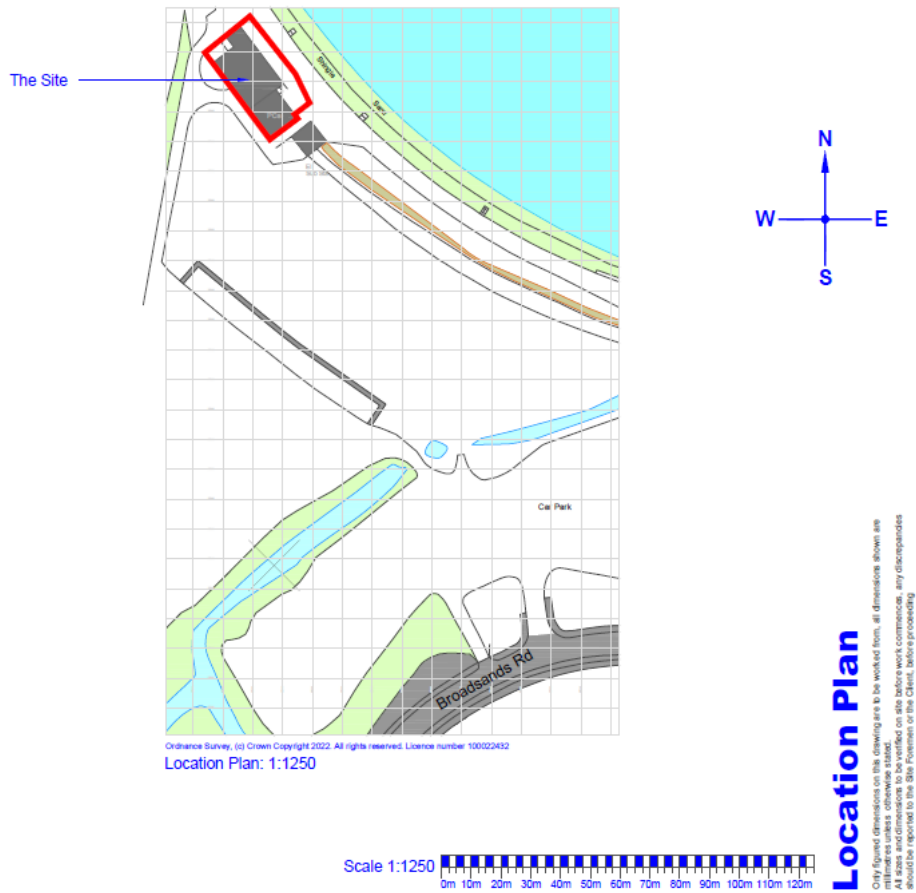


Application Site Address	Beach Cafe Broadsands Road Paignton TQ4 6HL
Proposal	Formation of additional decking areas and ramps, alterations to existing decking, extensions and alterations to building, formation of sports equipment storage and changing area, refuse area, ground floor retail unit, internal alterations to increase internal seating, solar PV and associated works.
Application Number	P/2022/0811
Agent	Mr. Terry Dillon
Applicant	Mr. Michael Smith
Date Application Valid	20/07/2022
Decision Due date	14/09/2022
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>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 and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
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	Verity Clark



## **Site Details**

The application site comprises of a split level two storey building located on the promenade opposite Broad Sands Beach. The site is currently in use as a restaurant/takeaway. Access to the building by the public is gained via steps or a ramp up from the promenade. The building features a flat roof with rendered walls and large areas of glazing on the promenade facing elevations and a large external terrace area on the south east of the building. The rear, facing towards the green is more utilitarian in nature featuring a brick lower ground floor level facing the public toilets.

The site is located in the Countryside Area, Undeveloped Coast and a Coastal Change Management Zone. The site is located within Flood Zone 3 and the promenade is part of the South West Coast Path. The site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe Bats associated with the South Hams SAC. The Brixham Peninsula Neighbourhood Plan identifies the site as a Settlement Gap E3-3. The site is also adjacent to a County Wildlife Site – Broad Sands Marsh.

## **Description of Development**

The application seeks permission for the formation of additional decking areas and ramps to the front promenade facing elevation, alongside alterations to the existing decking area. The proposal also seeks consent for an extension to the existing building alongside an entrance extension and overall alterations to the building including the use of cladding, new fenestration and solar PV. A sports equipment storage and changing area will be relocated to the lower ground floor level and a new refuse area formed. At ground floor level a Class E retail unit will be formed alongside internal alterations to increase the restaurants internal seating.

## **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:

### **Development Plan**

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030

### **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.

## **Summary Of Consultation Responses**

### **Highways:**

The Local Highway Authority generated a response to the withdrawn submission P/2022/0216 in which no objections were raised. The same would apply to this resubmission, Highway's would raise no objection. However, I would suggest that a review of the Pavement Cafe Licence is undertaken if necessary.

## **Police:**

The overall security of the building is key to deterring and preventing unauthorised access as such any new external doors to the bin store, café, and storerooms should be sourced as tested and certificated products to a minimum standard of PAS 24 2016 or LPS 1175 Issue 8 A1 or equivalent.

The external furniture should be of a robust, vandal and graffiti resistant design and if the intention is to leave any furniture outside it should be fixed to the ground or decking to prevent them from being stolen or used to cause damage. Ideally the table and chairs should be a design that can be easily moved and stored inside the café or storage area when not in use.

Graffiti tends to attract further graffiti, it is advised that if it occurs it is removed as soon as possible. It is recommended that finishes that make this task easier to perform are considered. The surface of the elevations should be coated with an anti-graffiti coating or be designed for ease of maintenance.

It is welcomed that Venus operates an external CCTV system at all their locations, it is recommended that any new cameras are installed if required to cover new external entrance and exit points. A clear passport to compliance document should be in place prior to installation to ensure that the system and each camera have a clear purpose and needs of the user are being met.

I am not in a position to advise how to go about procuring or installing a monitored CCTV system, but an accredited NSI or SSAIB installers should be used. To search for a local accredited and approved CCTV installer please click on these links [www.nsi.org](http://www.nsi.org) or [www.ssaib.org](http://www.ssaib.org).

It is recommended that the premises is also fitted with a monitored intruder alarm. For police response, the system must comply with the requirements of the Security Systems policy, which can be found at Secured By Design under the 'Group Initiatives' tab.

It is also recommended that the cycle stands are secured with a steel ground anchor into a 300mm foundation.

I would respectfully request details on the lockers being provided to open swimmers, and how they will be secured in place.

*Secured By Design is a free from charge police owned crime prevention initiative which aims to improve the security of buildings and their immediate surroundings in order to provide safer and more securer places*

## **Drainage:**

Response dated 12/08/2022:

1. The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this building lies within Flood Zone 3.
2. Where sites are identified within Flood Zone 3 the developer is expected to submit a site specific flood risk assessment. The flood risk assessment must demonstrate that the development will be safe from all sources of flooding without increasing flood risk elsewhere and where possible will reduce flood risk overall. Within the site specific flood risk assessment I would have expected to see the sources and predicted depth of flooding being identified, the proposed finished floor levels for the ground floor, details of safe access and egress routes, details about what to do in an emergency including safe refuges, details of flood mitigation measures such as watertight doors, flood barriers, etc. being proposed including an emergency flood plan. In addition, I would expect to see that the owner of the building would be signed up to the Environment Agency's coastal flood warning system.
3. The submitted flood risk assessment fails to address the majority of the issues identified in item 2 above.
4. It should be noted that the Torbay Council Level 2 Strategic Flood Risk Assessment, Broadsands Overtopping Hazard Maps clearly identifies this site as having an extreme flood hazard and the depths of flooding would be considered a danger to all. This document is available on Torbay Council's website.

As a result, until the flood risk assessment has been updated to take full account of the risk of flooding and identifies all the requirements highlighted above, I would recommend that this planning application be refused.

Response dated 11/10/2022 following the submission of further information:

1. The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this building lies within Flood Zone 3.
2. The submitted information addresses my concerns raised in my previous correspondence however I would like to highlight that the maps identified by the developer from the Level 2 Strategic Flood Risk assessment are for a breach failure

of the coastal defence at Broadsands and not the Broadsands Overtopping Hazard Maps.

3. The owner/manager of the restaurant must be signed up to the Environment Agency's coastal flood warning system for Torbay.

Providing the development is constructed in accordance with the latest documents, I have no objections on drainage grounds to planning permission being granted.

### **DCC Ecology:**

Response dated 26/08/2022:

Given the application includes proposals extensions and alterations to an existing building, there is potential for protected species to be impacted by these proposals. Furthermore, the site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe bats associated with the South Hams SAC.

Currently there is insufficient detail provided by this application to confirm that these proposals will not have any impacts to protected and priority species and habitats. This is contrary to national and local planning policies, and as such the application cannot be determined until an ecology report from a suitably qualified ecological consultant has been submitted for comment. If this information is not submitted, then this application should be refused.

Please also advise the applicant that there is no such bird species as a 'Circling Bunting', as they have incorrectly referenced in paragraph 5.12 of the Design and Access Statement.

Response dated 25/10/2022 following the submission of further information:

Information provided sufficient. Conditions required.

Without mitigation, the proposals could result in a Likely Significant Effect on the Lyme Bay and Torbay SAC and Appropriate Assessment is therefore required.

### Appropriate Assessment

#### Impacts

Construction activities have the potential to generate waterborne and airborne pollutants which could impact the SAC.

## Mitigation

Construction would be undertaken following standard pollution prevention and dust control measures. These will be set out in a Construction Environmental Management Plan (CEMP) and implemented during the construction works.

Provided these mitigation measures are adhered to, there will be no Likely Significant Effect on the SAC.

## **Natural England:**

No objection. Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

## **Environmental Health:**

Having had an opportunity to review the above application I do not believe that the increase in opening hours until 8:00pm or other proposals in relation to the Venus café will have a direct impact on nearby residents when considered on their own merits. Although I would empathise with residents comments regarding people driving cars at speed down Broadsands Road or around the car park this anti-social behaviour has no direct link to the Beach Café and should be dealt with either by the Police or Parking Services. I would have thought if anything the prolonged opening hours for the café would mean more of a presence in the area which would help discourage such behaviour. If the proposals included activities such as loud music/entertainment etc.... then I would have suggested perhaps obtaining a noise consultant's report, but as it is I would have no objections.

## **Broadsands Churston and Galmpton Neighbourhood Forum:**

No response received.

## **Fire Brigade:**

No response received.

## **Environment Agency:**

No response received.

## **Natural Environment Services:**

No response received to this application.

Comments received for P/2022/0216 on 06/04/2022 for similar scheme:

No arboricultural objections are raised. However should the construction process require pruning of the adjacent tree or ground works/improvement works within the crown spread of the tree then we would need to be involved.

### **Summary Of Representations**

Publication type: Neighbour notification letters/site notice.

At the time of writing 5 letters of objection, 6 letters of support and 2 representations have been received (these are available to read in full online). Issues raised:

#### **Objection:**

- Overdevelopment
- Anti-social behaviour
- Safety concerns from late night swimming
- Height
- Width
- Drainage
- Plans do not detail all of lower ground floor use
- Landscaping and impact from weather
- Impact on parking in local roads
- Impact on views
- No additional substantial employment opportunity
- Permanent structure – impact on promenade
- Future development
- Potential for damage to building
- Emergency vehicle access
- Scale
- Impact on Water Sports Business
- Poor design
- Safety of pedestrians
- Location of bicycle parking
- Location of store/offices and changing rooms

#### **Support:**

- The proposal is fully in the spirit of community aspirations stated in the Brixham Peninsula Neighbourhood Plan
- Improvement to a thriving, quality business and visitor amenity
- Tourism



- Local Plan supported the development of a Water sports centre under policy TLP SC2
- Does not restrict promenade
- Improved facilities
- Encourage an increased use of the beach
- Traffic volumes seasonal
- Parking charge income
- Local employment
- Increased spend for local economy
- Aligns with adopted Destination Management Plan
- Does not increase height

#### Representations:

- Impacts from evening opening
- Safety
- No lighting along the promenade or car park
- Noise
- Increased congestion
- Height
- Future development
- Impact on area
- Impact on promenade

#### **Relevant Planning History**

P/2022/0216 Extension of existing raised balcony seating, formation of sports equipment storage, meeting rooms, ground floor retail unit. Internal alterations to increase internal seating. Withdrawn 14/04/2022

CN/2018/0043 Discharge of Condition 1 re: P/2017/1291 (Removal of front canopy and covering over external store area. Refurbishment of existing building, including access ramps, terrace with glazed screen and various external alterations) Condition 1 - Tree Protection. Approved 17/04/2018

P/2017/1291 Removal of front canopy and covering over external store area. Refurbishment of existing building, including access ramps, terrace with glazed screen and various external alterations. Approved 9/03/2018

#### **Planning Officer Assessment**

## Key Issues/Material Considerations

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

### **Planning Officer Assessment**

1. Principle of development
2. Impact on Visual Amenity and Landscape
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology & Biodiversity
6. Flood Risk and Drainage
7. Sustainability

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

The proposal is for extensions and works to the existing cafe/restaurant building including the formation of a ground floor retail unit. The site is designated as countryside under Policy C1 of the Torbay Local Plan. Policy C1 states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy C1 goes on to state that outside settlement boundaries, the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment:

- 1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;*
- 2. Development required for forestry, horticulture or agriculture;*
- 3. Touring caravans and tents;*
- 4. Tourist facilities appropriate to the rural area;*
- 5. Development associated with outdoor sport and recreation appropriate in a rural area;*

6. *Sensitive conversion, alteration and extension of existing buildings;*
7. *Essential improvements to the highway network; and*
8. *Appropriate renewable energy development.*

The site is also located in the undeveloped coast where Policy C2 seeks to conserve the character of the undeveloped coast and seek to enhance its distinctive landscape, seascape, biodiversity, geological, recreational and cultural value. Development will not be permitted in the undeveloped coastal area unless proposals satisfy the following requirements:

1. *Maintain the unspoilt character of the coastline, coastal landscape and seascape;*
2. *Maintain or improve public access for recreation; and*
3. *Provide sensitively designed development, including tourism uses, where there are clear economic or sustainability benefits that cannot be realised in alternative locations.*

*Development outside the undeveloped coast which may harm the intrinsic character of the area will be assessed with regard to visual impact.*

*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, historic or geological assets.*

Policy E3 Settlement Gaps of the Neighbourhood Plan states that within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported. The site is located in the Neighbourhood Plan settlement gaps E3-3.

The proposal seeks to extend an existing cafe building to improve the existing facilities. The proposal will also provide the formation of a ground floor retail unit. Policy C1 allows for sensitive extensions of existing buildings, tourist facilities appropriate to the rural area and development associated with outdoor sport and recreation. It is considered that the proposal would accord with these forms of development which are considered to be acceptable in principle within the countryside area. In respect of the undeveloped coast designation, given the proposal relates to an existing building it is considered reasonable to consider the criteria given under 'the developed coast'. It is considered that the expansion and improvement of the existing facilities on the site and the provision of additional tourism uses would benefit the economy. Consideration of the impact on the landscape character and appearance will be analysed in detail later in the report.

As the proposal is considered to comply with Policy C1 of the Local Plan, Policy E3 of the Neighbourhood Plan is considered to be adhered to. This is on the consideration of principle; other material planning considerations will be detailed later in the report.

The site is also located within a coastal change management area where Policy C3 of the Local Plan notes that the Council will support measures that are compatible with or actively support coastal change management. Given the proposal relates to an existing building and use which directly links to users of Broadsands beach, providing the proposal does not adversely affect the natural and historic environment of the area, including geodiversity, maritime archaeology, marine ecology and the integrity of sites protected under European legislation, the principle of this form of development within this designation is considered acceptable.

The site is located outside of the town centre and proposes a new retail unit (Class E) with a floor area of approximately 25.6m<sup>2</sup> although shown as a combined shop and takeaway on the proposed floor plan. As the proposal is for a retail use outside of the town centre in accordance with paragraph 87 of the NPPF a sequential test is required unless the proposal is in accordance with an up to date Local Plan. Policy TC3 of the Local Plan states that new out of centre retail development must meet the following criteria:

1. Proposals should not cause any unacceptable impacts either individually or cumulatively on the vitality and viability of existing and planned centres in the catchment area of the proposal, including site proposals in the Local Plan and/or neighbourhood plans. Proposals for Use Class A1 retail comparison or convenience goods over 500 square metres gross, and town centre uses over 500 square metres gross, must provide a retail impact assessment;
2. No other town centre or edge-of-centre site is suitable, available or viable; and
3. Development would improve the spatial distribution of accessible facilities throughout the Bay and help to achieve greater social inclusion.

Given the size and location of the proposed unit within the key tourist area of Broadsands beach and promenade, and the presence of the existing café use and adjacent business, the proposed retail unit would serve the users of the area, enhancing the existing tourist provisions of the area and would therefore not result in a detriment to the vitality and viability of the town centre. A sequential test is not

considered to be required in this instance and the proposal, with the addition of the recommended condition is considered to accord with Policy TC3 of the Local Plan.

A condition removing the permitted development rights of the Class E shop to other Class E uses, other than those related to food and the change of use from Class E to other use classes, is recommended given other uses would likely be inappropriate in this rural location.

The principle of the development is therefore considered to be acceptable and in accordance with Policies C1, C2, C3 and TC3 of the Local Plan and Policy E3 of the Neighbourhood Plan.

## **2. Impact on the character and appearance of the streetscene and surrounding area**

Paragraph 126 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. In addition, paragraph 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design and government guidance on design'. Policy DE1 Design 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 BH5 of the Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area and Policy E3 of the Neighbourhood Plan states that no development that visually and or actually closes the gaps between urban areas identified as settlement gaps will be supported.

At ground floor level the existing building features an indoor restaurant seating area with associated kitchen, storage area and toilets. An existing service hatch operates as a takeaway and the restaurant is served by a raised outdoor seating terrace accessed externally via the existing ramp or internally through the restaurant. Benches are set up as outside seating associated with the restaurant on the promenade. The northern section of the building is also used for surf storage and as a changing area.

The application seeks permission for the formation of additional decking areas and ramps on the north east promenade facing elevation. A lower deck area which will sit 34cm above promenade level will provide an area of outside seating, area for open swimmers including lockers in addition to cleaning, chair and bin storage. Ramps and steps will lead to a higher area of decking 1.306m above promenade level which will sit in front of the building and will include a semi-circular area for raised seating

on the northern corner of the building. The existing raised decking area on the south east of the building will not be increased in footprint but will be split into two sections, the smaller remaining at the same height, the larger raised 30cm in height.

Alterations to the existing building are proposed including a new entrance porch, new fenestration across the whole building including bi-fold doors to the promenade elevation, installation of wooden cladding to areas of the building and terraces, a 'log finish' with post and glazing balustrading and rope handrails to the decking areas. An extension to the north west of the building is also proposed to facilitate a freezer and chiller room associated with the restaurant at ground floor level and a dedicated bin storage area at lower ground floor level. The proposed elevations show that the proposal will result in an increase in height of the existing building by approximately 20cm and will feature solar PV on the roof.

The internal reconfiguration will allow for a greater level of internal restaurant seating at ground floor level, whilst retaining the takeaway and adding a small retail unit and moving the surf storage and changing area to the lower ground floor, accessible from the rear of the building.

The application follows on from withdrawn application P/2022/0216 which sought to extend the existing raised terrace area significantly forward towards the promenade. Officers felt that the proposed raised balcony seating and extension would be highly prominent and would be forward of the building line. It was considered that the proposal would be incongruous and have a poor design that comprises an important vista and promenade.

The current application seeks to overcome these concerns with tiered levels of decking. The first and closest to the promenade is 34cm above promenade level and will formalise what is currently used as an outside seating area by the restaurant. The next tier, which does include a semi-circle section which extends directly next to the promenade, sits 1.306m above promenade level and a section of the existing terrace area will be raised to 1.606m above promenade level. It is considered that the proposal will not appear as an overly dominant feature or result in an overbearing impact on the users of the promenade given the tiered design of the proposed terrace areas, which will utilise lightweight materials such as glass balustrading to reduce their dominance and allow views in and through this section at the front of the site. Whilst a section of the promenade will be permanently used for the restaurant, it is considered that the important views and vistas of the area and promenade will be retained given the lightweight nature of the development at the front of the site and the proposal will not result in the closure of gaps between urban areas, nor the loss of the panoramic view of the gap identified on page 104 of the Neighbourhood Plan.

The extension and entrance porch to the existing building are considered to be of a suitable size, scale and visual appearance and the works to the existing building and terrace are considered to modernise the existing building, improving its overall visual appearance. It is considered reasonable to add a condition requiring details of the external materials to ensure a good quality finish is achieved.

It is therefore considered that the proposal will result in a positive enhancement to the area and will be in line with the aspirations of Appendix 2 A1.1.7 of the Neighbourhood Plan 'Priority projects to evolve from Neighbourhood Plan policies' which states:

*Broadsands Beach facilities for visitors. Both the immediate community and those regular visitors to Broadsands from the rest of the Peninsula and beyond believe the dilapidated state, poor design and inadequate facilities of the existing beach-head buildings are long overdue major improvement or a complete rebuild.*

With the addition of the recommended condition the proposal is considered to accord with Policy DE1 of the Local Plan and Policies BH5 and E3 of the Brixham Peninsula Neighbourhood Plan and the guidance contained within the NPPF.

### **3. 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 and disturbance from the hours of operation and the potential for increased levels of anti-social behaviour. The nearest sensitive uses are the houses on Broadsands Road/Sycamore Close – the nearest window is approximately 274m away from the restaurant and terrace area.

The hours of operation of the restaurant are not currently controlled by planning condition. The proposed hours of opening are listed on the application form as 9am - 5pm for the proposed shop and 9am – 8pm for the restaurant.

The Senior Environmental Health Officer has considered the proposal and the concerns of nearby residents and has noted that they do not believe that the increase in opening hours until 8:00pm or other proposals in relation to the Venus

café will have a direct impact on nearby residents when considered on their own merits. Although comments regarding people driving cars at speed down Broadsands Road or around the car park are noted, this anti-social behaviour has no direct link to the Beach Café and should be dealt with either by the Police or Parking Services. The officer has noted that they consider it likely that the prolonged opening hours for the café would mean more of a presence in the area which would help discourage such behaviour. As such there is no objection from an amenity standpoint.

Concerns have also been raised about the safety of users of the beach and the potential increase in night time swimming as a result of the proposal. There is not considered to be any direct link to night-time swimming and the increase in capacity of the existing restaurant. As the current restaurant does not have a restriction on their hours of operation they could currently operate into the evening without any planning restrictions. It would therefore not be reasonable to object to the current application on this basis.

As such the proposal is considered to be acceptable with regard to amenity in accordance with Policy DE3 of the Local Plan.

#### **4. Transport issues**

Policies TA1 and TA2 of the Local Plan promote sustainable locations for new developments and require adequate accessibility and safety to meet the needs of the development. Policy TA3 of the Local Plan seeks car and cycle parking standards to be met. Policy BH8 of the Brixham Peninsula Neighbourhood Plan states that all new development should comply with the relevant adopted standards.

The application site is located on the promenade of Broadsands beach. The site is served by a nearby public Pay and Display car park, with level footpath along the promenade which forms part of the South West Coast Path route. The application site is considered to be in a sustainable and accessible location and the existing nearby parking facilities are considered to be sufficient to cope with any proposed increase in visitor numbers as a result of the expansion.

Concerns have been raised about the narrowing of the promenade and the ability of emergency service vehicles to access the site. The Fire Brigade were consulted but no response was received however the Highways Department have confirmed they have no objection to the proposal. Whilst the terrace expansion will formalise a section of the promenade for restaurant use, the majority of the area to be used is currently occupied by benches in association with the restaurant, thereby resulting in little change for pedestrian users of the promenade. In respect of vehicles, and



emergency service vehicles, at its narrowest point a gap of approximately 5.95m will be retained which is considered to be sufficient for the access of emergency vehicles.

The provision of cycle parking facilities to serve the additional seating for the café is required by Appendix F of the Local Plan and cycle parking has been detailed on the proposed site plan on the eastern corner. A condition requiring full details of the proposed cycle storage is recommended to ensure provision of a suitable scheme.

With the addition of the recommended condition, the proposal is considered to comply with Policy TA1, TA2 and TA3 of the Local Plan and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

## **5. Ecology**

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 site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe bats associated with the South Hams SAC. Sugar Loaf Hill and Saltern Cove SSSI and Local Nature Reserve are located approximately 560m to the north of the site.

An ecological appraisal was submitted with the application (Moor to Sea Ecology, October 2022). No evidence of bats was reported and external crevices with suitability to support roosting bats are limited to a gap between the wall top and the metal edge on the southern aspect of the terrace. As no works will be undertaken on the southern elevation, the report confirms it is considered appropriate to retain the crevice in situ, however if this changes the ecologist should be contacted. No nesting birds were noted however it is recommended that works are undertaken outside of

bird nesting season. No other protected species will be impacted by the proposal and no further surveys will be required. It is noted that that indirect effects such as pollution or dust during construction could impact on the SAC and a standard pollution prevention and dust control measures should be set out in a construction environmental management plan (CEMP) and implemented during the construction works. Biodiversity net gain measures in the form of 5 bat boxes, 3 bird boxes, a hedgehog house and flowering native plants are recommended.

Devon County Ecologist had no objection subject to a CEMP condition, no external lighting and adherence to the conservation action statement within the ecology report.

The application has been subject to Habitat Regulations Assessment screening. It has been determined that without mitigation, the proposals could result in a Likely Significant Effect on South Hams SAC. The site lies within a Sustainance Zone which are zones defined as any area within 4km of a designated roost are therefore include critical foraging habitat and commuting routes. Hedges are classed as foraging habitat and potential commuting routes. The hedge immediately adjacent to the site may, therefore, be used by greater horseshoe bats. This habitat could be adversely impacted by additional illumination during both construction and operational phases, and illumination of the hedge must be avoided at all times and no external lighting shall be installed on the building. All construction activities must be carried out within daylight hours. Provided these mitigation measures are adhered to via a CEMP and no external lighting condition, there will be no Likely Significant Effect on the SAC.

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.

## **6. Flooding and drainage**

Policy ER1 Flood Risk 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 and Flood Zone 3 and Torbay Council Level 2 Strategic Flood Risk Assessment, Broadsands Overtopping Hazard

Maps clearly identifies this site as having an extreme flood hazard and the depths of flooding would be considered a danger to all.

The application is accompanied by a site specific flood risk assessment which demonstrates that the development will be safe from all sources of flooding without increasing flood risk elsewhere and where possible will reduce flood risk overall. The Drainage Engineer has confirmed that providing the development is constructed in accordance with this documents, there is no objections on drainage grounds to planning permission being granted.

The sequential test is not required in this instance, in line with footnote 56 of the NPPF which states that the sequential test is not required for small non-residential extensions (with a footprint of less than 250m<sup>2</sup>) and change of use; except for change of use to a caravan, camping or chalet site, or to a mobile home or park home site.

With the addition of this recommended condition, the proposal is considered to be in accordance with Policy ER1 and ER2 of the Local Plan.

## **7. 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. The proposal also seeks to add solar PV to the roof which is considered to positively address Policies SS14 and ES1 of the 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.

### **Local Finance Considerations**

#### **S106/CIL**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

#### **EIA/HRA**

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.

### **Planning Balance**

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development. As such it is concluded that the planning balance is in favour of supporting this proposal.

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

The proposal is considered acceptable, having regard to the Local Plan, the Brixham Neighbourhood Plan and all other material considerations.

### **Officer Recommendation**

Approval: Subject to;

The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.

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 and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

## **Conditions**

### **1. CEMP**

Prior to the commencement of development, a Construction and Environmental Management Plan, which will include details of environmental protection throughout the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure the impacts of construction are mitigated from the outset.

### **2. External Materials**

Prior to their installation details of colour, type and texture of all external materials, including hard-surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those details as approved and retained thereafter.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1 of the Torbay Local Plan 2012 and Policy BH5 of Brixham Peninsula Neighbourhood Plan.

### **3. Bicycle Storage**

Prior to the first use of the development hereby permitted, provision shall be made for the storage of bicycles in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

#### **4. Ecology**

Development shall take place in accordance with the recommendations and mitigation given in the 'Ecological Appraisal' dated October 2022, including precautions to prevent threat of harm during construction works, timings of works, no work to be undertaken to the gap between the wall top and the metal edge on the southern aspect of the terrace without confirmation from the ecologist and the installation of 5 bat boxes, 3 bird boxes, a hedgehog house. The bat and bird boxes and hedgehog house shall be installed prior to first use of the extensions hereby approved and shall be retained thereafter.

Reason: To safeguard protected and/or priority species, and to ensure biodiversity net gain in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

#### **5. Bird 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. A record of such a check shall be made and made available to the Local Planning Authority upon request.

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

#### **6. Flood Risk**

The development shall proceed strictly in accordance with approved flood risk assessment reference 'P2022-0811-2' and prior to the first use of the terrace extensions hereby approved, the owner/manager of the restaurant must be signed up to the Environment Agency's coastal flood warning system for Torbay. These measures shall be adhered to for the lifetime of the development.

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 Torbay Local Plan 2012-2030.

## **7. No External Lighting**

No additional external lighting shall be installed on the building or terrace areas.

Reason: To safeguard legally protected species, including safeguarding foraging paths for legally protected bats, and in the interests of biodiversity in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

## **8. Class E Shop**

The Class E shop hereby approved shall only be used as Class E(a) and Class E(b) or as an ancillary takeaway use to the restaurant of The Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provisions equivalent to those Classes in any Statutory Instrument revoking and re-enacting that Order, and for no other purpose, including any use falling within Class E.

Reason: To prevent uses which might be inappropriate for this rural location in accordance with Policies C1, C2 and C3 of the Adopted Torbay Local Plan 2012-2030.