

**Application Number**

P/2014/0901

**Site Address**250 Babbacombe Road  
Torquay  
Devon  
TQ1 3TA**Case Officer**

Matt Diamond

**Ward**

Wellswood

**Description**

Construction of additional car parking following demolition of garden centre (retrospective), provision of two water tanks and a pump house, and insertion of mezzanine floor and exterior doors in existing building. (Revised description)

**Executive Summary/Key Outcomes**

The application is to insert a mezzanine floor in the former Focus store, now occupied by The Range, at 250 Babbacombe Road, Torquay, together with external alterations to the building, reorganisation of the car park to include 18 more spaces and external plant, following demolition of a greenhouse extension. The application has been implemented in full and is now entirely retrospective.

The mezzanine will be used for the sale of A1 goods (with ancillary cafe) in accordance with the extant permission for the store ref. 83.353, which has a condition restricting the use of the premises to a garden centre and for the sale of Do-It-Yourself materials. However, a concurrent application has been submitted with this one to vary this condition to allow the sale of a wider range of goods and allow occupation by The Range (ref. P/2014/0902). The two applications should be considered together, but decisions on each application need to be robust in their own rights.

The application is considered to be acceptable, subject to a s106 agreement to secure necessary highways infrastructure and a number of conditions which are listed at the end of this report. These include conditions to stop the sub-division of the store in order to pass the sequential test and require details of external lighting to overcome a number of complaints that have been made by local residents in this regard.

**Recommendation**

Conditional approval; subject to full payment of contributions or the signing of a s106 legal agreement to secure contributions prior to the agreed extended time period, or the application be refused, and no later than 3 months from the date of this committee or the application be reconsidered in full by the committee; conditions are listed at the end of this report, however final drafting and determination of appropriate planning conditions to be delegated to the Director of Place.

### **Statutory Determination Period**

The application was validated on 16.09.2014. An extension of time to determine the application has been agreed to 27.03.2015.

The additional time was agreed in order to allow the applicant to respond to the advice letter prepared by the Council's retail consultant dated 19.12.2014, which stated that insufficient information had been provided by the applicant to demonstrate compliance with the sequential test and to show that the proposal will not have a significant adverse impact on investment and town centre vitality and viability. The applicant submitted a Supplementary Retail Statement on 01.02.2015 and further advice was received from the Council's retail consultant on 01.03.2015 (letter dated 26.02.2015). The two advice letters have been circulated to Members.

### **Site Details**

The site address is 250 Babbacombe Road, Torquay. The site area is 1.18ha. It forms part of the former Walls Hill limestone quarry. It comprises the former Focus DIY store in the southeast corner (now in use by The Range) and associated car park to the north and west. Until 28 November 2014 the store building had been vacant for a number of years. In addition, until the latter half of 2014 a garden centre had operated on the site and the associated greenhouse extension and structures have since been demolished. Vehicular access is provided via a two way access onto Babbacombe Road to the southwest. Trees and vegetation line part of the northwest and southwest boundaries. Another line of trees and vegetation split the car park, but some of this vegetation has been removed.

The site is bounded by a scout hut and quarry business to the north, the former quarry cliff to the east, a public footpath and woodland to the south, and Babbacombe Road to the west. The wider area is characterised by housing to the west, Walls Hill public open space to the north and east (accessed via the footpath) and the Palace Hotel to the south.

The following designations in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan') affect the site and its setting:

- o Warberries/Walls Hill wildlife corridor passes through the north of the site
- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Area of Great Landscape Value (AGLV) adjoins site along east boundary
- o Coastal Preservation Area (CPA) adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Protection Zone (CPZ) in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south

- o Palace Hotel (northern edge) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

The following designations affect the setting of the site in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'):

- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Undeveloped Coast adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Change Management area in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel Ground (North) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

Wildlife corridors are not shown on the Policies Map for the emerging Local Plan, but they still exist and are shown on Map 3 of the Torbay Green Infrastructure Delivery Plan (April 2011), which is part of the evidence base for the new Local Plan.

The site is in an out of centre location. It is 580m from Babbacombe Local Centre, 970m from Wellswood Local Centre, 1.26 km from St Marychurch District Centre and 2 km from Torquay town centre. Babbacombe Road is a bus route with two regular services, 11 and 32/32A/32C.

### **Detailed Proposals**

The proposals are to insert a mezzanine floor in the store of 1,545 sq m for A1 retail use, including an ancillary cafe of 190 sq m, carry out external alterations to the building by adding new doors to the rear and side elevations, and reorganise the car park to provide 18 more spaces (159 to 177). Since the application was submitted it has been revised to include provision of two water tanks and a pump house in the north corner of the service yard. The application is also for retrospective consent to demolish the greenhouse extension and structures.

Taking the floor area of the demolished greenhouse extension into account, the net increase in gross floor area of the proposal is 1,005 sq m. This does not take into account the external area of the former garden centre. The plans indicate that the area to the rear and side of the building will be used as a garden centre.

A separate application has been submitted to vary the condition restricting the sale of goods on the premises, to allow more goods to be sold other than garden centre and Do-It-Yourself materials (ref. P/2014/0902/VC).

The application has been implemented and is therefore now entirely retrospective.

### **Summary Of Consultation Responses**

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: Refurbishments of retail units are difficult to influence as companies such as the Range normally have their own criteria and requirements for layout and physical security. If BREEAM is being sought this would require written confirmation from the PALO BREEAM Assessor that the security measures proposed are appropriate and in line with the principles of Secured By Design.

Torbay Development Agency: No response.

Strategic Transportation: Initial comments stated £102,491 sustainable transport contribution required in accordance with Planning Contributions and Affordable Housing SPD based on net additional retail floorspace. The exact level of additional traffic and impact upon the highway network has not been clearly set out in the Transport Assessment, therefore unable to comment on whether or not the proposal is acceptable. The TA is not robust. Additional crossing points are required in the car park to facilitate better pedestrian access. Service vehicle tracking diagram required to show that service vehicles can exit the service yard in forward gear. Staff travel plan required.

Additional comments questioned validity of further technical information received. Traffic generation has calmed down since opening and travel patterns likely to revert to peaking at holiday times and peak weekends. No appropriate data provided for a recognised neutral time of year based on several stores instead of only one at Plymouth, which is in a different type of location. £102,491 contribution still required, including £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.

Community Safety: Initial comments were no comments to make. Further to complaints received about external lighting, additional comments raised an objection to the external lighting, due to light pollution. A condition was recommended accordingly. Further discussions confirmed the lighting does not constitute a statutory nuisance. In addition, a condition was recommended limiting the hours deliveries can be made to between 07:00 and 23:00 Monday to Friday, and between 07:00 and 13:00 on Saturdays to protect residential amenity from noise. (This would also need to be added to P/2014/0902 to vary condition 5 of the extant consent. It is assumed the recommendation extends to no deliveries on Sundays and bank holidays.)

Waste: Unlikely to be any waste issues.

Building Control: No comments - building regulations being dealt with by a private sector Building Control Body.

### **Summary Of Representations**

One representation received objecting to lighting on the building, which is described as excessively bright at night and asking for baffles to be installed to direct it down instead of illuminating the whole area.

### **Relevant Planning History**

P/2014/0902/VC: Variation of condition 5 of previous planning permission (P/1983/0353) to permit additional items to be sold: Pending consideration.

P/2012/1124/VC: Variation of Condition 3 to enable deliveries to take place between 7am and 11 pm on Mondays-Saturdays and 8am to 6pm on Sundays and Bank Holidays and the removal of Condition 5 pursuant to planning permission reference 83.353 allowing the sale of all goods within Use Class A1, thereby allowing the premises to be used as a supermarket.: Refused 28.01.2013 (Appeal dismissed 15.01.2014)

P/2012/1123/MPA: Alterations to the building associated with its conversion to a supermarket and extension to the internal mezzanine floor by 282 sqm for ancillary plant and offices [non sales area]; together with new hard and soft landscaping, car park layout and site access arrangements (following demolition of greenhouse extensions, 297 sqm).: Refused 15.01.2013 (Appeal dismissed 15.01.2014)

ZP/2011/0698: Change of use and refurbishment of existing vacant unit to provide a food store of approx 3,500sqm with 175 car parking spaces (pre-application enquiry):

ZP/2008/0267: Extensions To Site And Use As A Supermarket (pre-application enquiry): Approve 01.04.2008

P/2005/1102/AD: Illuminated/Non Illuminated Signs: Approved 11.08.2005

99/1415/PA: Variation of condition 5 of application 83.353 to allow the sale of pets, pet food and pet products: Approved 15.11.1999

98/0470/PA: Change of use from DIY superstore to a store for the sale of furniture, carpets, beds and soft furnishings: Approved 30.04.1998

98/0140/PA: Variation of conditions 3 & 5 of application 83.353, to allow use of store as a food supermarket, including alterations and changes to form additional car parking and servicing areas: Refused 15.01.1999

83.2843: Erection of greenhouse Extension, Walls Hill Quarry, 250 Babbacombe

Road, Torquay: Approved 17/02.1984

83.353: Erection of D.I.Y. Home and Garden Centre, with ancillary parking and service areas, Walls Hill Quarry, Babbacombe Road, Torquay: Approved 23.09.1983

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

The key issues are:

1. The Principle of the Insertion of the Mezzanine
2. Impact on Local Highways
3. Demolition of Buildings and Layout of Car Park
4. Impact on Residential Amenity from Light Pollution and Noise
5. Impact on Ecology from Lighting
6. Alterations to Building

1. The Principle of the Insertion of the Mezzanine

The mezzanine floor is 1,545 sqm. Taking into account the demolition of the greenhouse extension, the net increase in A1 floor area on the site is 1,005 sq m. As the site is in an out of centre location, the sequential test must be applied. An impact assessment is not required because the net increase in floor area is below the default threshold of 2,500 sq m set in the NPPF. Whilst Policy TC3 of the emerging Local Plan sets a threshold of 1,000 sqm for A1 retail selling comparison goods in out of centre locations, this is not adopted policy. Furthermore, objections have been received to this new policy, so limited weight can be given to it at the present time.

The applicant had originally provided insufficient information in the Supporting Retail Statement to demonstrate compliance with the sequential test. This related to the issue of flexibility and the requirement to search for alternative sites across the whole of Torbay. Therefore, a Supplementary Retail Statement was submitted. The Council's retail consultant has reviewed this document and concluded that the application now passes the sequential test, subject to a condition to stop the sub-division of the retail store.

Whilst an impact assessment is not required for the application, the applicant has predicted the turnover of the mezzanine and variation of Condition 5, subject to application ref. P/2014/902, to be £1.74m. The majority of trade draw is predicted to be from other out of centre stores in Torquay (64%), whilst 13% is predicted to be drawn from Torquay town centre and 4% from the Willows district centre. The predicted impact on both of these centres is 0.1% each. Whilst this impact appears to be very low, the Council's retail consultant believes limited weight can be given to this information as it is based on DIY goods shopping patterns only and therefore does not reflect the full range of goods being sold.

As the proposal passes the sequential test and an impact assessment is not required, the insertion of the mezzanine floor in the building is considered to be acceptable and in accordance with the relevant parts of Local Plan Policies SS and S6, and paragraph 24 of the NPPF. However, this is subject to a condition to stop the sub-division of the store.

## 2. Impact on Local Highways

As described under the Summary of Consultation Responses above, the Transport Assessment submitted with the application was considered by Strategic Transport officers to not be robust. The applicant submitted further technical information to demonstrate that the proposal will not result in additional trips, but Strategic Transport officers consider the robustness of this additional information to still be questionable.

However, following observation of the store operating on week days, Strategic Transport officers consider the proposal to be acceptable, subject to payment of a £102,491 financial contribution in order to: implement parking restrictions on local roads; carry out highway safety works to the junction at Babbacombe Road, St Anne's Road and Babbacombe Downs Road; and carry out sustainable transport enhancements in the area. The contribution is based on the net additional floor area of the proposal and associated trip generation.

The contribution will need to be secured in a s106 agreement. A condition to secure a Staff Travel Plan within three months of the date of decision is also required. Subject to these provisions, the proposal is considered to be acceptable and in accordance with Local Plan Policies TS, T1, T2 and T26.

## 3. Demolition of Buildings and Layout of Car Park

The demolition of the greenhouse extension is acceptable. The car park on the site has increased the number of spaces from 159 to 177, a gain of 18 spaces. This number accords with the Council's adopted car parking standards under Local Plan Policy T25. Cycle parking is required in accordance with Local Plan Policy T3. This should be secure and ideally covered. The Design and Access Statement states that 16 covered cycle spaces will be provided. A condition is required to ensure the cycle parking is provided within three months of the date of decision.

Pedestrian crossing points have been provided in the car park in accordance with Strategic Transport officers' comments. In addition, a tracking diagram has been submitted to show that an articulated vehicle can enter and exit the service yard in forward gear in the interests of pedestrian safety.

Pockets of soft landscape have been provided in the car park in order to soften its visual impact. This is acceptable and appears to be well maintained. A

Landscape and Ecological Management Plan (LEMP) is required by condition to ensure it is maintained in perpetuity in the interests of the amenities of the area. This should identify opportunities for biodiversity enhancements in accordance with paragraphs 109 and 118 of the NPPF.

#### 4. Impact on Residential Amenity from Light Pollution and Noise

External lighting has been added to the building and lighting columns have been erected in the car park. The lights appear to be LED and are very bright. A number of complaints have been received from local residents concerning the brightness of the lights and their impact.

Details of the external lighting have been requested from the applicant, but these details have not been forthcoming. It is understood that the lighting is now being switched off at 10:30pm in order to limit their impact.

As discussed with Community Safety officers, a condition is required to approve details of the lighting within three months of the date of decision. The details must demonstrate that there will be no detriment to residential amenity in the surrounding area.

Community Safety officers have raised no objections to the plant at the store in terms of noise. However, they have recommended a condition to limit the hours of delivery to between 07:00 and 23:00 Monday to Friday, and 07:00 and 13:00 on Saturdays in order to reduce disturbance to local residents. The condition should also prevent deliveries taking place on Sundays and bank holidays.

Therefore, subject to the conditions referred to, the proposal is considered to be acceptable and in accordance with Local Plan Policies EPS, EP4 and EP5.

#### 5. Impact on Ecology from Lighting

The northern part of the site is a designated wildlife corridor. Whilst an Extended Phase 1 Habitat Survey has not been submitted, the species considered most likely to be affected by the proposal are bats. Bats are light sensitive and excessive lighting can disrupt their commuting patterns when foraging for food. Therefore, it will be necessary for the lighting condition referred to under 4. above to require details of how the lighting will not have an adverse impact on bats.

#### 6. Alterations to Building

The alterations to the building are minor, comprising new doors on the rear and side elevations of the building to facilitate access to the area behind the building so it can be used as a garden centre. These alterations are acceptable.



## **S106/CIL -**

A financial contribution of £102,491 is required towards the following:

- o £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.
- o £33,491 to alter radius kerbs and islands at Babbacombe Road/St Anne's Road/Babbacombe Downs Road junction in the interests of pedestrian safety.
- o £6,500 for bus shelter on northbound side of Babbacombe Road near the store in the interests of promoting sustainable modes of travel.
- o £60,000 for a shared pedestrian cycleway along Babbacombe Road linking St Anne's Road and Asheldon Road in the interests of promoting sustainable modes of travel.

### Justifications

The contributions towards highway works are justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6 and T26.

The contributions toward sustainable transport measures are justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6, T1 and T2, and paragraph 32 of the NPPF.

### Status

The applicant has not yet confirmed whether they agree to pay the above s106 contributions. Therefore, heads of terms have yet to be agreed and instructions have not been sent to Legal Services to start preparation of the s106 agreement. An update will be provided verbally at committee.

### Conclusions

In conclusion, the proposed development is acceptable, subject to a condition to stop the sub-division of the retail store and other conditions listed at the end of this report. In addition, a s106 agreement to secure necessary highway safety works and sustainable transport enhancement measures is required. These are necessary in order to mitigate the impact of the development on the local highway network in terms of additional trips created.

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

01. Stop sub-division of store
02. Staff Travel Plan
03. Cycle parking provision

04. Landscape and Ecological Management Plan (LEMP)
05. Lighting details
06. Hours of delivery

**Relevant Policies**

- SS - Shopping strategy
- S6 - Retail development outside identified To
- CF2 - Crime prevention
- CF6 - Community infrastructure contributions
- L10 - Major development and landscaping
- NCS - Nature conservation strategy
- NC4 - Wildlife Corridors
- NC5 - Protected species
- EPS - Environmental protection strategy
- EP4 - Noise
- EP5 - Light pollution
- EP6 - Derelict and under-used land
- BES - Built environment strategy
- BE2 - Landscaping and design
- TS - Land use transportation strategy
- T1 - Development accessibility
- T2 - Transport hierarchy
- T3 - Cycling
- T25 - Car parking in new development
- T26 - Access from development onto the highway
- NPPF - National Planning Policy Framework