent revised plans, and it is still considered that the proposal is a significant departure from the design principles that have been specifically conditioned by the Outline Approval (P/2011/0197). It is considered that such principles should still prevail even if this is no longer a reserved matters application. The principles were established through careful consultation and negotiation so as to create a satisfying, effective and acceptable urban design framework for the whole site. If this project were to be approved in its current form, then the coherence and quality of the wider place/new neighbourhood that is emerging at White Rock would be substantially undermined.

The most recent plans received raised the height of part of the building adjacent to Brixham Road and attempted to address concerns over scale and design. The Urban Design Officer however remains of the opinion that the proposal is not acceptable and outlines that there is no meaningful relationship between the interior of the building and the street, which is also the case for the prominent north elevation and the remainder of the building. It is noted that the three storey element of the building albeit diminutive, provides a better presentation along the short eastern elevation towards Brixham Road, but due to its small size, the impact on the much longer southern and northern elevations are minimal. This evidently causes a concern regards scale.

The introduction of railings along the site boundary to Brixham Road is also considered to be unfortunate; however it is understood that some form of boundary treatment may be necessary here due to the changes in level.

The proposals are therefore not considered to comply with Torbay Local Plan Policy DE1,

criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20, and 25 or Paragraph 58 of the NPPF. It is therefore recommended that the application be refused.

Senior Strategy and Project Officer (Transport): The initial plans submitted gave rise to concern over the levels of car parking being provided. With reference to Policy TA3, Appendix F of the Local Plan and using the Gross Floor Area, the scheme was considered to be providing a lesser number of parking spaces per sqm of gross floor area than applied to the previous reserved matters application (P/2016/0411). Based on the original submission, it was considered that the proposal would equate to 1 space per 18 sqm ratio and consequently there was a shortfall in parking provision and additional parking spaces were required. On the basis of 40 employees being proposed 20 cycle spaces should be provided for staff, and cycle parking should be provided for visitors. 10% of spaces should be provided for disabled persons.

A Travel Plan with 30% modal shift and SMART targets is also required (this can be conditioned unless it is required to mitigate the shortfall in parking and/or the impact of additional trip generation). A Parking Management Plan is required (this can be conditioned). Parent and child spaces should be relocated. The need for crossing points are highlighted.

The Transport Assessment also refers to HGV routes and how these will need to be secured by condition or legal agreement. The Transport Assessment implies that a HGV would find it difficult to enter the site from the south but also refers to Road Traffic Orders, which, if necessary would also need to be secured via 278/s106. It is reasonable to conclude that the trips generated are fewer than those assessed during the outline application, and that no further mitigation would be required. The contributions and works associated with the 2011 consent would still be necessary to ensure the impact is covered.

Since this initial response, revised plans were submitted in attempt to address these concerns.

And it was considered at this time that the despite the revisions, the car parking provision would still be below the recommended standard and therefore, to prevent on street parking issues, a Traffic Order for 'no waiting' will be needed along the length of Waddeton Close. The south entrance of Waddeton Close will also require a 'prohibition of HGVs' at the junction with White Rock Way. A pedestrian access was also requested to be provided along Waddeton Close.

In response to these concerns (and others as noted above) a meeting was held in January 2018 with the applicants whereby further concerns regards highways was raised. This included the request to ensure pedestrian connectivity through the car park from Waddeton Close to the store itself, requiring a widening of the footpath located to the north of the store. There was also a request to input a set of external stairs along the elevation of Brixham Road, in order to again enhance pedestrian connectivity. The latest plans received illustrate that such matters have been incorporated. An updated response to the revised plans will be provided to members at the Committee.

Paignton Neighbourhood Forum: The Paignton Neighbourhood Forum requests that a condition is attached to any consent that may be granted to the above proposal that requires Lidl as an operator to retain the store in Victoria Square as an operating retail store for a period not less than 10 years.

### **Summary Of Representations**

At the time of writing, 209 representations have been received (195 in support, 12 objections, 1 representation). Issues raised:

- o Proposal will provide better parking facilities than the town centre store
- o Proposal will provide further choice of shopping and more competition
- o Proposal will increase jobs
- o Objection as the scheme will not encourage apprenticeships as it doesn't include student accommodation-
- o Attempt to match the proposed Innovation Centre to the north but elevations do not take into account the sunken site and therefore will be out of scale with the proposed Innovation Centre and residential development to the south.
- o Landscaping has been removed to allow for more parking
- o Will provide facilities bearing in mind the number of houses being built
- o Objection as there are enough supermarkets in the area
- o Much needed facility for people in Brixham and prevent needing to travel to Lidl in Torquay and Paignton.
- o The proposed store may encourage Lidl to leave the town centre store resulting in less people visiting the town centre
- o Impact on traffic generation
- o A different type of retail store here would be more beneficial
- o Will reduce traffic going to Torquay for local people and traffic on the Newton Road towards the Torquay Lidl
- o Will allow residents to walk to a supermarket
- o Will remove an eyesore assuming that Lidl will be landscaping the area
- o Having a Lidl supermarket here will be convenient for people in Brixham
- o Will create better shopping and parking environment than at the Victoria Square Lidl store
- o Proposal is contrary to policy DE1 of the Torbay Local Plan and is not an attractive design, by removing the student accommodation this does not optimise the development of the site/space
- o Negative impact on town centre.

### **Relevant Planning History**

P/2011/0197 Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup> A1/A3 use and student accommodation, approximately 15 hectares of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application) APPROVED 29.04.2013

P/2013/1009 Reserved matters application for P/2011/0197 including appearance,

landscaping, layout and scale of 2 industrial units, enabling work for new road, demolition of unit 31, relocation of 10 parking spaces for unit 33-34 APPROVED 16.10.2013

P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development APPROVED

P/2014/0071 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 APPROVED

P/2015/0918 Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development (Variation of condition P1 of P/2013/1229 - MMA to units 37, 94 and 237 to allow wheelchair access) APPROVED

P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 PENDING CONSIDERATION subject to the outcome of this application

P/2015/1229 Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated development - EIA NOT REQUIRED

P/2015/1126 Approval of appearance, landscaping, layout and scale in relation to 216 dwellings and associated development REFUSED 13.04.2016

P/2016/0094 Erection of 42 dwellings and associated infrastructure REFUSED 24.08.2016

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0188 Approval of appearance, landscaping, layout and scale in relation to a sports pavilion and associated development including a sports playing pitch, multi-use games area and car park APPROVED

P/2016/0411 Reserved matters for a food retail store including parking and other associated works (relates to P/2011/0197) APPROVED 25.08.17

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0880 Erection of Class B2 industrial building of 6,000 sqm floor space to include parking, external lighting, hardstanding and circulation space APPROVED

P/2017/1042 Construction of two Use Class B2 industrial manufacturing units, to provide 2255.9m<sup>2</sup> (GIA) of floor space, external lighting, circulation space, car parking and hard standing. PENDING CONSIDERATION



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

The application seeks full planning permission for the formation of a supermarket and associated works.

The key issues to consider in the consideration of this application are:

- o Principle of development/sustainability;
- o Appearance of the development (including design, layout and landscaping), and its potential impact on the character/appearance of the area;
- o Impact of the development on residential amenity;
- o Biodiversity;
- o Drainage;
- o Access and parking.

### **Principle of the Proposed Development:**

The site is identified within the Torbay Local Plan (SDP3.5) as a committed strategic mixed use employment/housing development that will provide 8.5ha of employment land, local centre, around 1,200 jobs and around 350 dwellings largely over the first half of the Plan period. The site is allocated as a proposed Local Centre as noted within policy TC2.3.19 of the Torbay Local Plan.

The Paignton Neighbourhood Plan has only recently completed its consultation stage, has not yet been the subject of an independent examination, nevertheless, taking into account the stage that the emerging Neighbourhood Plan has reached, some weight must be given to the policies in that Neighbourhood Plan. The Paignton Neighbourhood Plan (submission version) does not allocate any sites for any form of development, however Policy PNP21 promotes employment at White Rock and nearby areas. Policy PNP2 seeks to protect the town centre, but does not set out a sequential or impact test for out of town centre stores.

Whilst this proposal is a new full application the previous planning history on this site remains a material consideration which, in the absence of significant changes in circumstances, should be afforded significant weight. Outline consent has been granted for the mixed use development of the site. This application was approved following extensive consultation. It was subject to Habitat Regulation Assessment and was accompanied by a detailed Environmental Statement. The principle of retail development in this location was established by this application (albeit of a smaller floor area), and the general position of the proposal is in accordance with the indicative layout agreed at outline stage being within the Eastern Bowl which was highlighted for mixed use development and more specifically the local centre including food retail and student accommodation uses. The design and access statement submitted with outline application reference P/2011/0197 specifically stated that the local centre was to incorporate a local convenience food store, restaurants and/or small complimentary retail or services uses, offices above the ground floor level, residential apartments and student study bedrooms. A public open space was also to be incorporated with the local centre. Whilst the proposal now continues to be located within the Eastern Bowl as indicated as part of the outline application, the amount of retail floor area has increased and the form

and scale of the building has reduced substantially as the proposal is for a building which is single storey retail use without provision of any form of accommodation above. A small element of the building provides an appearance of a three storey element and was added as a result of officer concern over the scale of the building proposed. However, this will be effectively 'dummy' space as there are no actual rooms above.

Policy TC1 of the Torbay Local Plan supports new or enhanced district, local and neighbourhood centres that complement town centre facilities, provide a range of goods and services that meet the day to day needs of local communities, including the provision of healthcare facilities, local skills training facilities, local employment and local food outlets. Similarly Policy TC2 of the Torbay Local Plan supports retail development in local centres where it is appropriate to the role, function and scale of those centres. Supporting paragraph 6.1.1.8 states that local centres provide a range of small scale retail and other related services capable of meeting local needs, top-up shopping, and act as the focus for the local community such as post offices, newsagents, pharmacies and groceries. It notes that the provision of new local centres may be required to meet demand arising from major new residential developments, including White Rock. Policy TC3 of the Torbay Local Plan goes on to state that new retail development in local centres will be supported when the scale of the development is appropriate to the nature and size of the centre and will complement its role and character and it provides for and sustains a range of services and facilities which contribute to the long-term vitality and viability of the centre and the ability of people to meet their needs locally.

As noted above the amount of gross and net retail floor space has increased by 554 sq m gross and 135 sq m net from that proposed at outline stage and therefore the retail impact of this increase in floor space needs to be assessed. The net (trading) floorspace is considered to be the most relevant figure although the gross figure should also be borne in mind. As the site is within a proposed local centre and has the benefit of outline consent and reserved matters consent for a retail store, the sequential test is not considered necessary. However it remains appropriate to consider the retail impact of the scheme on the town centre.

The Local Plan does not provide any guidance about the size of store that would be appropriate within a local centre, however the outline consent and subsequent reserved matters consent granted approval for a store of 1,652sqm gross retail floorspace (1,188 net convenience floorspace) which remains a material consideration. A key consideration in seeking to limit the extent of retail floorspace in local centres is to ensure that they do not have a serious impact on town centres and on this basis it is appropriate to consider town centre impact.

The proposal is for a gross retail area of 2,206sqm of which the net sales area is 1,323sqm. Of this 80% of sales would be food retail and 20% would be non-food retail.

The applicant submitted an initial retail assessment which suggests that the proposed Lidl will have a £4.4m less impact than the existing approval due to Lidl's lower benchmark trading figure. However the Council rejected this view and sought a re-assessment based on, what in the Council's view, are more realistic trading figures. The applicant has

accordingly submitted further retail evidence which argues that the impact on the town centre will be minimal based on White Rock being within a different catchment to the town centre and serving a different function. In addition the applicant's agent argues that much of the trade diversion will be from other stores along the Western Corridor, which are mainly out of centre. The applicant's revised assessment assesses that there will be a trade draw of £0.4m from Paignton town centre, representing 3.3% of the total store turnover.

It is considered that these figures could be an underestimate, but not significantly so. The total trade diversion could be about £1.04 m per year, but it is accepted that a significant proportion of this would be from Western Corridor stores which, apart from Yalberton Road (Aldi), are all out of centre.

Whilst a considerable number of letters of support have been received, the main policy concern is the potential impact on Paignton Town Centre. There are several food stores in the town centre including a small Tesco, Coop and Iceland. However, the most direct town centre impact is likely to be Lidl in Victoria Square assuming that the White Rock store is Lidl. However a different retail user could have a different pattern of impact

When operating, this area of White Rock will enjoy status as a local centre, and the previous approvals on the site is also a material consideration.

It is considered that there is not sufficient evidence to warrant the refusal of the application on town centre impact grounds. However as there is evidence to indicate that there would be a town centre impact, in order to ensure that there is not a significant adverse impact on the town centre, it is considered necessary to seek to ensure that Lidl remain in the town centre for a set period of time after the opening of the proposed store at White Rock.

There has been some concern raised by the applicant regarding the time period recommended by the Council's Senior Strategy and Project Officer. Initially a period of ten years was suggested and this has also been requested by the Paignton Town Centre Neighbourhood Forum. Lidl have raised concerns regarding this as they do not own the existing store in the Victoria Centre, which is leased from the Council. The Council has aspirations to redevelop the Victoria Centre and therefore the long term position of the site is not certain. Lidl have therefore argued that as the future of the Victoria Centre is uncertain it would not be reasonable or appropriate at this stage for Lidl to enter into a legal agreement to secure a town centre presence for 10 years.

It is noted that paragraph 26 of the National Planning Policy Framework that the impact of town centre vitality and viability should be realised in 5 years. Therefore it may be difficult to justify requiring Lidl to remain in the town centre for 10 years as requested by the Paignton Neighbourhood Forum and the Senior Strategy and Project Officer in their original response. Since additional information has been submitted the Council's Senior Strategy and Project Officer has noted that they would not object to the requirement for Lidl to remain in the town centre for 5 years subject to the wording being robust and enforceable and the wording specifying that it would 5 years from the store's opening because this is when any town centre impact would arise.

In line with the above and subject to the wording of a Section 106 agreement which requires the retention of the town centre store for a minimum of 5 years, the principle of a retail store of this scale in this location is considered acceptable and compliant with policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030.

**Appearance of the development (including design, layout and landscaping), and its potential impact on the character/appearance of the area:**

Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition paragraph 58 states that planning decisions should aim to ensure developments will function well and add to overall quality of the area, establish a strong sense of place, optimise the potential of the site to accommodate development, respond to local character and reflect the identity of local surroundings and materials and are visually attractive as a result of good architecture and appropriate landscaping. Finally paragraph 64 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Consistent with these paragraphs, policy DE1 states that proposals will be assessed against their ability to meet design considerations such as:

- o whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials,
- o whether they protect local and longer distance views and the impact on the skyline especially from public vantage points, having regard to the location and prominence of the site
- o whether they have a clear urban structure and grain that integrate with the surrounding context,
- o whether they relate to the surrounding built environment in terms of scale, height and massing,
- o whether they positively address the street with active frontages,
- o whether they include the provision of high quality soft and hard landscaping,
- o whether they make best use of space in terms of ground coverage and height, and
- o whether they positively enhance the built environment.

Policy DE4 of the Torbay Local Plan which refers to building heights states that new development should be constructed to the prevailing height within the character areas in which it is located, unless there are sound urban design or socio-economic benefits to justify deviation from this approach. The supporting text states that where deviations from the prevailing height are proposed, justification and supporting evidence should be provided as part of a design and access statement.

The design and access statement submitted with outline application reference P/2011/0197 included a context analysis of the immediate area and highlighted the positive and negative impact of existing built form which set the basis for the form, scale and location of the buildings proposed within the Eastern Bowl and particularly along the Brixham Road and White Rock Way frontages. This design and access statement stated that the Brixham Road corridor is poorly defined for much of its length and that previous

developments have not addressed the importance of this corridor and have, for much of its length, avoided any positive frontage on to this route. The outline application aimed to create a positive principal frontage to the Brixham Road with a scale of development (3-4 storeys) that helps to define the corridor. This was to ensure good presentation of the overall development to the main Brixham Road and to form a civilised gateway into the site as one proceeds along the new primary street. The retail uses were to be located along this active frontage so that they are easily accessible from the surrounding area, legible as the most active and vital part of the new neighbourhood and therefore improve these facilities.

As part of this application limited context analysis has been submitted. The Design and Access Statement and a later Urban Design Rebuttal refer to the design being influenced by the design of other retail stores nearby, such as Aldi which is located at Yalberton Road, the aims of 'Secured by Design for Commercial Premises 2015' and the needs of the occupiers in terms of it being economically viable. The layout and arrangement of the store and car parking has been designed to reflect the size of the site, operator's format and the size proposed. The existing urban grain is referred to as disjointed within the Local Centre and stated that as the development to south of the site had not commenced at the time of submission, the innovation centre is pending approval and western side of the Local Centre has not been developed, and therefore as a result there is limited character and materials to respond to. The Design and Access statement states that the proposal does acknowledge local character and that it is important to consider the commercial nature of the proposal by its own merit without the surrounding residential context which the proposal does not comprise.

#### Design evolution following Officer Concern

As outlined above, the application since being submitted initially has undergone several revisions in attempt to address officer concern over the design. The proposal was first amended to provide a single storey building of a maximum height of 8.5m, which sought to increase the height by approximately 2m. The building was brought closer to the Brixham Road, with the number of materials on the building reduced, and local stone specified. Such changes were in response to concerns raised by the Case Officer and aimed to try and achieve a greater sense of arrival to the White Rock Local Centre, increase the massing of the building as required by the earlier outline approval on the site, to simplify the material treatments on the building and to try and achieve a greater sense of place.

This was considered a reasonable request to make given that the approvals to date along the Brixham Road and those currently pending approval, each include building heights of 12m (residential apartments P/2014/0071 under construction), 16m (Innovation Centre P/2017/0685) and 10m (Premier Inn building and extension, completed and pending approval P/2017/0855). Each of these developments responds to the context analysis set out at outline stage, addressing the importance of the Western Corridor and providing positive frontages on to the Brixham Road in accordance with policy DE1, specifically criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 and DE4 of the Torbay Local Plan.

Whilst the applicant agreed to revise the plans in order to try and address these concerns,

due to the change in levels the building which is already 1.5m lower in height than the lowest building along the Brixham Road frontage of the Eastern Bowl development, was still considered to appear too low, thereby decreasing its prominence on the street scene and this important corner.

This was particularly evident from the submission of the Indicative Street Scene Plan which demonstrated the inadequate scale of the proposal in relation to the adjacent proposed and under construction buildings.

Further revised plans for the scheme have been submitted, and, the proposals are not considered to suitably address the concerns raised, nor provide a development that meets the aspirations for this site.

The scale proposed is not considered to satisfactorily announce the local centre and compares unfavourably to the terraced residential development which is already complete and undoubtedly to the residential apartments opposite to the site which are under construction. Whilst not yet approved, the Innovation Centre has been resolved for approval by the Development Management Committee and is of a much greater height than that proposed reflecting the importance of the Brixham Road frontage. In comparison, the proposal appears squat in the indicative street scene and emphasises the need for greater height in this location. The repositioning of the building closer to the South East corner of the site somewhat improves the massing, however this is still considered to remain weak due to the lack of roof height which when moving down White Rock way starts to diminish. Whilst the increase in height is acknowledged, it is not considered that this overcomes the original concerns raised regarding the design of the proposal and the lack of presence in the street scene despite the change in position. The building remains weak in this location both in terms of its character and appearance, producing an unacceptable townscape in this key location.

In relation to active frontage, it is acknowledged that the addition of windows within the 'dummy' additional storeys is an improvement; however the provision of 'dummy' storeys is not considered to be a good use of space. The insertion of strip windows incorporated in the elevation fronting on to White Rock Way has again improved upon the concern, but is still not considered to be satisfactory. This lack of active frontage is considered to be contrary to criteria 19 of Policy DE1 in the Torbay Local Plan. Similarly the lack of active frontage to the front (north) elevation of the building is also a concern with limited fenestration which is not considered to be an adequate response to the site or the approach from the car park.

The simplicity of the material choices is noted, however there remains insufficient information to confirm the architectural quality of the proposals in terms of material choices and criteria 16 of policy DE1 of the Torbay Local Plan.

#### Conclusion of design matters

In summary, it should be noted that at outline stage and a later reserved matters application, that additional uses were proposed at upper floor levels which contributed to achieving the additional height required in this location and a range of uses making best

use of space in terms of ground height and coverage and helping to ensure economic and social viability in terms of density, mix, use and function as required by criteria 3 and 5 of the policy DE1 of the Torbay Local Plan. The applicant has stated that having additional uses at upper level is not a viable option for them and that they are interested in only delivering a new store to act as an anchor for the local centre, although they have demonstrated flexibility in their most recent plans extending the height of the frontage onto Brixham Road.. Whilst this is noted, a local centre is defined in the Glossary to the Local Plan as an area of shops and similar uses generally serving only the immediate area. The proposed local centre is shown in the Torbay Local Plan as covering a relatively small area, and whilst the principle of a larger retail store in this location is considered acceptable (subject to securing specific provisions), a mix of uses is important to ensuring the vitality of this space. Whilst it is noted that, as part of the wider commercial element of the Eastern bowl, other uses are established/ proposed, the single use on this site, together with the lack of active frontages and open space, the proposal is not considered to comply with criteria 3 and 5 of Policy DE1 in the Torbay Local Plan.

The proposal is not considered to comply with criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and DE4 of the Torbay Local Plan.

#### **Landscaping and Impact on the AONB and Surrounding Countryside:**

Whilst this proposal is not bound by the outline permission, off-site landscape mitigation and enhancement works secured by this permission, including significant belts of woodland planting on land to the south of the White Rock site will provide a strong landscape buffer between the development and undeveloped countryside to the south. The proposed development is separated from the wider countryside by the residential development approved under references P/2014/0071 and P/2013/1229. In light of the structural planting proposed to the south which will act to contain the site once established, the proposals are not considered to result in significantly greater impact in views from the AONB to the south or views from the South Hams.

Policy C4 of the Torbay Local Plan states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible. In addition proposals for new trees and woodlands will be supported in principle and will be a specific requirement in Strategic Delivery Areas and related Future Growth Areas. Policy DE1 states that development proposals will be assessed against their ability to meet certain design considerations including the incorporation of existing trees and native species and the provision of high quality hard and soft landscaping.

There are no arboricultural features of merit on the site given the previous uses on the site and clearance works that have occurred in the past. The application was supported by a landscaping plan upon submission, which due to concerns raised has also undergone revision. The initial proposals illustrated a scheme with 3 trees to the Brixham Road elevation, 10 trees to the White Rock Way elevation and 5 trees to the access road elevation. 1 tree was proposed within the car park to the north of the proposed building. This was considered to provide a lack of landscaping to the north of the building within the car parking area, which would be necessary to soften and integrate the site into the existing landscape.

Since the application proposals have been revised in attempt to address design and scale concerns, a revised landscaping scheme has also been submitted. This now proposes a number of trees along White Rock Way, Waddeton Close and Brixham Road. The Council's Arboricultural Officer has been consulted on the revision and advises that the applicant has overcome all previous concerns and that the landscaping scheme is considered to be acceptable.

**Biodiversity:**

Policy NC1 of the Torbay Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. The policy continues to state that development should not result in the loss or deterioration of irreplaceable habitats or wildlife corridors. It also notes that all developments should positively incorporate and promote biodiversity features.

The proposed development site falls within a greater horseshoe bat sustenance zone associated with the SAC roost at Berry Head. Sustenance zones are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC. The permanent loss of existing or potential habitat within the sustenance zone and in proximity to the Berry Head roost has the scope to adversely affect the favourable conservation status of the Berry Head maternity colony.

The development has been screened in respect of the Habitat Regulations and it is concluded that there will be no likely impact on the Berry Head component of the South Hams SAC.

The comments from Natural England are however noted; Natural England have advised that the proposal is unlikely to affect any statutorily protected sites or landscapes.

Comments from the Council's Ecological Consultants have been sought and the outcome of this consultation suggests that the proposed development is acceptable provided that the recommendations outlined within the Ecological Assessment and Ecological Management Plan undertaken by Devon Wildlife Consultants are followed and a number of conditions associated with any grant of planning permission.

The submitted ecological report has identified habitat suitable for a number of species including badger, birds and reptiles on site. The report stated that the proposed works will result in the loss of low quality habitats which are of limited value to nesting birds and commuting/foraging badgers. The report identified that no reptiles were found during the survey of the site. The report recommends precautionary timing and suitable control measures in order to minimise potential impacts during vegetation removal and construction. The report states that additional habitat will be created as part of the scheme and will provide new commuting/foraging habitat. The report concludes that the scheme is likely to result in a minor positive impact on the ecology of the site.

Comments from the RSPB have recommended the inclusion of bat and nesting bird



features by way of swift bricks and were the application to be recommended for approval these could be sought by way of condition. Subject to conditions being associated with any grant of planning permission in line with the recommendations received from the Council's Ecological Consultants, together with conditions relating to nesting features and a satisfactory level of landscaping being achieved on site which helps achieve a biodiversity gain, the proposal would be considered compliant with policies SS8 and NC1 of the Torbay Local Plan.

### **Residential Amenity:**

The proposals are to be sited to the north of the approved residential development (P/2013/1229 and P/2014/0071). The position of the proposals in relation to the residential development reflects that shown within the indicative layout shown at outline stage. Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DE3 of the Torbay Local Plan 2012-2030 states that developments should be designed to not unduly impact upon the amenity of neighbouring and surrounding uses, with one of the criteria for assessment being the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution. The proposed building is positioned some distance from residential dwellings and is separated by White Rock Way. The proposals are not considered to result in any serious detriment to residential amenity by reason of loss of light, loss of privacy or by reason of being unduly dominant or overbearing due to the separating distances involved which are a minimum of approximately 22m.

In terms of noise, the proposals have the potential to impact upon residential amenity. Details of any proposed extraction and ventilation to serve the retail unit can be secured by condition to ensure any potential impact is minimised. Concerns regarding the impact of deliveries on residential amenity has been raised by the Council's Senior Environmental Health Officer and this was previously raised by the Committee as part of the reserved matters application. This potential impact can be resolved through preventing access to the site for HGVs from White Rock Way and requiring access only from Waddeton Road to the north of the site via the use of Traffic Regulation Orders. Such Orders can be secured by condition.

### **Access and Parking:**

The amount of retail floor space has increased since the outline application established the principle of retail development in this location. The increase in floor area since the outline scheme forecasts an increase in trips of 30 in the AM peak and 67 in the PM peak which equates to approximately 1 extra trip every two minutes in the AM peak and one extra trip every minute in the PM peak. The applicant's Transport Consultants have concluded that the proportional increase is very low and should be considered within the context that many of these trips will be pass-by trips already on Brixham Road rather than trips new to highway network. They also conclude that given the scale of infrastructure introduced by the outline permission the very low increase in trips will have little discernible impact upon the operation of either junction on Brixham Road which will be used by customers to access the store. Comments from the Council's Senior Project and Strategy

Officer are awaited on this point and the Members will be updated at the Committee meeting.

The position of the access to the site largely reflects that agreed at outline stage with two points of access from Waddeton Road and White Rock Way. A new section of road is already in situ, enhancing Waddeton Road and including a roundabout with access in to the development site.

Revised plans have been submitted which show a revised layout to the car park, a number of points have been raised by the Council's Senior Strategy and Project Officer and confirmation is awaited from this Officer as to whether all have been successfully resolved. These related to pedestrian crossings and access and whether Waddeton Road is to remain private or it is to be adopted. The Members will be updated on these points at the Committee meeting.

The Council's Senior Strategy and Project Officer has also raised matters of vehicle parking and cycle parking. The proposal includes 121 parking spaces (6 of which are allocated for disabled people, 8 are parent and child spaces and 2 are electrical charging spaces).

Policy TA3 in the Torbay Local Plan states that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development and that development proposals will be expected to meet the guideline requirements as set out in appendix F. Appendix F states that in local centres, a minimum level of parking provision will be negotiated taking into account the impact of the use and existing parking provision. The previous outline consent (P/2011/0197 refers) included a supporting Transport Statement which stated that the parking provision for the development would not exceed the maximum standards set out in the adopted Local Plan 1995-2011 (the development plan at the time of the outline consent). No parking provision figure was provided for the retail element within the Transport Statement but it was noted that at the time of the outline consent, policy T25 of the Torbay Local Plan 1995-2011 stated that parking provision should be provided at a maximum level of 1 parking space per 14sqm of gross retail floor space and therefore 118 spaces maximum. At the time of this Local Plan (1995-2011) there was no differentiation between out of centre and local centre proposals. The current Local Plan 2012-2030 however recognises this retail hierarchy defining local centres as areas of shops and similar uses generally serving only the immediate area. In line with this, they tend to be located within or adjacent to residential estates and accessible by a range of transport modes including walking, cycling and public transport. There is therefore a case for a lower level of parking provision than that required for out of centre retail proposals which are subject to a different standard. This is also supported by policy TA1 of the Torbay Local Plan 2012-2030 which states that developments should ensure that the use of cars is reduced wherever possible and that the most sustainable and environmentally acceptable modes of transport are promoted as integral parts of developments. In line with this it is not considered appropriate to provide an oversupply of parking such that it would encourage use of the private car when the location of this development is such that it should encourage access via walking, cycling and public transport predominantly.

The location of the development within a proposed local centre has been taken into account when considering the level of parking provision required. This consideration has also taken into account the opportunities for alternative modes of transport and relevant TRICS data (database of trip rates for developments in the UK). Having considered this information, in consultation with Highways Officers, an approximate parking provision level of 1 space per 17sqm of gross retail floor space within a local centre was considered appropriate taking into account use of sustainable modes of transport. This would have require approximately 129 parking spaces to serve the retail store. However in line with policy TA3 and associated appendix F, this is a guideline requirement only and is negotiable taking into account the impact of the use and existing parking provision. The proposed ratio of parking provision would be 1 space per 18.4sqm of gross retail floor space. On balance, this level of parking provision is considered acceptable by Officers in light of the local centre location and subject to securing a travel plan to encourage sustainable transport use and a car park management strategy to address the operation of the parking by condition along with Traffic Regulation Orders to secure no waiting on White Rock Way and the prohibition of HGV access from the junction of White Rock Way and Waddeton Close.

In terms of cycle provision, the proposed plans indicate that 7 cycle loops are proposed. This would be below the recommended standards as set out in appendix F of the Local Plan. Cycle storage to serve the retail store for both visitors and staff will also be required. Electrical charging points are provided and these can also be secured by condition. The Senior Strategy and Project Officer has requested clarity on the number of cycle spaces being provided and the Members will be updated on this point at the Committee meeting.

### **Drainage:**

The application site is within the Critical Drainage Area as designated by the Environment Agency. Policy ER2 requires all development to seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will firstly discharge to an adequate infiltration system, a main river or watercourse, a surface water sewer or highway drain or as a last resort a combined foul sewer where discharge is controlled to be at a greenfield discharge rate.

The Council's Drainage Engineer has requested additional information particularly with regarding the hydraulic calculations and modelling for the proposed surface water drainage design. Torbay has been designated by the Environment Agency as a Critical Drainage Area (CDA). As a consequence, all development requires a basic Flood Risk Assessment (FRA) and all new development must deliver a reduction in run-off rates. This requirement applies to brownfield sites. The explanatory text to Policy ER1 of the Local Plan states that all off-site surface water discharges from new development should mimic greenfield performance up to a maximum 1 in 10 year discharge. On site, all surface water should be safely managed in conditions up to the 1 in 100 event plus an allowance for climate change. In order to satisfy the requirements arising from the Critical Drainage Area designation. It must be established that these measures can be accommodated prior to permission being granted. These measures cannot be secured by condition and therefore unless this information is submitted prior to determination of the application, the

proposal will not meet the aims of policies ER1 and ER2 or the aims of the National Planning Policy Framework insofar as it seeks to ensure flood risk is not increased elsewhere.

### **Emerging Paignton Neighbourhood Plan:**

The Paignton Neighbourhood Plan proposals completed their Regulation 16 Publicity Period consultation on 18th December 2017. It is expected that they will be subject to Independent Examination in Spring 2018. As such they are at an advanced stage of preparation. National Planning Policy Framework paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise) according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. On balance, it is considered that the Neighbourhood Plans should now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. They cannot be accorded full weight of an adopted/made development plan, although the degree of weight is a matter for the decision taker in accordance with the NPPF 216 criteria. Relevant policies of the Paignton Neighbourhood Plan include:

Policy PNP21 promotes employment at White Rock and nearby areas. Policy PNP2 seeks to protect the town centre, but does not set out a sequential or impact test for out of town centre stores.

### **Other Issues:**

Policy SC1 of the Torbay Local Plan states that all developments creating over 1,000sqm of floorspace will be required to undertake a screening for a Health Impact Assessment and a full Health Impact Assessment if necessary, proportionate to the development proposed and to demonstrate how they maximise positive impacts on health and healthy living within the development and adjoining areas. No health impact assessment screening has been submitted with the application. Whilst in line with Policy SC1, a screening is required, the information submitted in support of the application is considered sufficient to determine that a health impact assessment will not be required.

### **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:**

The proposal would result in the provision of retail space which would benefit the local economy as a result of providing 40 jobs. The construction phase will also benefit the local economy.

**S106/CIL:**

**S106:**

The Planning Contribution and Affordable Housing SPD states that developments in Torbay will be assessed to identify where they generate net additional trips and therefore contribute towards sustainable transport. Table 4.3 of the SPD indicates Sustainable Transport contributions will be sought at a rate of £7,530 per 100sqm for retail developments within the town centre but that mitigation will usually be provided for job creation/regeneration. In this case, (without any mitigation) this would amount to £41,641 towards sustainable transport. This calculation is on the basis of the additional 553sqm of gross additional floorspace between the outline consent and full application now proposed. Regard however will be given to the cost of providing other mitigations to transport such as measures incorporated in travel plans. Mitigation for job creation and economic prosperity is a high priority for the Council and therefore it is particularly important that planning obligations do not impede upon job creations. On this basis, mitigation from tariff style contributions will be given for jobs created by development proposal. This is matter that is being considered further by the Council's Senior Project and Strategy Officer and the Members will be updated at the Development Management Committee .

A S106 agreement will be required to secure retention of the existing Lidl store in the town centre for a minimum of 5 years from the commencement of any retail use at this store, in order to offset any impact on the town centre from the additional floorspace that is proposed compared to the previously approved scheme

**CIL:**

The application is for retail development (Class A1 retail over 300sqm) where the Community Infrastructure Levy (CIL) is £120 per square metre of additional gross internal floor area created. The existing gross internal area in lawful use for a continuous period of at least six months within the three years immediately preceding this grant of planning permission is 0m<sup>2</sup>. The CIL liability for this development is £264,720. In line with the submitted CIL form, this is based on 2206sqm at £120 per m<sup>2</sup>.

**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 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.

### **Conclusions:**

The provision of retail uses at this site is supported by policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030. The principle of retail development of this scale in this location is considered acceptable subject to securing the retention of the existing Lidl store in the town centre for a minimum of 5 years from the commencement of any retail use at this store, in order to offset any impact on the town centre from the additional floorspace that is proposed compared to the previously approved scheme. However there are a number of concerns relating to the design of the proposal and whether it would provide a strong enough visual and legible presence on this important corner site, which when tested against the policies in the Torbay Local Plan 2012-30 warrant the refusal of the application.

As insufficient information has been submitted in support of the application to demonstrate that the proposed development will not result in flood risk due to surface water drainage within a Critical Drainage Area the proposal should be refused for this reason.

It is appropriate to include a third reason for refusal relating to the LPA not having a signed S106 agreement at the time of the decision confirming that the applicant agrees to retain the existing town centre use for a period of 5 years. This is so that, in the event the applicant is successful on appeal, the LPA can argue the need for the Section 106 agreement.

### **Relevant Policies**

TC1 - Town Centres  
TC2 - Torbay retail hierarchy  
TC3 - Retail Development  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 - Parking requirements  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
NC1LFS - Biodiversity and Geodiversity  
SS8 - Natural Environment  
SDP1 - Paignton  
SDP3 - Paignton North and Western area  
ER1 - Flood Risk  
ER2 - Water Management

**Application Number**

P/2017/1160

**Site Address**

Cantina  
Youngs Park Road  
Paignton  
TQ4 6BU

**Case Officer**

Gary Crawford

**Ward**

Goodrington With Roselands

**Description**

Single storey wraparound extension with two roof lights, front entrance ramp, new entrance doors and installation of storage unit (revised plans received 11.01.2018).

**Executive Summary/Key Outcomes**

The application relates to an established café, bar and restaurant situated at the north side of Youngs Park. This proposal is for the erection of a single storey wraparound extension with roof lights, a new front entrance ramp, new entrance doors and the installation of a storage unit.

The proposal is an investment in an existing business in a popular tourist area close to Goodrington beach that will improve facilities for tourists within a Core Tourism Investment Area. The applicant has advised that the proposal would safeguard 46 full and part time jobs and create potential for the equivalent of 4 new full time positions. Although the application site is located within Flood Zone 3, which has the highest probability of flooding, the applicant has detailed that the proposed floor level for the new extension would match that of the existing building. Whilst a minor revision to the submitted plans has been requested with regards to the proposed roof lights, it is considered that the design and appearance of the proposed extension would make a positive contribution to the appearance and character of the area. Therefore, it is deemed that the proposed development would be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations.

**Recommendation**

Conditional approval subject to the receipt of amended plans regarding the proposed roof lights and additional drainage information. Final drafting of conditions to be delegated to the Executive Head of Assets and Business Services.

**Reason for Referral to Development Management Committee**

As the development is on Council owned land and two objections have been received, the Council's constitution requires the application to be referred to the Development Management Committee for determination.

**Statutory Determination Period**

The determination date was 5th January 2018. The application has exceeded the determination date to allow the submission of revised plans to address concerns raised

by officers.

### **Site Details**

The application relates to a detached building situated at the northern end of Youngs Park, Paignton. The building is currently in use as a café and features arched windows, a flat roof with a terracotta tiled parapet wall and a hipped roof tower. There is a storage area to the east of the café building which is surrounded by an existing wall and fence. The host building is situated in between a shelter and a public convenience block, and a public footpath runs along the front entrance of the building. The site is located within a Core Tourism Investment Area as designated in Policy TO1 (Tourism, events and culture) of Torbay Local Plan 2012-2030 and the site is also designated as an Urban Landscape Protection Area in Policy C5 (Urban Landscape Protection Areas) of the Torbay Local Plan. The site is located within Flood Zone 3.

### **Detailed Proposals**

The application is for the erection of a single storey wraparound extension with roof lights, a new front entrance ramp, new entrance doors and the installation of a storage unit. The proposed extension would be modern in appearance with a metal clad flat roof and roof lights, a glazed aluminium curtain wall and render. A pre-fabricated storage unit would be sited to the east of the café building, behind an existing 2.9m high boundary wall. The submitted scheme has been amended by the applicant at the request of officers during the course of the application to alter the roof and to reduce the internal area of the proposed wraparound extension. The amended plans also included four additional roof lights in the extension.

### **Summary Of Consultation Responses**

Strategic Transport: The site lies within the Core Tourism Investment Area (TA1 &TA2 and the ULPAC5.42, Coastal Change C3, South West Coast Path Policy SS6.3 and National Cycle Route) and therefore it would be reasonable to request the provision of secure cycle storage area for staff (one space per two employees) or a cycle parking facility (such as Sheffield cycle stands) for staff & customers in accordance with Policy TA1, TA2 and TA3 of the Local Plan (Appendix F). If the applicant can set out the maximum number of staff on site at any one time, this figure could be used in conjunction with some visitor provision.

The Planning Contributions & Affordable Housing SPD considers the contribution to employment/economic impact of the proposal and it would be reasonable to discount the additional part time jobs created. In this case, as the job creation would mitigate the majority of the additional trips generated and no site acceptability measures have been identified, no additional contributions are required.

A construction management plan (CEMP) should be submitted to ensure that public areas on the footway and promenade are not unduly obstructed. This could be conditioned.

Drainage Engineer: The proposed development lies within Flood Zone 3 and a site specific flood risk assessment has been submitted with the application. This site specific flood risk assessment identifies the sources of flooding together with proposed mitigation measures.



Within the flood risk assessment, it identifies that infiltration testing has been carried out at the site and the results of this infiltration testing confirms that infiltration testing will not be feasible at this location.

As a result of the infiltration testing the developer is proposing to discharge surface water drainage from the development at a controlled discharge rate to the combined sewer system. The controlled discharge rate has been set at 1.0 l/sec by South West Water and this complies with the requirements of the Torbay Critical Drainage Area.

There are no hydraulic calculations included within the flood risk assessment for the proposed surface water drainage system.

The developer must demonstrate that the surface water drainage for this development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Therefore the developer must supply hydraulic calculations for the entire surface water drainage system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change.

Before planning permission can be granted, the applicant must supply details and designs for the entire surface water drainage system for this development.

Police Designing out Crime Officer: It is recommended that all external doors and accessible windows, including roof lights, are sourced as tested and certificated products to ensure a consistent and fit for purpose level of security for the premises.

The overhang of the building, in parts, will assist in deterring and preventing climbing up onto the roof but an assessment should be considered in order to identify any potential vulnerable locations that could enable an offender to climb up onto the roof and gain access to the roof lights.

External recessed and concealed areas should be avoided wherever possible to prevent creating cover for criminal activity or unwanted or inappropriate loitering.

### **Summary Of Representations**

Two letters of objection and 23 letters of support have been received. Issues raised by the objectors:

- Impact on local area
- Not in keeping with local area
- Impact on traffic and access
- Block off a public right of way
- Loss of local green space.

The comments in support of the application included:

- It provides facilities
- Provides/retains jobs
- Improves tourist facilities
- It's shown in the Local Plan.

### **Relevant Planning History**

P/2011/0922: Alterations and formation of extension to side of the existing cafe joining it to the exiting shelter and extend paved area and a low level raised deck to provide a larger outside seating area. Approved 19/10/2011.

P/2016/0522: Installation of 2no Translucent roof lights (Retrospective). Approved 11/7/2016.

### **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. Highways impacts
5. Flooding
6. Impact on footpaths.

#### **1. Principle of the development**

Policy TO1 (Tourism, events and culture) of the Torbay Local Plan supports in principle the improvement of existing and provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark. Furthermore, Policy TO1 will be achieved via the retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with a particular focus on Core Tourism Investment Areas (CTIAs), which include Goodrington Sands and Clennon Valley in Paignton. Given that the application site is located within the Goodrington Sands and Clennon Valley CTIA, and as the proposal involves the improvement of an existing tourist attraction, it is deemed that the principle of the development is acceptable, subject to compliance with other relevant Local Plan Policies.

Policy SDP1 of the Torbay Local Plan states that the role of Goodrington as a leisure and employment hub will be promoted and enhanced, whilst protecting the areas environmental assets. In addition, Policy SS1 (Growth Strategy for a prosperous Torbay) of the Torbay Local Plan states that development should reinforce Torbay's role as a main urban centre and premier resort.

Policy SS4 (The economy and employment) of the Torbay Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it enables expansion and diversification of the

economy of the Bay. The Local Plan seeks to promote growth in sectors that are particularly important in Torbay, including tourism, hotel and catering. The applicant has detailed in the submitted Design and Access Statement that the proposal would safeguard 46 full and part time jobs and create potential for the equivalent of 4 new full time positions.

A restaurant (Class A3 use) is designated as a main town centre use in the Glossary of the National Planning Policy Framework (NPPF). Paragraph 24 of the NPPF states that local planning authorities should apply a sequential test to planning applications for main town centre uses that are not in an existing centre, however, this test should be balanced against other benefits of the proposal, including the improvement of existing tourism and leisure facilities in a core tourism investment area. Policy TO1 (Tourism) of the Torbay Local Plan states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Policy TO1 details further that Torbay Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

- Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions.
- The retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with particular focus on Core Tourism Investment Areas (CTIAs).

Given that the application site is located within the Goodrington Sands and Clennon Valley CTIA as designated in Policy TO1, and the proposed extension would improve the provision of tourist attractions, it is considered that the principle of the proposed development is acceptable and a sequential test is not required.

## **2. Visual impact**

Policy DE1 (Design) of the Torbay Local Plan details that development should be well-designed, respecting and enhancing Torbay's special qualities. Policy C2 (The coastal landscape) of the Torbay Local Plan specifies that in the developed areas of coast, development will be permitted where it provides benefit to Torbay's economy and does not unacceptably harm the landscape character and appearance of natural, historical or geological assets.

The application site is located within an area designated as an Urban Landscape Protection Area in Policy C5 (Urban Landscape Protection Areas) of the Torbay Local Plan 2012-2030. Policy C5 specifies that development within Urban Landscape Protection Areas (ULPAs) will only be permitted where:

1. It does not undermine the value of the ULPA as an open or landscaped feature within the urban area; and
2. It makes a positive contribution to the urban environment and enhances the landscape character of the ULPA.

The northern end of Youngs Park features a number of single storey structures including

the existing café building, a public shelter and a public convenience block. As such, it is considered that an extension to an existing building would not undermine the value of the ULPA. Whilst the proposed extension would be contemporary in terms of its design and would differ from the design of the existing building, given that the proposed materials would provide the extension with a lightweight appearance, it is considered that the extension would not adversely affect the character and appearance of the existing building. In addition, it is deemed that the extension would make a positive contribution to the urban environment and enhance the landscape character of the ULPA. Due to the positioning of the proposed storage unit behind an existing 2.9m high boundary wall and given the temporary nature of the storage unit, this element of the proposal would not be particularly visible from the public realm and it is deemed that it would not have a significantly adverse effect on the character of the ULPA.

As such, it is considered that the proposal would comply with Policies DE1, C2 and C5 of the Torbay Local Plan.

### **3. Impact on amenity**

Due to the approximate 35m distance between the proposed extension and storage area, and the nearest residential property, it is deemed that the proposal would not result in any harmful impacts upon the amenity of neighbouring properties.

### **4. Highways impacts**

There is a public car park located on the south western side of Youngs Park and a National Cycle Network runs through the middle of Youngs Park. The Council's Strategic Highways Officer has noted that the site lies within the Core Tourism Investment Area (TA1 & TA2 and the ULPAC5.42, Coastal Change C3, South West Coast Path Policy SS6.3 and National Cycle Route,) and therefore it would be reasonable to request the provision of secure cycle storage area for staff (one space per two employees) or a cycle parking facility (such as Sheffield cycle stands) for staff & customers in accordance with Policy TA1, TA2 and TA3 of the Local Plan (Appendix F). If the applicant can set out the maximum number of staff on site at any one time, this figure could be used in conjunction with some visitor provision. With the provision of appropriate cycle parking, there is no objection to the development in principle.

The Planning Contributions & Affordable Housing SPD considers the contribution to employment/economic impact of the proposal and it would therefore be reasonable to discount the additional part time jobs created. In this case, as the job creation would mitigate the majority of the additional trips generated and no site acceptability measures have been identified, no additional contributions are required.

With the provision of cycle parking, which can be secured by way of condition, the proposal is considered to accord with Policies TA1 and TA3 of the Torbay Local Plan.

### **5. Flooding**

The application site is located within Flood Zone 3 which has the highest probability of flooding. The Environment Agency's standing advice for minor developments in Flood Zone 3 is that floor levels are either no lower than existing floor levels or 300 mm above

the estimated flood level. The submitted Flood Risk Assessment (FRA) details that the proposed floor level for the new extension would match that of the existing building at 2.189m above Ordnance Datum and it is therefore considered that the proposal would comply with the Environment Agency's standing advice.

The submitted FRA identifies that infiltration testing has been carried out at the site and the results of this infiltration testing confirm that infiltration testing will not be feasible at this location. The council has requested the submission of further information with regards to the impact of the proposed development on drainage and these details will be reported at DMC.

## **6. Impact on footpaths**

Concerns have been raised with regards to the proposed extension blocking a public right of way at the front of the building. Whilst there is an existing footpath which runs across the front of the existing Cantina building, this path is not a Public Right of Way. Whilst the existing footpath which runs along the front of the building would be slightly re-routed, a footpath along the front of the building would be maintained. The retention of a footpath in front of the building can be secured by condition.

### **Paignton Neighbourhood Plan**

The Paignton Neighbourhood Plan completed its Regulation 16 Publicity Period consultation on 18th December 2017. It is expected that the Neighbourhood Plan will be subject to Independent Examination in Spring 2018. As such, it is at an advanced stage of preparation. NPPF paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise) according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. Relevant policies in the Paignton Neighbourhood Plan now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. The weight afforded to emerging Neighbourhood Plan policies is a matter for the decision taker in accordance with the NPPF 216 criteria. Relevant policies of the Paignton Neighbourhood Plan include:

- Policy PNP25 (Clennon Valley)

Policy PNP25 details that within the area of Clennon Valley and Goodrington Seafront, development proposals will be supported that:

- o Retain and enhance the natural landscape character of the valley, biodiversity and waterway flowing through;
- o Safeguard footpaths and facilities used by local residents;
- o Improve provision of facilities for tourists that widen the tourism offer;
- o Provide facilities that will be resilient to flood risk; and
- o Widen the provision of all-weather tourist attractions.

The proposed development would improve the provision of tourism facilities at Goodrington Seafront and it would widen the provision of all-weather tourist attractions.

Whilst the existing footpath which runs along the front of the building would be slightly re-routed, a footpath along the front of the building would be maintained.

### **S106/CIL**

As the proposed extension is less than 300 sq m, the development is not CIL liable.

### **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 - 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.

### **Conclusions**

In conclusion, the proposal is an investment in an existing business in a popular tourist area close to Goodrington beach that will improve facilities for tourists within a Core Tourism Investment Area. It is also considered that the design and appearance of the proposed extension would make a positive contribution to the appearance and character of the area. Therefore, it is deemed that the proposed development would 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. No development shall take place until details and designs for the entire surface water drainage system for the development have been submitted to and approved in writing by the Local Planning Authority.
02. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority.
03. Prior to the occupation of the extension, details of cycle parking to serve the development shall be submitted to and approved in writing by the Local Planning Authority.

### **Relevant Policies**

-

# Agenda Item 8

**Application Number**

P/2017/0638

**Site Address**

Pier Point Cafe  
Torbay Road  
Torquay  
TQ2 5HA

**Case Officer**

Verity Clark

**Ward**

Tormohun

**Description**

First floor extension, terrace and alterations to restaurant & bar, solar PV and associated works. (Revised Plans received)

**Executive Summary**

The proposal seeks permission to form a first floor extension with terrace area, the enclosure of the existing ground floor outdoor seating area and installation of solar panels on the roof of the first floor extension. The proposal will result in the expansion of the existing commercial business which is in use as a restaurant, café and bar.

The proposed first floor extension will sit fairly centrally over the existing ground floor and outdoor seating area footprint. The first floor extension will include a flat roof with large areas of glazing, including angled glazing. The glazing will sit within a framework of rendered sections. The first floor terrace will sit within the North West and South West section of the flat roof and will include a 1.1m high frameless glass balustrading. The total height of the building will increase from approximately 3.9m to 7.2m at its highest point from ground level.

The building will predominantly feature powder coated aluminium windows set within white render with sections of powder coated rainscreen cladding. The proposed solar panels will be set in four blocks comprising 36 solar PV set at a 10 degree angle. The design seeks to assimilate with the existing building with a continuation of window fenestration and design and angled glazing.

The site sits within the Belgravia Conservation Area and a Grade II listed Historic Park and Garden. The existing building is a characteristic 1950s structure, low in scale and of lightweight appearance and makes a positive contribution to the character and appearance of the Conservation Area. An extension to the existing building should therefore be of a lightweight appearance, appropriate to the seafront location and the modernist architecture of the existing building in order to preserve the existing character of the building, and the character and quality of the Conservation Area and listed park and garden.

Revised plans were provided during the course of the application. It is considered that the proposed scale and design of the first floor extension would respond well to the context set by the existing building and hence it will sit comfortably in its surrounds. The revised

proposal results in a suitably lightweight visual appearance which respects the character of the existing building and the surrounding street scene. The revised plans have sought to address an initial objection from Historic England and the Council's Senior Historic Environment Officer. The Gardens Trust have confirmed they have no comment on the scheme. The Senior Historic Environment Officer has confirmed that the revised proposal is suitable for a recommendation of approval, however further improvements to the design, specifically to the grouping of the solar panels and the design of the northwest elevation could be made. The proposal is therefore considered to be visually acceptable and will preserve the character and quality of the Conservation Area and listed park and garden. Historic England have been consulted on the revised plans however to date no further consultation response has been received. Members will be verbally updated at Committee if a further representation is received.

The site lies within the Core Tourism Investment Area where proposals which result in the improvement of existing and provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark are encouraged.

Policy TA1 and TA3 seek to develop a sustainable and high quality transport system whilst ensuring that the most sustainable and environmentally friendly modes of transport are promoted. Policy TA1 and TA3 seek to incorporate appropriate levels of cycle parking in all new development. It would therefore be reasonable to request the provision of secure cycle storage area for staff (one space per two employees) or a cycle parking facility (such as Sheffield cycle stands) for staff & customers.

The Council's Senior Environmental Health Officer does not object to the proposal however details of the proposed equipment, including noise levels and odour abatement, should be submitted to the Local Planning Authority for written approval prior to commencement of the development. This can be dealt with by means of a condition. It is also considered appropriate to require the submission of a construction method statement to ensure public areas on the footway and promenade are not unduly obstructed and the works are carried out in an appropriate manner. Given the distance of the proposed extension from the nearest residential properties, which would be on Warren Road, it is considered unlikely that there will be a material loss of amenity to the occupiers of these properties from the proposed extension and terrace. Further advice is sought from the Council's Senior Environmental Health Officer to confirm if additional measures need to be put in place to ensure amenity is protected. The Committee Members will be verbally updated on this issue.

There are highway trees in close proximity to the site. The Council's Arboricultural Officer has been consulted and his comments are still awaited. Members will be updated at Committee.

The Council's Drainage Engineer has confirmed that although the development lies within flood zone 3 the proposal relates to works on the existing roof which is outside the flood zone. As there is no impermeable area and the proposed works are located outside the flood zone there is no objection on drainage grounds to planning permission being



granted. The Environment Agency's standing advice for minor developments in Flood Zone 3 is that floor levels are either no lower than existing floor levels or 300 mm above the estimated flood level. The proposal will include an extension at first floor level and the enclosure of an existing outside seating area. The proposal is therefore considered to comply with these requirements.

Policy SS4 (The economy and employment) of the Torbay Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it enables expansion and diversification of the economy of the Bay. The Local Plan seeks to promote growth in sectors that are particularly important in Torbay, including tourism, hotel and catering. The applicant has detailed in the submitted application form that the proposal would create 2 new part time positions.

Although the application is for the extension of an A3 use, meaning that a sequential test should be applied in accordance with paragraph 24 of the NPPF, this test should be balanced against other benefits of the proposals, including the improvement of existing tourism and leisure facilities in a core tourism investment area. However, Policy TO1 (Tourism) of the Torbay Local Plan states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Policy TO1 details further that Torbay Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

- Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions
- The retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with particular focus on Core Tourism Investment Areas (CTIAs).

Given that the application site is located within a CTIA as designated in Policy TO1, and the proposed extension would improve the provision of tourist attractions, it is considered that the principle of the proposed development is acceptable and a sequential test is not required.

The application is recommended for conditional approval subject to the receipt of satisfactory further information in relation to impact on amenity of nearby occupiers and effect on nearby trees.

### **Recommendation**

Subject to the receipt of satisfactory consultation responses from arboriculture, community safety and Historic England, conditional approval delegated to the Executive Head for Assets and Business Services to include final drafting of conditions.

### **Reason for Referral to Development Management Committee**

The application has been referred to the Development Management Committee in accordance with the Council's constitution which states that applications relating to land owned, controlled or occupied by the Council (unless there are no objections or it is a minor variation to an existing planning permission) must be referred to the Development Management Committee.

### **Statutory Determination Period**

8 weeks. The determination date was the 22nd September 2017. The application has exceeded the determination date to allow the submission of revised plans to address concerns raised by officers.

### **Site Details**

The application site, Pier Point is a restaurant and bar, situated in a prominent location close to the pier, the seafront and the Princess Theatre. In the Torbay Local Plan the site is located within a core tourism investment area, Belgravia Conservation Area, coastal change management area, community investment area, and flood zones 2 and 3. The site also sits within the grade II Princess and Royal Terrace Historic Park and Garden and is adjacent to the South West Coast Path.

The site comprises a detached single storey building, occupied by the existing Pier Point which operates as a restaurant, café and bar. It includes an outdoor seating area on the North West corner with an adjoining souvenir and gift shop 'Promenade Gifts' which occupies a North East section of the building. The site is located adjacent to the Princess Theatre and sits within a pedestrian promenade with Rock Walk to the North of the site. Princess Pier, which is not listed, is immediately to the south. It is located close to Torbay Road (A379) and is prominent in the street scene and from the elevated Rock Walk footpath to the north.

### **Detailed Proposals**

The proposal seeks permission to form a first floor extension with terrace area, the enclosure of the existing ground floor outdoor seating area and installation of solar panels. The proposal will result in the expansion of the existing commercial business which is used as a restaurant, café and bar.

The proposed first floor extension will sit fairly centrally above the existing ground floor and outdoor seating area footprint. The first floor extension will include a flat roof with large areas of glazing, including angled glazing. The glazing will sit within rendered sections. The first floor terrace will sit within the North West and South West section of the flat roof and will include a 1.1m high frameless glass balustrading. The total height of the building will increase from approximately 3.9m to 7.2m at its highest point from ground level.

The building will predominantly feature powder coated aluminium windows set within white render with sections of powder coated rainscreen cladding. The proposed solar panels will be situated on the roof and set in four blocks comprising 36 solar PV set at a 10 degree angle. The design seeks to assimilate with the existing building with a

continuation of window fenestration and design and angled glazing.

### **Summary Of Consultation Responses**

Community Safety: No objections in respect of the proposal, however it is recommended that a condition is added to the consent to ensure that the potential for odour nuisance is minimised.

Food Safety: Raises a number of operational issues that are addressed through Environmental Health legislation and Building Regulations.

Strategic Transport: The site Lies within the Core Tourism Investment Area (TA1 &TA2 and the South West Coast Path Policy SS6.3) therefore it would be reasonable to request the provision of secure cycle storage area for staff (one space per two employees) or a cycle parking facility (such as Sheffield cycle stands) for staff & customers in accordance with Policy TA1 and TA3 of the Local Plan. If the applicant can set out the maximum number of staff on site at any one time, this figure could be used in conjunction with some visitor provision. Since parking for the additional floorspace created cannot be achieved onsite, a S106 sustainable transport contribution could be appropriate. However the Planning Contributions & Affordable Housing SPD also considers the contribution to employment/economic impact of the proposal and it would be reasonable to discount the additional part time jobs created. In this case as the job creation would mitigate the majority of the additional trips generated and no site acceptability measures have been identified, no additional contributions are required.

Arboriculture: Awaiting comments.

Historic England:

Comments on the original scheme:

The case falls outside Historic England's statutory remit, as it affects an unlisted building in a conservation area on a site of less than 1000sq m. However as we have now examined the proposals and are familiar with the site, we are happy to provide a short comment to assist you in the decision-making process. The existing Pier Point café is a characteristic 1950s structure, low in scale and of lightweight appearance. In our view, it makes a positive contribution to the character and appearance of the conservation area. While retention and modernisation of the structure should of course be welcomed, the proposed design of the (significant) extensions to the building are robust and muscular in character and will fundamentally change the appearance of the café into something much more solid. We wonder whether you might consider working with the applicant and the architect to finesse the proposed design and achieve a more lightweight appearance, appropriate to the seafront location and the modernist architecture of the existing building? We also suggest that you seek the views of your specialist conservation advisers, as relevant.

- A further consultation request has been sent following the receipt of revised plans which have aimed to address the initial concerns. To date no response has been received.

The Garden Trust: We have considered the information on the Council's website and do not wish to comment.

Drainage: Although the development lies within flood zone 3 the proposal relates to works on the existing roof which is outside the flood zone. The developer has submitted a site specific flood risk assessment for this development. The works involve the construction of an extension and terrace to form a first floor and therefore the impermeable area of the building will not be increased and hence the risk of flooding will not increase. As there is no impermeable area and the proposed works are located outside the flood zone there is no objection on drainage grounds to planning permission being granted.

Conservation: This 1950s/60s Bar/Restaurant is in the Belgravia conservation area, at its border with the Torquay Harbour conservation area. Its sits 'within' the grade II Princess Gardens and Royal Terrace Gardens Historic Registered Park (NHLE No. 1001507), but with the Princess Theatre forms an enclave of unregistered space. The current building is single storey and is essentially glass-walled atop a limestone dwarf wall; above a wide entablature is jettied out above the walls carried on a series of raking struts; a flat roof oversails; the (north)west façade has a slightly concave front, now part obscured by an external seating area. It wasn't recognised in the Belgravia Conservation Area Character Appraisal as a key building, however following English Heritage/Historic England's recent work, aided by the 20th Century Society on later 20C it surely it should be considered so, though the external gals screening detracts. It is essentially a single-cell structure, well adapted to its promenade locale; it is certainly one of the good buildings of its period and type. Seen from the west and southwest across Torre Abbey Sands it is very permeable, and despite its proximity to the Princess Theatre it does not detract from that building's 'showfront' the west elevation. The proposals are for an additional floor over two-thirds of the building (from the north-east corner outwards) with an extended roof terrace not only occupying the rest of the existing roof, but extending over the western area of external seating. The two photograph views sent in - in support of the application - views A & B, actually demonstrate the opposite. The light-touch, low profile permeable building would be replaced by a much larger, impermeable, extended building, which presents from Torbay Road (view B) a slab like appearance and removes from the building that innocent charm characteristic of the late 1950s.

Following submission of revised plans a revised comment has been received: Very much better. I am content with the revised elevations; I do think a grouping of the solar panels in a canted roof section would be much better and the northwest elevation could have so easily imitated the existing elliptical glazed front if the fixed glaze panel at the west corner had been canted to the angle of the existing screen, however I have no objection to a permission based on these revised plans

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advert

5 representations have been received. 1 representation, 1 letter of support and 3 objections. Issues raised:

- Development in the surrounding area
- Height

- Massing
- Loss of light
- Sets precedent
- Impact on sea-front
- Noise
- Use of terrace
- Poor design
- Visual appearance
- Storage and waste collection
- Odour
- Impact of construction on adjacent theatre
- Vehicular access
- Investment
- Positive development

### **Relevant Planning History**

P/2013/1121 New door opening formed within existing glazed panel and sill to provide additional fire exit and means of escape. Approved 11/12/13

P/2007/0913 Change Of Use To Provide Tables And Chairs To Front Of Venue. Approved 23/07/07

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

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

1. Principle of the development
2. Design
3. Impact of the development on the Torquay Harbour Conservation Area and the Listed Historic Park and Garden
4. Impact on Highways
5. Impact on Amenity
6. Impact on trees
7. Drainage.

#### **1. Principle of the Development**

Policy TO1 (Tourism, events and culture) of the Torbay Local Plan supports in principle the improvement of existing and provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark. The application site is also located within Core Tourism Investment Area (CTIA) as designated in Policy TO1. As such, given the site's location within a CTIA, and as the proposed extension will result in an improvement to the existing building and allow for increased capacity which will support the local business and provide enhanced facilities, the proposal would comply with Policy TO1.

Policy SS4 of the Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it enables

expansion and diversification of the economy of the Bay. The Plan seeks to promote growth in sectors that are particularly important in Torbay, namely tourism, hotel and catering. The addition of the extension would create 2 new part time employees in line with this policy.

Although the application is for the extension of an A3 use, meaning that a sequential test should be applied in accordance with paragraph 24 of the NPPF, this test should be balanced against other benefits of the proposals, including the improvement of existing tourism and leisure facilities in a core tourism investment area. However, Policy TO1 (Tourism) of the Torbay Local Plan states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Policy TO1 details further that Torbay Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

- Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions.
- The retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with particular focus on Core Tourism Investment Areas (CTIAs)

Given that the application site is located within a CTIA as designated in Policy TO1, and the proposed extension would improve the provision of tourist attractions, it is considered that the principle of the proposed development is acceptable and a sequential test is not required.

There are likely to be wider economic benefits through additional visitors being attracted to the area as a result of the extended capacity. Additionally it would add to the existing tourism offer in the seafront area attracting people of all ages, accordingly the proposal complies with Policy TC5 (Evening and night time economy) of the Local Plan.

The Torquay Neighbourhood Plan completed its Regulation 16 Publicity Period consultation on 18th December 2017. It is expected that the Neighbourhood Plan will be subject to Independent Examination in Spring 2018. As such it is at an advanced stage of preparation. National Planning Policy Framework paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise) according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. Relevant policies in the Torquay Neighbourhood Plans now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. The weight afforded to emerging Neighbourhood Plan policies is a matter for the decision-taker in accordance with the NPPF 216 criteria. Relevant policies of the Torquay Neighbourhood Plan include:

- Policy S1 (The Presumption in Favour of Development) which states that development proposals which accord with the policies of the Torquay

- Neighbourhood Plan and Torbay Local Plan shall be approved unless material planning considerations indicate otherwise.
- Policy H13 (Established architecture) which states any development shall be in a character, scale, bulk and design sympathetic to established surrounding architecture and must not have an adverse impact on the local area and must not significantly increase the density of properties in the immediate area.

The proposal is considered to accord with the above Neighbourhood Plan Policies.

## **2. Design**

Policy DE1 of the Local Plan requires development to positively enhance the built environment, integrate with the existing street scene and features, including trees, protect important local and longer-distance views and impact on the skyline, especially from public vantage points and to evolve high quality architectural detail with a sensitive palette of materials.

The design of building is 1950s/60s and is very permeable, and despite its proximity to the Princess Theatre it does not detract from that building's 'showfront' the west elevation. As the proposal is for an additional floor over a ground floor section of the building, any proposal should retain the lightweight structure and permeability. The original submission raised an objection from Historic England and the Council's Senior Historic Environment Officer as the proposal presented a larger, impermeable, extended building which would remove from the building that innocent charm characteristic of the late 1950s, forming an extension which is robust and muscular in character and will fundamentally change the appearance of the café into something much more solid. It was advised by officers that an extension with a more lightweight appearance, appropriate to the seafront location and the modernist architecture of the existing building would be more appropriate in this setting.

Following the initial comments revised plans have been submitted. In line with the comments from the Council's Senior Historic Environment Officer the proposal as amended now raises no objections. Whilst additional points of revision were noted in the latest consultation response, these are not considered necessary to the acceptability of the proposal. It is considered that the proposed scale and design of the first floor extension responds to the context set by the existing building and hence it will sit comfortably in its surrounds. The proposal will reinforce the existing character of the building with the use of angled glazing, fenestration form and use of render.

The proposal is considered acceptable in design terms and in accordance with Policy DE1 of the Torbay Local Plan.

## **3. Impact of the development on the Torquay Harbour Conservation Area and the Listed Historic Park and Garden**

Section 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. Paragraph 132 of the NPPF explains that great weight should be given to the conservation of 'heritage assets' such as

Conservation Areas and Listed Historic Park and Garden.

The Gardens Trust have confirmed they have no comment on the scheme and the Council's Senior Historic Environment Officer has confirmed there is no objection to the scheme although there are additional changes which could be made which would improve the overall design. As previously noted, whilst additional points of revision were raised in the latest consultation response, these are not considered necessary to the acceptability of the proposal as it is considered that the design and visual appearance respects the existing building and surrounding streetscene. The proposed extension to the existing building is considered to be of a lightweight appearance, appropriate to the seafront location and the modernist architecture of the existing building which preserves the existing character of the building, and the character and quality of the Conservation Area and listed park and garden. As such the proposal is considered to preserve and enhance the character and quality of the Conservation Area and grade II listed park and garden in accordance with Policy SS10 of the Torbay Local Plan.

Following the submission of revised plans Historic England has been re-consulted. To date no further comments have been received. Members will be verbally updated at Committee if any further response is received.

#### **4. Impact on Highways**

Consultation from the Council's Senior Strategy and Project Officer has noted that the site lies within the Core Tourism Investment Area (TA1 &TA2 and the South West Coast Path Policy SS6.3) therefore it would be reasonable to request the provision of secure cycle storage area for staff (one space per two employees) or a cycle parking facility (such as Sheffield cycle stands) for staff & customers in accordance with Policy TA1 and TA3 of the Local Plan (Appendix F). If the applicant can set out the maximum number of staff on site at any one time, this figure could be used in conjunction with some visitor provision. The cycle parking provision should not be placed on the seaward (southern) side of the site. With the provision of appropriate cycle parking there is no objection to the development in principle.

The Planning Contributions & Affordable Housing SPD considers the contribution to employment/economic impact of the proposal and it would therefore be reasonable to discount the two additional part time jobs created. In this case, as the job creation would mitigate the majority of the additional trips generated and no site acceptability measures have been identified, no additional contributions are required.

With the provision of cycle parking which can be secured by way of condition the proposal is considered to accord with Policies TA1 and TA3 of the Torbay Local Plan.

#### **5. Impact on Amenity**

Representations from local residents have raised concerns about the noise impacts and have highlighted existing concerns with the relationship between the restaurant and nearby residential properties.

Consultation from the Council's Senior Environmental Health Officer has noted that there



is no objection to the proposal however details of the proposed equipment, including noise levels and odour abatement, should be submitted to the Local Planning Authority for written approval prior to commencement of the development. This will ensure that the extension of the business does not result in any negative impacts on the surrounding users and residential properties. It is also considered necessary to require the submission of a construction method statement to ensure public areas on the footway and promenade are not unduly obstructed and the works are carried out in an appropriate manner.

Given the distance of the proposed extension to the nearest residential properties which are above Rock Walk, which at its closest point is approximately 93.5m in distance, it is considered unlikely that there will be a material loss of amenity to the occupiers of these properties from the proposed extension and terrace however further advice is sought from the Council's Senior Environmental Health Officer to confirm if additional measures need to be put in place to ensure amenity is protected. The Committee Members will be verbally updated on this issue.

The proposal, for the reasons above, and following confirmation from the Council's Senior Environmental Health Officer is considered to retain suitable levels of amenity for adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

#### **6. Impact on trees and ecology**

The application site includes highway trees in close proximity to the site which currently overhang the building. No information has been requested from the applicant to date. The Council's Arboricultural Officer has been consulted however his comments are still awaited. As such Members will be updated at Committee.

#### **7. Drainage**

A site specific flood risk assessment has been submitted to support the application as the site is within flood zone 2 and 3. The Council's Drainage Engineer has confirmed that although the development lies within flood zone 3 the proposal relates to works on the existing roof which is outside the flood zone. The works involve the construction of an extension and terrace to form a first floor and therefore the impermeable area of the building will not be increased and hence the risk of flooding will not increase. As there is no impermeable area and the proposed works are located outside the flood zone there is no objection on drainage grounds to planning permission being granted.

The Environment Agency's standing advice for minor developments in Flood Zone 3 is that floor levels are either no lower than existing floor levels or 300 mm above the estimated flood level. The proposal will include an extension at first floor level and the enclosure of an existing outside seating area. The proposal is therefore considered to comply with these requirements.

The proposal, therefore accords with Policies ER1 and ER2 of the Torbay Local Plan.

#### **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.

#### **CIL -**

CIL:

The application is for commercial development in zone 2 where the Community Infrastructure Levy (CIL) is £0 per square metre of additional gross internal floor area created for development under 300m<sup>2</sup>.

The CIL liability for this development is Nil.

#### **Conclusions**

Subject to the imposition of conditions and the submission of further information relating to highways and arboricultural matters, the proposals accord with the provisions of the Local Plan and are recommended for approval.

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

01. Construction Management Plan
02. Environmental health Risk/ noise Assessment
03. Cycle storage
04. Tree protection

#### **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**

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