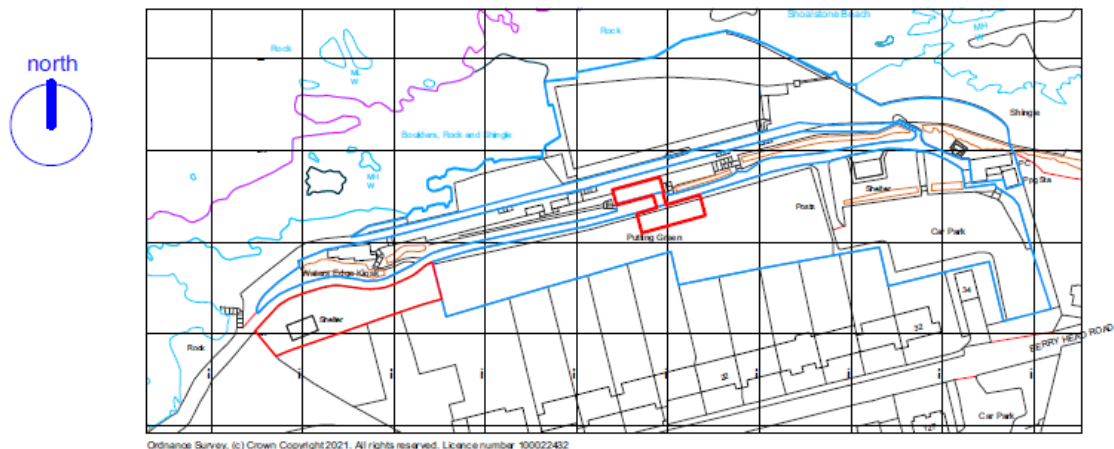


Application Site Address	Shoalstone Pool, Berry Head Road, Brixham, TQ5 9FT
Proposal	Removal of seating shelter and installation of 21 beach huts and hardstanding area. Creation of two external seating areas to serve 'Shoals' cafe on the roof above cafe and on green.
Application Number	P/2021/0942
Applicant	The Shoalstone Pool Community Interest Company (SPCIC)
Agent	Mr Jonathan Ling-Cottey
Date Application Valid	20.09.2021
Decision Due date	15.11.2021
Extension of Time Date	To Be Confirmed
Recommendation	<p>Approval subject to:</p> <ol style="list-style-type: none"> 1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency. 2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	June Pagdin

Location Plan



LOCATION PLAN
scale 1:1250

Site Details

The application site comprises three areas of the Shoalstone Pool and associated Local Green Space on the seafront in Brixham. The land is owned by Torbay Council, rented to Brixham Town Council, managed by SPCIC and the restaurant is sublet to “Shoals” restaurant. The restaurant has an internal seating area and a level terrace adjacent.

The Shoalstone Pool facility provides an open-air seawater pool in summer and a green space that is open all year. It is served by a public car park from Berry Head Road.

The first part of the application site is the roof area of the existing “Shoals” restaurant (60sqm), the second is an area of the green (53sqm) on the south side of the South West Coastal Path (SWCP). The third is a grassed area at the west end of the Green Space which covers an area of 540sqm and slopes down towards the sea (northwards). It contains an unused seating shelter.

The facility and open space are within the Urban Protected Landscape Area (C5-57 Shoalstone and Ash Hole Woods), the Core Tourism Investment Area (Harbourside and waterfront, Brixham) and the Coastal Change Management Area. The area is also within Brixham Town Conservation Area in the Torbay Local Plan and the gardens of the Grade II listed buildings at 12 to 32 Berry Head Road back onto the open space. The application site is within Shoalstone Pool Local Green Space (E4-9) as designated in the Brixham Peninsula Neighbourhood Plan. The South West Coast Path (SWCP) runs through the site and has a tarmac surface. The site is also close to the Special Area of Conservation (Greater Horseshoe Bats) at Berry Head.

Description of Development

Full planning permission is sought through this application for three different proposals to extend the leisure provisions at the site:

- i) Use of the roof of Shoals Restaurant as an outdoor seating area for the restaurant, installation of a flight to steps up from the SWCP up to the existing flat concrete roof surface, installation of railings along the southern side of the roof to match existing railing
- ii) Remove an area of grass from the green to the south side of the SWCP 3.5m deep by 15m wide and surface with pea gravel to form a seating area for "Shoals" Restaurant
- iii) Remove the existing seating shelter from the green and install 21 beach huts in a row against the hedge to the south; area 200sqm, pea gravel with timber edge. Proposed beach huts; 2.5m high at ridge, 1.8m to eaves, footprint 1.8m square.

Pre-Application Enquiry

None

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 Brixham Peninsula Neighbourhood Plan ("The Neighbourhood Plan")

Material Considerations

- National Planning Policy Framework (NPPF 2021)
- Planning Practice Guidance (PPG)
- Published Standing Advice
- Healthy Torbay Supplementary Planning Document (HTSPD)
- Brixham Town Centre Design Statement
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Relevant Planning History

P/2014/1272: Change of use from clubhouse of existing building to cafe, install two new windows to north elevation, install new doors to West & East elevations externally. Approved 20.03.2015.

P/2016/0582: Erection of retractable awning (retrospective) over lower terrace. Approved 22.07.2016.

EN/2021/0276: Use of public walkway for extended seated area. Subject of current planning application.

Summary of Representations

Neighbour letters were sent out on 19th October 2021. A site notice and newspaper advertisement were displayed on 20th October 2021.

Two responses were received. The comments can be summarised as:

- Object to loss of green area for seating. A lift would be better solution
- Right of way compromised by seating area
- Loss of seating shelter and public access
- Beach huts will deter access to the green area by the general public as it will be 'owned' by hut renters
- Not in interests of wider community
- Land on the north side of the SWCP could be built up to make a level seating area.
- Original café permission did not allow external lights
- Café hours of operation were 8am to 9pm.
- Seating on roof does not have planning approval
- Potential interference of footpath users, waiting staff and customers.
- No details of how this would be managed/illuminated
- Illuminations – adverse impacts on bats

Summary of Consultation Responses

Community Safety: No objections.

Drainage: The developments are in Flood Zone 1. The developer has not identified how surface water run-off from the beach huts will be drained. Details must be provided before planning permission is granted.

Waste: No information proposed on waste, recycling and litter issues associated with the development. Although existing arrangements and practices may be sufficient, I would ask that this is considered and documented.

Devon County Council Ecology: Recommend conditions over no external lighting, development be carried out in accordance with the Ecological Assessment and no vegetation clearance during nesting season (01.03 to 31.08 in any year).

Natural England: No objection. The proposed development will not have significant adverse impact on designated sites South Hams SAC, Berry Head SSSI, Torbay MCZ or Torbay SAC.

Devon County Council Archaeologist: The site is in an area of archaeological interest dating from pre-historic times. Groundworks have the potential to expose and destroy artifacts and deposits associated with medieval and post medieval settlement. Request a Written Scheme of Investigation prior to determination or through a pre-commencement condition

The following were consulted and have not responded:

Key Issues/Material Considerations

Planning Officer Assessment

- 1. Principle of development**
- 2. Impact on Visual Amenity and Landscape**
- 3. Impact on Heritage Assets**
- 4. Impact on Residential Amenity**
- 5. Impact on Highway Safety**
- 6. Ecology & Biodiversity**
- 7. Flood Risk and Drainage**
- 8. Sustainability**
- 9. Statement on Human Rights and Equalities Issues**
- 10. Local Finance Considerations**

1. Principle of development

1.1

The site is within the Core Tourism Investment Area as designated in the Torbay Local Plan. Policy TO1 is relevant. This policy seeks Torbay's tourism offer to be extended in a sustainable manner through improvement, modernisation and new facilities. These are to be focussed in the Core Tourism Investment Areas, subject to no adverse effect on the integrity of European protected sites.

The proposals are aimed at enhancing the leisure provisions at Shoalstone Pool and Green Space for local residents and for tourists. The extension to the seating areas would enable a local business to expand and is likely to create local employment opportunities in the tourism sector, although these have not been quantified in the application. The beach huts would extend the availability and season of these popular features of many of Torbay's beaches and coves.

The principle of extended beach huts and seating is, therefore, supported. However, this is subject to the constraints and other designations of the site.

1.2 The site is designated as a Local Green Space in the Neighbourhood Plan (BPNP). Policy E4 (Local Green Spaces) states that development in these spaces will only be permitted in "very special circumstances" and requires robust justification on grounds of specific benefit to the community, for example where it would enhance leisure facilities and meets design and environmental requirements. The Policy identifies the site as adjacent to the Art Deco Shoalstone Pool and dependent upon practical and financial support from local communities.

The proposals to provide seating to extend a café rather would result in commercial use in place of a small area of the green. The use of the café roof as a seating area would not impact public access as this is not generally open to public, having no steps up to it.

1.3 The 21 beach huts would occupy an area of approximately 200sqm. They would provide 12-month leases to extend the tourism offer throughout the year. This element would involve removal of an existing closed public seating shelter. While the grassed area would be reduced in size, an area of approximately 340sqm would be maintained for public access to the grassed area in front of the huts. The applicant has advised that the conditions of lease for the beach huts will require that public access is retained to the grassed area in front of the beach huts.

Policy TO1 supports the principle of tourism and dining facilities in this location, and the proposed provisions would support the operation of the wider public facility. However, the impacts on public access and seating would need to be mitigated. The applicants have expressed the intention to provide benches and picnic tables within the Local Green Space. Specific details have not been submitted in this application but a scheme of replacement public seating within the Green Space land under the control of the SPCIC in the Local Green Space could be secured through a Grampian-style planning condition and this is recommended.

The site is in an Urban Landscape Protection Area. Policy C5 states that development will only be permitted in these areas where it does not undermine the value of the ULPA as an open or landscaped feature in the urban area **and** makes a positive contribution to the environment and enhances the landscape character of the ULPA. Landscape impact is assessed under the Visual Impacts section of this report.

The Conservation Area designation of the site is considered in the Heritage Section of this report.

Impacts on European protected species and biodiversity enhancements are considered in the Biodiversity Section of this report.

2. Impact on Visual Amenity and Landscape

2.1 Paragraph 124 of the National Planning Policy Framework (NPPF) states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'.

Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

Policy C5 of the Local Plan identifies that development within an Urban Landscape Protection Area (ULPA) 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.”*

Policy BH5 requires new developments to respond to and integrate with the character and appearance of the local area and landscape context as well as the built environment. Policy E4 allows proposals that enhance recreational and leisure facilities where they meet design and environmental requirements.

Taking each part of the proposal separately:

2.2 Roof Top Seating area

The roof-top is a flat concrete area raised up above the existing cafe. Directly along north edge of SWCP and 1m higher. The existing railings along north east and west sides are bright blue arris style.

The proposal involves creating a flight of five or six steps up and extension of the 1.1m high balustrade along the southern edge of the roof.

The steps would be accessed from a tarmac apron off the pathway that runs through the green space and is part of the SWCP. The access from the kitchen of the cafe would be via existing steps up to the tarmac apron area so that the serving of food would not require access along the footpath itself. The steps and new balustrade would be made of metal. The applicant has stated that the new balustrade would match the existing in pattern and colour (although this is not shown on the elevation drawings). A consistent colour and style with the existing balustrade would minimise the visual impact of this element in the setting of the open space and relate well to the art deco style of the pool below. This can be secured by condition and is recommended.

The introduction of chairs and tables would not result in any intrusion over the height of the balustrade. However, the use of parasols and other coverings would increase the visual prominence of the seating area ULPA and may interfere with views towards the sea from the green. Given the setting, it is considered reasonable to prohibit the installation of fixed and permanent structures and parasols, gazebos or structures (fixed or moveable) above the height of the railings.

2.3 Seating Area on the Green -

This element would involve some excavation of the existing slope to create a level area adjacent to the path and opposite the existing cafe. This would necessitate moving the existing low wooden rail between the green and the path. The seating area would cover an area of around 52sqm. The surface would be treated with pea gravel with a timber edge and would be level with the pathway, thus enabling access for wheelchairs and pushchairs, in accordance with Policy DE1.6.

The introduction of tables and chairs would have a visual impact on the green although from a distance these would be less visible being positioned in the lowered level area of ground and bounded by the grass slope on three sides. The visual impact would depend upon the style, materials and colour of the proposed furniture. However, these have not been identified. To ensure that the designs are appropriate to the setting and do not adversely impact upon the ULPA, it is recommended that these details are secured by condition.

Given the setting, it is considered reasonable to also prohibit the installation of parasols, gazebos or structures (fixed or moveable) on this area.

The seating area would be adjacent to the SWCP, which is a public right of way. The South West Coast Path Association has not objected and the proposal is clearly to provide seating off the pathway. However, it is recommended that an informative be added to any decision to advise that the path must be kept clear of obstructions.

2.4 Beach huts

The proposal involves siting a row of 21 huts in two clusters (of ten and eleven) against the southern boundary of the green at the rear of the small private car park adjacent to No 12 Berry Head Road. The boundary is marked with an evergreen hedge which is positioned outside the application site.

The huts are proposed to be set on a gravel base retained by a timber-board. The eaves would be 1.8m high and the ridge of the roofs 2.5m high. These would be screened from views on Berry Head Road and from rear of listed buildings by being on lower land due to the slope towards the sea and a small amount of excavation to make the area level.

The huts would be typical Torbay beach huts; white -painted timber with felt ridged roof and colour-painted doors. They would be the same style and size as the existing ones on the lower level of the pool. The design would not be out of keeping with the character of many of Torbay's beaches and coves where these huts are present. They would be seen as an addition to the current provision of beach huts related to Shoalstone Pool. The location at the western end of the green is close to the existing path that links to the pool and rocky water-edge below. The gravel sitting out area in front of each hut would be set back 3m clear of the SWCP at its closest point and 8m at its furthest point.

The huts would be screened from views from the footpaths to the west and from the beach area by the changes in land levels. They would be visible from the path to the east but would not be prominently positioned. Given the degree of set back and recessed position at the western end of the green, the beach hut element is not considered to be inappropriate given its function, the size of the beach huts and their consistent style with existing beach huts in the setting of the ULPA.

2.5 The proposals would introduce built structures in the ULPA and the amount of space open to the public reduced slightly. While the proposals have been designed and located to cause as little impact as possible, the openness of the ULPA and its character would be impacted to some degree. The applicants have advised of their intention to plant a wildflower meadow on part of the Green Space in order to provide landscape enhancement. Specific details have not been submitted in this application but a scheme of landscaping within the Green Space land under the control of the SPCIC in the Local Green Space could be secured through a Grampian-style planning condition and is recommended.

Subject to the recommended conditions over details of stairs and railings for the roof top, seating and table furniture for the seating area on the green, use of the typical beach hut design and provision of a landscaping scheme, the proposal are considered to be in accordance with Policies DE1 and C5 of the Torbay Local Plan and Policies BH5 and E4 of the Brixham Peninsula Neighbourhood Plan.

3. Impact on Heritage Assets

The site lies within the Brixham Town Conservation Area and is set between the rear elevations of listed buildings in Berry Head Road and the seafront.

Guidance on considering the impacts on designated heritage assets is provided in Paragraphs 199 to 208 of the NPPF (2021). Paragraph 199 states that great weight should be given to an asset's conservation and the more important the asset the greater the weight should be. Paragraphs 201-202 state 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". Policy HE1 of the Local Plan requires developments to preserve the setting of listed buildings and their settings.

Listed Buildings and Archaeology

Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires local planning authorities when considering whether to grant planning permission for development which affects a listed building or its setting, to 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.

Policy SS10 sets out that proposals that may affect heritage assets will be assessed in terms of, inter alia, their impact on listed buildings and their settings and the importance of Torbay's archaeological remains, and the contribution to design and use of appropriate materials and removal of deleterious features.

With regards to archaeology, Devon County Council's Archaeologist has requested a Written Scheme of Investigation for the areas of excavation, which although shallow are proposed in this area where remains from prehistoric through to medieval times have been recorded. This can be secured through a condition.

The Listed Buildings in Berry Head Road at Nos 12 to 32 comprise a row of stone houses with single storey links. The proposals would not be visible from Berry Head Road and would not affect the setting from this perspective.

From the SWCP at the rear of the Listed Buildings the character is less formal; the garden lengths vary and the boundaries are marked with hedges. The land slopes down to the north towards the sea and the green area provides informal coastal recreation space for walking, sitting and viewing the sea. The café seating proposals are small in scale and, subject to appropriate design and materials of the furniture, would not significantly alter the overall character of the setting. The beach huts would introduce new structures but are not considered to be out of place in the coastal setting and would be visually separate from the listed buildings and not directly behind them. Their impact on the setting of the listed buildings is considered to be at the lower end of “less than significant harm”.

Subject to the suggested conditions, the amended proposal is considered to be in compliance with Policy HE1 of the Local Plan Policy TH8 of the Neighbourhood Plan.

Conservation Area

Section 72 of the Listed Buildings and Conservation Areas Act 1990 requires an LPA, in determining planning proposals, to have special attention to the desirability of preserving and enhancing the character or appearance of a conservation area. Policy SS10 of the Torbay Local Plan seeks to maintain the character of conservation areas while allowing sympathetic development.

Policy SS10 of the Torbay Local Plan seeks to conserve and enhance the distinctive character and appearance of Torbay’s conservation areas, while allowing sympathetic development within them.

Shoalstone Pool and the lido buildings were built in an Art Deco style in the mid 20th Century. The simple rendered exterior walls and horizontal lines are key elements of the coastal fringe of this part of the Conservation Area.

The upper level of the green space is less formal with open grass areas and pedestrian paths within the natural and historic setting. Other structures include the seating shelters and the Public Conveniences at the eastern end, which are to be retained. The informal recreational activities in the green space are intrinsic to this part of the Conservation Area.

The application proposes new elements to this open setting. However, as set out in the considerations of Urban Landscape, the design aims to minimise the impact on the Conservation Area and wider landscape setting while providing recreational opportunities appropriate to the character of the conservation area.

Visually the roof top seating area would have a low level of impact, subject to the choice of surface materials, railings and furniture, which can be determined under the aforementioned conditions. The seating area on the green would involve a small amount of excavation to create a level area but this would be screened by the gently sloping bank on each side when viewed along the SWCP. The introduction of

seating and tables would be seen against the existing setting of the low wooden fence, benches and timber bin store. Subject to the use of seating and tables in appropriate materials and colours (which can be controlled by condition) the impact would be minor.

The proposal involves removal of the existing seating shelter and its concrete base. The shelter is built of timber and has a pronounced tiled roof with recessed seating beneath. The shelter is in poor condition, has suffered from vandalism and is unsafe to use so has been fenced off. There is another shelter in a similar style at the east end of the green, which is in usable condition and is to be retained. The proposal to remove it and to install beach huts aims to prevent further antisocial behaviour and increase the level of use and natural surveillance of this part of the green.

The proposed beach huts would replicate the existing beach huts at the lower level near the pool and be positioned where they are least prominent in the green space. This is subject to the colour being appropriate to the setting (the pink on the submitted drawing is not the proposed colour). Further details can be secured via a condition and this is recommended.

The loss of the characteristic structure would constitute a less than significant harm. However, the other shelter would be retained and the proposed beach huts can be considered a sympathetic development in this setting. The loss would also be outweighed by the public benefits of the proposals contributing to the informal leisure and recreation activities on the green.

The impact on the setting of the listed buildings and conservation area is considered to constitute a less than substantial harm. In accordance with Policies SS10, HE1 and paragraph 202 of the NPPF (2021) the harm is outweighed by public benefits of the scheme. These were identified in the Principle of Development section of this report as supporting and diversifying and expanding the tourism economy in support of this public facility, subject to the provision of replacement public seating of an appropriate nature.

4. Impact on Residential Amenity

Policy DE3 requires all development to provide a good level of amenity for users and the surrounding uses in terms of noise, nuisance, and air pollution.

Concern has been expressed by objectors to the potential for noise from customers using the outdoor seating areas, and from people's voices being heard as they arrive, dine and leave. The nearest sensitive uses are the houses on Berry Head Road – the nearest window is approximately 45m away from the café roof top and 40m from the second proposed seating area.

The hours of operation of the restaurant are not currently controlled by condition as the use was solely internal and 45m from the nearest residential property (sensitive receptor). The proposed hours of opening are not specified in the application submission. However, the existing hours of operation are from 12pm to 3pm and 6pm to 10pm each day of the week.

The noise of people arriving and leaving between around 10pm is already a feature of the café. However, the use of outside seating areas would be likely to add to the level of noise generated by the use of the café. Therefore, in the interests of limiting the potential for noise nuisance at unsocial hours, it is considered reasonable to impose a condition limiting the hours of use of the external seating areas to 10pm.

The limits on lighting in this area adjacent to the SAC are considered in The Ecology Section of this report and have implications for the hours of use of the seating areas and beach huts on a seasonal basis.

Collection of waste and refuse for the seating areas would be included in the overall operation of the SPCIC and the existing restaurant. Collection of refuse and recycling from the beach huts would be controlled by SPCIC as for the existing beach huts. No waste bins are proposed and beach hut owners are usually required to take their waste away with them.

Subject to the above-mentioned conditions the proposal is considered to be acceptable with regard to the amenities of the area further to Policy DE3 of the Local Plan.

5. Impact on Highways

Policies TA1 and TA2 promote sustainable locations for new developments and require adequate accessibility and safety to meet the needs of the development. Policy TA3 seeks car and cycle parking standards to be met.

The application sites are located within the Local Green Space off Berry Head Road. They are accessible on foot from Brixham Town and from Berry Head, being on the route of the South West Coast Path. The Green Space is served by a public Pay and Display car park, with level footpath joining the SWCP in the Local Green Space. There is a bus stop (Nos 17 and SB1) where the SWCP meets Berry Head Road, 200m from the café. The application site is considered to be in a sustainable and accessible location.

The roof top and green level seating areas will need to be managed so that they do not interfere with people using the SWCP. The proposed steps to the roof top are designed to not intrude upon the line of the SWCP. Seating on the proposed path-level area, (together with tables, waiting staff and people waiting to be seated) must not cause obstruction of the path. The path is a public right of way subject to separate regulations however an informative regarding obstruction of public rights of way can be added to a decision letter, should permission be granted.

The provision of cycle parking facilities to serve the additional seating for the café is required by Appendix F. However, there is limited space around the restaurant itself. The beach huts are also likely to generate some demand for cycle parking. The

provision of some cycle parking is considered to be reasonable and some facilities located near the beach huts would be convenient for those using the huts. It is recommended that a condition is imposed to secure details and provision of a suitable scheme of cycle parking facility within the land managed by SPCIC.

6. Ecology & Biodiversity

Policies SS8 and NC1 of the Local Plan seek to conserve Torbay's biodiversity and geodiversity. Paragraphs 179 to 182 of the National Planning Policy Framework seek to protect and enhance biodiversity. Paragraph 182 sets out that the presumption in favour of sustainable development does not apply where the proposal could affect a protected habitat site unless an appropriate assessment has concluded that the plan or project will not affect the integrity of the habitat site.

Policy E.8 of the Brixham Peninsula Neighbourhood Plan reinforces these policies. and cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats.

The foreshore on the northern edge of the pool area is a Nationally Protected Site.. The site lies in the sustenance zone of Greater Horseshoe Bats, adjacent to the internationally important South Hams Special Conservation Area at nearby Berry Head and the coastal edge is a bat commuting route. The site is within 50m of Berry Head SSSI. Natural England's conservation objective for these areas is to ensure that the integrity of the site's natural habitats are maintained.

An ecological appraisal was submitted with the application (Sunflower, Sept 2021). No evidence of bats was reported and no further surveys were required. The report recommended enhancing the biodiversity of the grass area by planting a linear wildflower meadow on the green.

Devon County Ecologist had no objection subject to conditions over external lighting, creation of a linear wildflower meadow in accordance with the Ecological Assessment and no vegetation clearance during the bird nesting season.

The application has been subject to Habitat Regulations Assessment screening. It has been determined that there will be no likely significant effects as a result of the development whether on its own or in combination with any other projects. Consequently, a Habitat Regulations Assessment is not required. Natural England confirmed that the proposal as submitted would not have significant adverse impacts on the designated sites.

Subject to the recommended conditions the application is in accordance with Policy NC1 of the Local Plan, Policy E.8 of the Neighbourhood Plan and guidance in the NPPF.

7. Flood Risk and Drainage

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within the Critical Drainage Area in Flood Zone 1 and the application is accompanied by a Flood Risk Assessment, which did not identify a means of disposing of surface water other than the existing means. The roof top seating area would continue to drain as existing. The new seating area would have a permeable surface.

The existing seating shelter has a concrete base of 40sqm. The beach huts would cover approximately 80sq; a net increase of 40sqm. Run-off from the beach hut roofs would drain onto the proposed gravel base. The applicant has advised that the surface around the huts would be permeable. While the means of disposing of this run-off has not been specified, a condition further to agreed standing advice, requiring that soakaways be investigated prior to commencement, can be imposed on any planning decision and this is recommended.

Subject to satisfactory details secured by condition, the proposal is considered to be in accordance with Policies ER1 and ER2 of the Torbay Local Plan.

8. Sustainability

Policies SS14 and ES1 of the Local Plan seeks to promote a low-carbon form of development with adaptations to climate change so as to minimise carbon emissions and make more use of natural renewable resources.

The proposal is in a sustainable location where customers do not need to, but can, drive to access it. Alternative, low-carbon means of transport are available to the site.

Some energy would be used in the preparation of food in the kitchens. However, the proposal is small scale and no additional lighting is proposed for the external areas. The beach huts are constructed of timber, a natural material and the new surface areas would be pea gravel on hard core base, which can be sourced locally.

9. 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.

10. Local Finance Considerations

S106: Not Applicable

CIL: Not Liable

Planning Balance

Paragraph 11 of the NPPF (2021) sets out the presumption in favour of sustainable development that is in accordance with the development plan. The principle of the proposed use is supported by Council Policies relating to expanding and enhancing Torbay's tourism offer as set out in the Local Plan Policy TO1. The extension of leisure facilities and public benefit is in accordance with Policy E4 of the Neighbourhood Plan subject to a public seating scheme being provided and implemented.

The proposal has been assessed in terms of its visual impact on the Urban Protected Landscape Area and is considered acceptable subject to a scheme of enhanced planting. The proposals would cause a "less than significant" level of harm on the heritage assets of listed houses in Berry Head Road and the Brixham Town Conservation Area, subject to details of appearance and materials. The public benefits are considered to outweigh the "less than significant" harms in this case.

Matters of neighbour amenity, flood risk and sustainable transport and pedestrian facilities have been considered and, further to Policies of the Local Plan, can be controlled by planning conditions over the permitted uses, hours of operation, and submission and compliance with an FRA.

The biodiversity aspects of the scheme can be satisfactorily controlled through conditions over external lighting and timing of any vegetation clearance.

Conclusions and Reasons for Decision

The proposal has been assessed in terms of the principle of the use, its visual impact, impacts on heritage, amenities of neighbours and users, highways, biodiversity, drainage and carbon impact. Subject to conditions, the proposed development is, considered to be in accordance with the policies of the NPPF (2021), the Local Plan and the Neighbourhood Plan.

Officer Recommendation

Grant permission to demolish an unlisted building in a conservation area and planning permission subject to the following conditions:

Conditions

1. FRA

Notwithstanding the submitted flood risk assessment, surface water drainage for the beach huts shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100-year storm event plus 40% for climate change.

If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement of the development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10-year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100-year storm event plus a 40% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100-year critical rainfall event plus 40% allowance for climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream. The development shall not be utilised until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

2. Archaeology WSI

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of archaeological evidence that may be affected by the development'

3. The demolition of the public seating shelter hereby permitted shall not commence until a scheme of public seating and picnic benches for the application site has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall include
- a) details of the treatment of the area once excavated including surfaces and any retaining structures;
 - b) Restoration of any damage to surrounding areas and
 - c) public benches and picnic benches which shall be made available for public use free of charge for the lifetime of the development.

The approved scheme shall be implemented and the seating made available for public use before the first use of the beach huts hereby permitted and retained thereafter unless otherwise agreed in writing with the LPA.

Reason: In the interests of continued community provision and enhancement of leisure facilities in the locality further to Policies TO1 of the Local Plan and E4 of the Brixham Peninsula Neighbourhood Plan.

4. Landscaping plan to include Wildflower meadow in accordance with EA: Prior to the first occupation of any of the development hereby approved, a scheme of soft landscaping enhancement shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a linear wildflower area in accordance with the submitted Ecological Assessment (Sunflower Ecological Consultancy dated 19.09.2021).

All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development

Reason: In the interests of visual amenity of the Urban Protected Landscape Area and biodiversity enhancement in accordance with Policies DE1, C5 and NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E.8 of the Brixham Peninsula Adopted Torquay Neighbourhood Plan 2012-2030.

5. Details of Seating areas

Prior to commencement of works to the restaurant roof top and the proposed green level seating areas hereby permitted, details of the relevant materials of the area surfaces, railings, fences and seating for each respective area shall be submitted to and agreed in writing by the LPA. Development shall take place in accordance with the approved details prior to the development to which it relates being brought into use and shall be retained as such for the lifetime of the development.

Reason: In the interests of the appearance of the development within the Conservation Area and setting of Listed buildings and the Urban Landscape Protected area further to Policies SS10, HE1, DE1 and C5 of the Torbay Local Plan and Policy BH5 of the Brixham Peninsula Neighbourhood Plan.

6. No structures on the external seating areas

No parasols, awnings, gazebos or other structures over 1.2m high either temporary or permanent shall be installed on the seating areas hereby permitted.

Reason: In the interests of the appearance of the development within the Conservation Area and setting of Listed buildings and the Urban Landscape Protected area further to Policies SS10, HE1, DE1 and C5 of the Torbay Local Plan and Policy BH5 of the Brixham Peninsula Neighbourhood Plan.

7. Details of beach hut materials and finishes

Prior to the commencement of above-ground works of the proposed beach hut area hereby permitted, details of colour, type and texture of all external materials, including hard-surfaced areas and restoration of any damage to surrounding areas, to be used in the construction of the beach hut area including the beach huts shall be submitted to and approved by the Local Planning Authority. The development shall, thereafter, be implemented in accordance with the approved details.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1, HE1 and SS10 of the Torbay Local Plan 2012, Policy BH5 of Brixham Peninsula Neighbourhood Plan 2019 and the National Planning Policy Framework.

8. Hours of use until 10pm

The external seating areas for the restaurant shall only be operated for the use hereby permitted between the hours of 10am to 10pm on any day. Outside those hours the areas shall be closed and no customers, visitors or employees shall be permitted to remain in the area.

Reason: In the interests of the amenities of the Local Green Space and neighbouring occupiers further to Policy DE3 of the Torbay Local Plan and Policy E.4 of Brixham Peninsula Neighbourhood Plan 2019.

9. Cycle parking provisions

Prior to the first occupation of each part of the development hereby permitted details of a scheme of cycle parking for users of that respective part of the development shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and retained thereafter.

Reason: In the interests of reduction of carbon fuel usage and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

10. Lighting external

No external lighting of the development shall be installed unless otherwise agreed in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details and retained in that condition thereafter.

Reason: In the interests of the protecting the habitat of Greater Horseshoe Bats around the South Hams SAC and the amenities of Shoalstone Local Green Space and neighbouring occupiers further to Policies NC1 and DE3 of the Torbay Local Plan and Policy E8 of Brixham Peninsula Neighbourhood Plan 2019.

11. No veg clearance in nesting season

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

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

Info

1. Art 35

2. The South West Coast Path is a public right of way. Please be aware that obstructing a public right of way is an offence. The highway authority has the right to demand you remove any obstruction you cause.

3. DCC HER Archaeological advice [Development management - Historic Environment and planning in Devon](#)

Relevant Policies

Torbay Local Plan:

TO1 Tourism, events and culture

DE1 Design

C5 Urban Landscape Protected Areas

SS10 Conservation and the historic environment

HE1 Listed buildings

DE3 Development amenity

TA1 Transport and accessibility

TA2 Development access

SS8 Natural environment

NC1 Biodiversity and geodiversity

ER1 Flood risk

ER2 Water management

Neighbourhood Plan

BH5 – Established Architecture

E.4 – Local Green Spaces – 9 Shoalstone Pool