

# TORBAY COUNCIL

Application Site Address	Pavilion, Vaughan Road, Torquay
Proposal	Repair works and alterations to include exposure of structural steel frame, concrete terraces with embedded steel structure, faience facade and further investigations into damage caused by water penetration
Application Number	<u>P/2021/1167</u>
Applicant	Marina Developments Ltd
Agent	Listed Building Surveys
Date Application Valid	19.11.2021
Decision Due date	14.01.2022
Extension of Time Date	
Recommendation	That Listed Building Consent is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Divisional Director of Planning, Housing & Climate Emergency
Reason for Referral to Planning Committee	Building leased by Torbay Council to Marina Developments Ltd.
Planning Case Officer	Jim Blackwell

## Location Plan



## **Site Details**

The site lies on the west side of the Torquay Inner Harbour and is separated by a low-level multi-storey car-park, café and marina offices. It is at the east end of Princess Gardens. The south side of the site faces the Princess Parade, the Outer Harbour area and marina. The northern boundary of the site is contained by Vaughan Road and Torbay Road as it curves around Cary Green to join The Strand.

Part of its site is on land reclaimed from the sea, and it was built on a concrete raft on which a steel framework was erected. In 1911 the Pavilion, by Garratt, was a modification of the 1897 designs of Edward Richards. The structure is formed of a steel frame with brick infill, externally clad with Doulton's patent carrera-ware (a form of faience) glazed cream and green. The barrel-shaped roof, four corner domes, all copper-covered, the latter on cast-iron columns, and some exceptionally fine Art Nouveau ironwork and coloured glass all make this a significant seaside building of the period. Its central copper-covered dome is topped with a life-size figure of Britannia and two smaller domes on each side bear figures of Mercury. Finely sculpted Art Nouveau-style cast iron edges the steps to the promenade deck and the octagonal bandstands or summer houses.

The Pavilion opened in 1912 and apart from the foyer and auditorium, it had lounges and a cafe, all of which were panelled with oak. It was proposed to demolish the building in 1973, but was listed in the same year. It closed in 1976, when it was leased to Rank Organisation and the interior was destroyed in the most part through adaptations for various types of amusements, first as a skating rink and in the 1980s as a shopping arcade. Since then, several applications have been determined, from small scale repairs to large scale developments of the site and adjoining car park.

The Pavilion is a grade II Listed Building and lies within the Torquay Harbour Conservation Area. It forms part of the Historic Gardens: Princes and Royal Terrace Gardens. It is also within Flood Zone 3.

## **Description of Development**

The submitted Building Condition Report shows evidence of water ingress, saturation, cracks, open joints and significant corrosion. Internally there is damage to fibrous plasterwork, removal of fabric and significant corrosion. If left unresolved and untreated it risks loss of the asset.

Repair works and alterations therefore include the exposure of structural steel frame, concrete terraces with embedded steel structure, faience facade and further investigations into damage caused by water penetration.

The proposed works also include various elements of repair. The whole building requires a detailed joint-by-joint decision as work proceeds to make good, remove lime putty, silicone mastic, fill cracks and gaps and complete comprehensive repointing where needed. On completion of these works, the building will be washed to give it a cleaner appearance.

## **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan:

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan 2012-2030 (TNP)

Material Considerations:

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant listed building consent, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

### **Relevant Planning History**

Torquay Pavilion and Marina Car Park and Office and Adjoining Land - P/2015/0962 and P/2015/0961: Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer, including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel (proposal revised 5 July 2016). Refused.

P/2014/0283: Refurbishment of building including repairs to corroded structure and works to prevent water penetration. Internal and external works to listed Pavilion to enable use as hotel foyer including function rooms, bars, restaurant and spa. Construction of linked access from first floor level to proposed waterfront hotel.

P/2014/0282: Change of use and restoration of the Pavilion to form hotel reception and spa including restaurant, bars and function rooms. Construction of 4/5 storey 60 bed hotel and 14 storey block of residential apartments, with ground floor restaurant and retail uses adjacent to the harbour. Link between the Pavilion and new hotel. Construction of new harbour walkway, provision of 280 car parking spaces including 65 spaces on Cary Green. Construction of Marina Office, berth holder facilities and landscaping (revised scheme as amended by plans received 16 October 2015)

P/2013/1203: Remedial repairs to flat roof forming the external terrace (marina facing) to prevent water ingress.

P/2003/1915: Removal of Existing Promenade Tiles to First Floor Terrace, Replacement with New Slabs to Match Existing. Approved.

P/1995/0658: Alterations to Front Entrance. Refused.

P/1995/0473 and P/1995/0427: Erection of Ticket Kiosk. Refused.

### **Summary of Representations**

Torbay Heritage Trust have provided two consultation responses. The first welcome the works, but raise concerns about the length of time taken to undertake the repair works and the lack of understanding of the future use of the building. The second suggests the listing status be elevated to grade II\*.

### **Summary of Consultation Responses**

#### **Torquay Neighbourhood Forum:**

No comments received.

#### **County Archaeologist and Historic Environment Manager:**

No comments received.

#### **Devon County Council Ecologist:**

No objection subject to conditions requiring control of lighting, submission of a CEMP and no work taking place in the bird nesting season.

#### **Theatres Trust:**

Support the application subject to conditions requiring internal photographic recording of the building.

#### **Torbay Council Community Safety Team:**

No objections.

#### **Historic England:**

Historic England have provided a formal response saying they do not wish to make a comment. However, verbal support has been provided and Officers and Historic England are satisfied with the level of detail provided, methodology and outcomes subject to condition.

### **Planning Officer Assessment**

Key Issues/Material Considerations:

1. Ecology and Biodiversity
2. Impact on Heritage Assets

#### **1. Ecology and Biodiversity**

Policy NC1 seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of terrestrial and marine environments, and fauna and flora, commensurate to their importance. Policy TE5 of the Torquay Neighbourhood Plan states

that, where appropriate, an assessment of impacts upon any existing protected species or habitats should be undertaken, and the use of necessary mitigating arrangements, in order to protect and enhance species and habitats, should be provided. Policy C4 states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features.

A Preliminary Bat Roost Assessment was undertaken in November 2021. No evidence of bats was found internally or externally and no potential access/egress points for bats were noted. Therefore, the building was considered to have 'Negligible' bat roost potential in line with best practice guidance. It was therefore considered unlikely that the Pavilion would be used by roosting bats due to the absence of evidence of roosting activity and the limited suitable features available.

All birds, their nests and eggs are protected under the Wildlife and Countryside Act 1981 (as amended). The Ecology report recommended that the scaffolding should be undertaken outside of the main bird-breeding season (i.e., between October and February) or subject to a pre-clearance check by a qualified ecologist.

The County Ecologist had no objection subject to conditions requiring control of any potential lighting, submission of a Construction and Environmental Management Plan to be submitted prior to works taking place and no work taking place in the bird nesting season. Lighting will be required to facilitate the repair works during the winter months. This will need to be regularly moved and adjusted to ensure a safe working site. A condition has been included to ensure no permanent lighting fixtures on the building.

The proposal is therefore deemed to comply with Policies NC1 and C4 of the Local Plan, policy TE5 of the Torquay Neighbourhood Plan and the NPPF (2021).

## **2. Impact on Heritage Assets**

NPPF (2021) provides guidance as to when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 199). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 200). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 202).

In terms of the Local Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policies SS10 and HE1 of the Local Plan). This is aligned with the duties for decisions as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, where decisions shall have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

Policy TH10 of the Torquay Neighbourhood Plan support alterations to listed buildings where they safeguard and enhance their historic qualities and elements according to their significance.

The application is supported by suite of investigative documents including a Building Condition report (July 2021) and Opening Up Report (July 2021), a Structural Inspection (June 2021), Asbestos Survey (May 2021) and up to date Heritage Statement (July 2021). The rigorous Heritage Statement from 2012 has also been included and is still relevant today. Additionally, extensive 3D modelling of the internal and external fabric has been carried out. Although not submitted as part of this application it is being used collaboratively as part of the ongoing project.

The Building Condition Report shows several instances of water ingress and saturation, cracks and open joints and evidence of significant corrosion. Internally there is damage to fibrous plasterwork, removal of fabric and significant corrosion. If left unresolved and untreated this risks loss of the asset. The Pavilion is exposed to prevailing weather conditions from predominantly a south to north west direction. This links directly to the most severe of the defects that can be evidenced. Issues can also be seen on the east and north elevations, but they are considered less severe.

Officers are mindful that this is the first in a sequence of positive actions involving the building. Although it's future use is yet to be defined and given its current deteriorating condition, this is being seen as an opportunity identify defects and to 'future-proof' the building as much as possible. Given the potential length of time these works could take and the invasive nature a condition has been suggested to provide further details.

A first phase of exploratory work has already taken place. These were required to make reasoned judgement on the overall condition of the building, help formulate a strategy for the next steps to be taken and to be clear about what the priority actions are the severity of the problems.

This application for listed building consent is to proceed with the second phase of the survey prior to a repair strategy being designed. The survey carried out so far has been non-invasive, except for the previously agreed internal works. Extensive reports and photographs have been provided following that work. There is full justification to continue the survey to the next phase and to proceed with a more comprehensive opening-up works. The repairs to the building and to the exposed parts will be included within the repair project and will need to be done to the highest levels of conservation expertise. There will be subsequent applications for listed building consent once the opening-up phase is complete and as the project moves forward to the repair phase.

The whole building requires a detailed joint-by-joint decision as work proceeds to make good, remove lime putty and silicone mastic, fill cracks and gaps and complete comprehensive repointing. On completion of these works, the building will be gently washed to give it a cleaner appearance. Once done, the building should have a unified appearance as well as being better protected against future moisture ingress.

Historic England have provided a formal response saying they do not wish to make a comment. Verbal support has been provided and Officers and Historic England are satisfied with the level of detail provided, methodology and outcomes subject to condition.

The Theatres Trust support the proposal and have suggested the building is fully recorded. As stated previously in this report, the building has been thoroughly examined, recorded and a modelled using 3D technology. This process of information collection will continue as the works evolve.

Torbay Heritage Trust have also provided two consultation responses. The first welcome the application, but raise concerns about the length of time taken to undertake the repair works and the lack of understanding of the future use of the building. The second suggests the listing status be elevated to grade II\*. Commitment is being shown towards the repair and future use of the building. The heritage status does not appear to need elevating and this in itself would not alter the determination of the application.

The submitted Heritage Statement (July 2021) demonstrates that the investigation and subsequent repair of the building will deliver a positive level of enhancement to the character, appearance and significance of the Torquay Harbour Conservation Area and the Historic Gardens. These enhancements represent a wholly heritage-based form of public benefit.

As a defined heritage asset, grade II listed, within the Harbour Conservation Area and Historic Gardens, and key landmark for Torquay, Officers are supportive of these carefully considered works which would enable full long term restoration and facilitate opportunities for the Pavilion to be brought back to sustainable active use. The proposal is therefore considered to be in accordance with Policies SS10 and HE1 of the Local Plan, Policy TH10 of the Torquay Neighbourhood Plan and the guidance contained in the NPPF.

This conclusion has been reached in relation to section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Having regard to the above assessment the proposed works to the listed building are considered to represent sustainable development.

### **Local Finance Considerations**

#### **Community Infrastructure Levy**

The residential aspect of the site is situated in Charging Zone 1 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £30/sqm. An informative can be imposed, should consent be granted, to explain the applicant's, developer's, landowner's obligations under the CIL Regulations.

## **EIA/HRA**

### **EIA:**

The site is in an area sensitive to flooding and is a designated heritage asset. Officers have therefore fully considered the sensitivity of the development. Due to the size, scale and nature of this development it will not have significant effects on the environment and therefore is not considered to be EIA development.

### **HRA:**

In view of the nature of the application there is not likely to be a Significant Effect on the Annex I habitats - alone or in-combination with other proposals or projects.

### **Planning Balance**

The development is considered to result in positive enhancement of the listed building with the added public benefit through taking the first steps towards the positive, sustainable re-use of this key heritage asset.

### **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.

### **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 listed building consent approval.

### **Conclusions and Reasons for Decision**

The proposal is acceptable in principle as it would not result in unacceptable harm to the Listed Buildings, the character of the area or the setting of the Conservation Area. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.



The proposals are considered to be in accordance with the provisions of the Development Plan. The Officer recommendation is therefore one of conditional approval.

### **Officer Recommendation**

Approval - subject to:

1. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing & Climate Emergency;
2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing & Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **1. Lighting:**

No external lighting shall be permanently installed on the application site without the written permission of the Local Planning Authority.

Reason: In order to protect ecology in accordance with Policies DE1, DE3, NC1 and SS8 of the Torbay Local Plan 2012-2030 and guidance contained in the NPPF

#### **2. Construction and Environmental Management Plan:**

The works hereby approved shall take place in strict accordance with a Construction Environmental Management Plan (including measures of construction controls on dust and reducing contaminated run-off) which shall have been submitted to and approved in writing by the Local Planning Authority prior to commencement of the works hereby approved. It will include details of environmental protection throughout the construction phase and be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: In order to protect ecology and to secure necessary mitigation to accord with the aims for biodiversity enhancements, in accordance with Policies NC1 and SS8 of the Torbay Local Plan 2012-2030 and guidance contained in the NPPF. This needs to be pre-commencement condition to ensure the impacts of development are controlled from the outset.

#### **3. No works during the bird nesting season:**

No works including building demolition or vegetation clearance and preparatory operations (e.g. installation of scaffolding) shall take place during the bird nesting season (01 March to 30 September, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.

Reason: In order to protect ecology and to secure necessary mitigation to accord with the aims for biodiversity enhancements, in accordance with Policies NC1 and SS8 of the Torbay Local Plan 2012-2030 and guidance contained in the NPPF.

#### **4. Works of reinstatement:**

Prior to commencement of development a detailed specification of works of reinstatement of the building following the investigative works, including a timetable for the works, shall have been submitted to and approved in writing by the Local Planning Authority. All the works of reinstatement shall take place in accordance with the approved specification and in accordance with the approved timetable of works.

Reason: To ensure the development takes place in a manner that will sustain and enhance this heritage asset in accordance with Policy SS10 of the Torbay Local Plan.

#### **Informative(s)**

1. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.

2. 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.

3. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

#### **Relevant Policies**

##### **Local Plan**

DE1 – Design

NC1 – Biodiversity and Geodiversity

HE1 – Listed Buildings

SS3 – Presumption in favour of Sustainable Development

SS10 – Conservation and the Historic Environment

SS14 - Low carbon development and adaptation to climate change

**Torquay Neighbourhood Plan**

TH8 – Established Architecture

TE5 – Protected species Habitats and Biodiversity

TH10 – Protection of the Historic Built Environment

TS1 – Sustainable Development