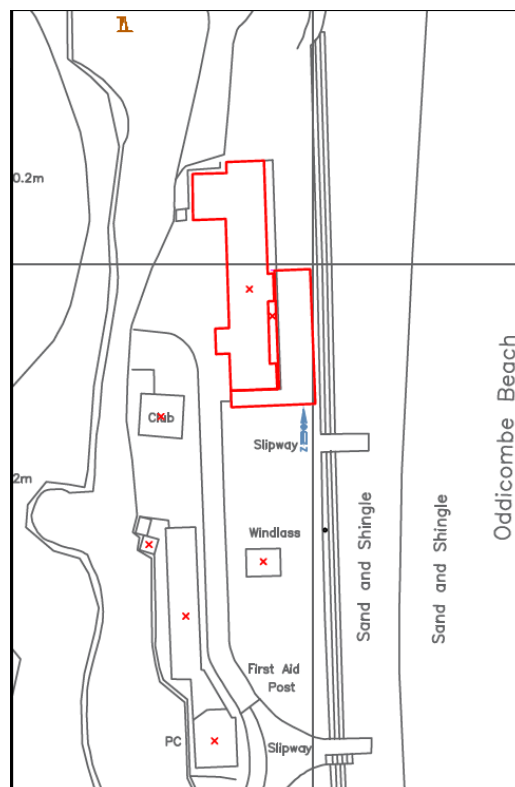


Application Site Address	Café, Oddicombe Beach, Torquay, TQ1 3NZ
Proposal	Construction of gazebo. (Part Retrospective.)
Application Number	P/2023/0205
Applicant	Mr Mark Buck
Agent	McKenna Architectural Design
Date Application Valid	01.03.2023
Decision Due Date	04.05.2023
Extension of Time Date	Requested from agent
Recommendation	<p>Approval, Subject to;</p> <p>The receipt of a Site Specific Flood Risk Assessment that demonstrates that the development is safe from all risks of flooding, to the satisfaction of officers.</p> <p>Conditions as detailed.</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	<p>The application has been referred to Planning Committee because it is on land owned by Torbay Council, is a retrospective addition to the existing Cafe, and the application has received objections from members of the public, the Council's constitution requires that the application be referred to the Planning Committee for determination.</p>
Planning Case Officer	Katie Greer



Site Details

Description

The application site sits to the north of the Babbacombe Downs Road and to the west of the sea and is approximately 187 square metres in size. The site is a retail unit that exists as a Café called Three Degrees West, which includes an outside seating area on the public promenade. The site is accessed from Oddicombe Beach Hill. Three Degrees West is a cafe and restaurant located in the Babbacombe area. The cafe is situated at the bottom of Oddicombe Beach Hill on Oddicombe Beach and has been operating for the past eight years and is owned and operated by Oddicombe Beach Resort TLD.

The cafe is located on the ground floor of a building and has outdoor seating on the promenade/terrace to the front overlooking the beach and sea. The surrounding area is a popular tourist destination, with a mix of residential properties, hotels, and other cafes and restaurants in the vicinity.

The site is located within Flood Zones 2&3 and is sited within the Undeveloped Coast, Countryside Zone, Coastal Change Management Area and the Core Tourism Area. The site is also next to the SSSI, the Torbay Marine SAC and Marine Conservation Zone.

Description of Development

The application seeks permission for the construction of a retrospective gazebo on the public promenade to cover the seating area to the front of the business.

The Gazebo is finished in aluminium, being a white powder coated structure bolted to existing concrete. The roof will be aluminium, also white powder coated, with a pivot sliding frame.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice 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:

Relevant Planning History

None.

Summary of Representations

11 letters of support have been received. Comments raised include:

- It provides facilities

- Makes tourist facilities better
- Provides/retains jobs

2 objections have been received. The summary of concerns is as follows.

- Impact on Local Area
- Over development
- Not in keeping with Local Area
- Privacy/overlooking
- Sets precedent
- Traffic and Access

Summary of Consultation Responses

Torquay Neighbourhood Forum

No comments.

Community Safety Officer:

No objections.

Drainage Officer:

The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this development lies within Flood Zone 3.

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 being proposed including an emergency flood plan and confirmation that the owners will be signed up to the Environment Agency's coastal flood warning system.

The only submitted flood risk assessment is the simple tick sheet which is not valid within Flood Zone 3 as it fails to address the points highlighted above.

With regards to surface water drainage as the proposal is for the construction of a gazebo over an area that is already impermeable. I can confirm that there is no requirement to attenuate the surface water run-off from the gazebo.

Before this planning application is approved the developer must submit a site specific flood risk assessment to address the points highlighted above.

Highway Authority:

With respect to the application, it appears that customer seating is already placed and utilised in the area where the proposed Gazebo is to be.

Therefore, the Local Highway Authority would raise no objection to this becoming covered seating

Devon County Council Ecologist:

No impact on the SSSI, the Torbay Marine SAC or Marine Conservation Zone, as the proposed development is on the existing hard standing, and there has been no change to the lease, meaning no increase to the capacity of the restaurant.

The only concern I would like to raise is that section 3 and 8 of the Design and Access Statement by McKenna Architectural Design states the gazebo will incorporate integrated lighting, of which I cannot see any further detail in any documents or design drawings. Details of the lighting would need to be specified.

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 and Biodiversity
6. Flood Risk and Drainage
7. Sustainability

1. The Principle of Development

The proposal is for the construction of a part retrospective gazebo, to create a covered outdoor seating area along the public promenade of Oddicombe Beach. The site is designated within the Flood Zones 2&3, the Undeveloped Coast, Countryside Zone, Coastal Change Management Area and the Core Tourism Area. The site is also next to the SSSI, the Torbay Marine SAC and Marine Conservation Zone. Policy C2 Coastal Landscape of the Torbay Local Plan states that on the undeveloped coast: The Council and partnership organisations will 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.

The proposal seeks a covered extension to an existing cafe building to improve the existing facilities. 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 and is small scale it is considered reasonable in this case to also 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 Oddicombe 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.

Policy TO1.1 states Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Tourist facilities and accommodation will be improved and modernised, and new tourism facilities provided, in order to attract new visitors, particularly overnight visitors, and increase overall spend. Growth sectors, such as sustainable tourism, will be actively encouraged.

The Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

1. Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions, subject to other Policies in this Plan. In particular proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark will be encouraged;

The principle of the development is therefore considered to be acceptable and in accordance with Policies C2, C3 and TO1 of the Local Plan.

2. Impact on Visual Amenity and Landscape

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 DE5 of the Local Plan states that extensions to domestic dwellings should not dominate or have other adverse effects on the character or appearance of the original dwelling or any neighbouring dwellings or on the street scene in general.

At ground floor level the existing building features an indoor restaurant seating area with associated kitchen, storage area and toilets. Existing bifold doors serve the restaurant with an outdoor seating area accessed externally on the public promenade. The northern section of the building is also used for tourist centre and museum.

The application seeks the regularisation of the retrospective gazebo covering the outdoor seating area on the eastern promenade elevation, which includes retractable side panels and integrated lighting and heating. The proposed gazebo will not be increasing the footprint of the existing outdoor seating area.

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 small nature of the proposed areas, which will utilise lightweight materials such as retractable side panels to reduce their dominance and allow views in and through 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.

Clarity has been sought on the purpose and form of “roller shutter blinds” detailed to the sides to the submitted drawings. Members will be updated on this matters including any proposed amendment to the recommendation and/or conditions following any response.

The proposal is, subject to adequate comfort on the purpose and form of the side roller shutter blinds, considered to be of a suitable size, scale and visual appearance.

The proposal is therefore considered to accord with Policies DE1 and DE5 of the Local Plan and Policy TH8 the Torquay 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.

Concerns have been expressed by objectors to the potential restricted access to the promenade the gazebo will make and the design of the gazebo. Highways have been consulted on the application and they have no objections to the proposal. The gazebo will leave an area of 1.7m-2m between the gazebo and the edge of the promenade leading to the beach steps. This is considered an acceptable distance to allow public access through each end of the promenade.

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

4. Impact on Highway Safety

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.

Concerns have been raised about the narrowing of the promenade and the ability of emergency service vehicles to access the site. The Highways Department have confirmed they have no objection to the proposal. Whilst the gazebo will formalise a section of the promenade for restaurant use, the seating area is currently retrospective and occupied by tables in association with the restaurant, thereby resulting in little change for pedestrian users of the promenade.

The proposal is considered to comply with Policy TA1, TA2 and TA3 of the Local Plan and The Torquay Neighbourhood Plan.

5. Ecology and Biodiversity

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

Devon County Council have been consulted on the application in regard to the impact the proposal may have on the SSSI, the Torbay Marine SAC or Marine Conservation Zone. They have confirmed that the development would have no impact as the proposed development is

on the existing hard standing, and there has been no change to the lease, meaning no increase to the capacity of the restaurant.

A concern was raised in regard to the integrated lighting on the gazebo, as no specification has been provided, a condition is recommended for the details of any lighting to be installed within the proposed development to be submitted for agreement with the LPA prior to implementation.

The proposal therefore complies with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.

6. Flood risk 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 Zones 2&3. The application is accompanied by a site specific flood risk assessment.

With regards to surface water drainage as the proposal is for the construction of a gazebo over an area that is already impermeable there is no requirement to attenuate the surface water run-off from the gazebo. There is no additional flood risk from the development.

In terms of the developments own flood risk from sources of flooding it has not been demonstrated that the development will be safe from all sources of flooding. The Council's Drainage Engineer has cited that the current flood risk assessment is inadequate, having failed to identify sources and predicted depth of flooding, 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 being proposed including an emergency flood plan and confirmation that the owners will be signed up to the Environment Agency's coastal flood warning system. These matters have been raised with the applicant and a revised flood risk assessment is to be submitted.

Subject to the receipt of a revised flood risk assessment that addressed the matters raised above the development is acceptable on flood risk grounds.

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 250m²) 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.

Subject to the matters above being adequately resolved, and the imposition of any necessary planning condition to secure any highlighted management/measures, 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 addresses Policies SS14 and ES1 of the Local Plan.

Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8 of the Act. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Local Finance Considerations

CIL

Not applicable to this development.

S106

Not Applicable to this application.

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 Torquay Neighbourhood Plan and all other material considerations.

Officer Recommendation

Approval, subject to:

The receipt of a Site Specific Flood Risk Assessment that demonstrates that the development is safe from all risks of flooding, to the satisfaction of officers.

The condition 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

Lighting

No internal or external lighting shall be installed or utilised except in accordance with a scheme and details approved beforehand by the LPA. For the avoidance of doubt no lighting which has already been installed within the development shall be switched on unless it forms part of the approved scheme.

The proposal therefore complies with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.