

Application Number

P/2015/0840

Site Address1 Southfield Road
Paignton
Devon
TQ3 2SL**Case Officer**

Matt Diamond

Ward

Clifton With Maidenway

Description

Erection of 4 storey block of flats comprising 12 no. 2-bed flats, with associated pedestrian/vehicular access and parking

Executive Summary/Key Outcomes

The application is to develop a 4-storey block of flats (12 no. 2-bed flats) on the grassed, amenity area of an existing block of flats (11 flats) at 1 Southfield Road to the northwest of Paignton Town Centre. The site is located within and on the edge of the Old Paignton Conservation Area.

A proposal for a similar development was refused in 2007; however, subsequent applications were approved, due to comments made by the appeal Inspector stating that the design would enhance the character and appearance of the Conservation Area.

Whilst the principle of developing housing on the site is considered to be acceptable by officers, the proposed design is considered to be unacceptable due to its height and lack of distinctiveness. It will harm the character and appearance of the Conservation Area accordingly. Furthermore, it will leave little useable amenity space for the residents of the flats or the existing flats. Therefore, despite the earlier decisions, the application should be refused. This takes into account the Policies of the new Local Plan and a recent appeal decision made with respect to the Gleneagles Hotel site in Torquay, which are new material considerations carrying significant weight. Officers' preference is for a lower storey building that is subservient to the historic host building on the site, whilst leaving adequate amenity space around it for residents to use and to plant shrubs and trees. This will help the development to blend into the landscape setting.

In addition, insufficient information has been submitted with the application to demonstrate that the proposal will not result in downstream flooding within the Critical Drainage Area (CDA). Detailed drainage proposals must be submitted with planning applications, with priority given to sustainable drainage systems where feasible. No infiltration testing has been carried out on the site to investigate whether a SUDS system is feasible and the submitted Flood Risk Assessment lacks detail and justification why this is the case.

Taking the above issues into account, the application should be refused.

Recommendation

Refusal; for the reasons set out in this report.

Statutory Determination Period

The application was validated on 04.09.2015. The statutory determination date is 05.12.2015 (13 weeks).

Site Details

The site is a backland site behind properties fronting onto Colley End Road to the northwest of Paignton Town Centre. It is approximately 0.23ha in area. It comprises the sloping, grassed amenity area of an existing 4-storey block of flats (11 flats), and the existing parking court and part of the access road to Southfield Road. The existing block of flats is outside the application site boundary, but is within the same ownership as the site.

The site is bounded by the gardens of residential properties fronting onto Redburn Road to the north, Southfield Road and Colley End Road to the east, residential properties and Kitson Hall fronting onto Colley End Road to the south, and Kirkham Court to the west. The immediate area is primarily residential. To the northeast of the site entrance are a Grade II listed warehouse and church.

The site is located within and on the boundary of the Old Paignton Conservation Area. Apart from this it is undesignated in the Adopted Torbay Local Plan 1995-2011 ('the current Local Plan') and Torbay Local Plan - A landscape for success 2012-2030 ('the new Local Plan').

Detailed Proposals

The proposed development is to develop a 4-storey block of flats (12 no. 2-bed flats) on the sloping, grassed amenity area of the existing block of flats on the site. It is a reapplication of a scheme granted planning permission in 2009 and which was granted an extended time limit to implement in 2012. The scheme remains unimplemented.

A new access drive will be constructed from Southfield Road over part of the existing access road. Unlike the existing access, this will go directly up the slope and will have a steep gradient of 1:7. This will lead to a rearranged parking court with a total of 26 car parking spaces. 23 of the spaces will provide 1:1 parking for the existing and proposed blocks of flats. 3 additional spaces will be provided for an adjoining site on the remaining part of the existing access road, which was granted planning permission for 3 dwellings fronting onto Colley End Road in April 2014. This development is tied to the current application by a condition that prevents occupation of the 3 dwellings until the access and car parking spaces, subject to the current application, have been provided and made available for use.

Summary Of Consultation Responses

Strategy and Project Delivery Team /Highways ('Local Highway Authority'): Comments awaited. These will be provided as a late representation.

Environment Agency: No comments to make - recommend consult drainage department. No longer statutory consultee on surface water drainage matters since 15 April 2015. Refer to Standing Advice, as site within CDA - follow SUDS hierarchy, by using infiltration as far as practicable.

Historic England: Comment that they were not consulted on 2009 scheme. Question whether the design is of sufficient quality for a conservation area context. This part of the conservation area has indifferent quality. Advise Council to take into account Para 137 of the NPPF - 'local planning authorities should look for opportunities for new development within conservation areas... to enhance or better reveal their significance.' These issues should be addressed. Recommend application is determined in accordance with national and local policy guidance, and on basis of Council's specialist conservation advice.

Engineering (on behalf of Torbay Council as Lead Local Flood Authority): A sustainable drainage option must be investigated before a decision is made to connect to the main sewer. No details provided in the application of the proposed surface water drainage system. Details of infiltration tests and detailed design of soakaways (if viable) must be provided before planning permission is granted. If ground conditions are not suitable, detailed design of surface water drainage system must be provided with discharge to combined sewer controlled to greenfield runoff rate.

South West Water: Cannot support application as the proposed means of surface water drainage specified on the application is by connection to the public combined sewer which is against South West Water policy. Note that the flood risk assessment references the use of a SUDs system which needs to be fully investigated prior to SWW giving any consideration to a connection of this element to the public sewer. As the site is within Critical Drainage Area, the Council's Engineering department and Environment Agency must be consulted.

Police Architectural Liaison Officer: Recommend the development is constructed to achieve full compliance of Secured by Design. Refuse and bike stores must have no windows and be fitted with a secure door with access only to residents. Car parking spaces should be allocated to prevent conflict over use. Other more detailed comments relating to the building provided.

Arboricultural Officer: The only constraining arboricultural feature is a large mature Cherry tree to the west of the existing car park, which enhances the Conservation Area. Further car parking is proposed beneath the tree and to the west, accessed by a new driveway under the canopy. No supporting tree report submitted. The prominence of the site at the confluence of junctions allied with

the steep local topography offers opportunity for significant tree planting to visually improve what is presently an area of low tree density, whilst breaking up the massing of the proposed building and improving the internal amenities of the scheme. The scheme is suitable for approval on arboricultural merit, however prior to any approval the following should be submitted:

- o Detailed methodology to create a no dig driveway solution and tree protective plan in accordance with B.S.5837:2012 should be submitted, together with Trees in relation to design, demolition and construction - recommendations to be installed prior to any commencement on site.

- o Detailed landscaping plan to including the planting of a number of specimen trees amongst other soft landscaping details.

Natural Environment Services: General comments made regarding biodiversity and greenspace/recreation: Any planning application on, or adjacent to, a greenfield or vegetated brownfield site has potential to impact biodiversity, requiring an Extended Phase 1 Habitat Survey. This will identify whether further protected species surveys are required. Existing features should be incorporated into landscaping proposals. Bird nesting and bat roosting sites should be incorporated into the built fabric if possible. Where no, or limited, greenspace and recreation provision is proposed onsite, a contribution should be sought in accordance with the Planning Contributions and Affordable Housing SPD.

Senior Heritage & Design Officer: Objects - similar to previous scheme that was refused (partly on design grounds) in 2007 and dismissed at appeal in January 2008, however the Inspector considered the design to be appropriate in the context of the Conservation Area. Therefore, subsequent applications were allowed. The policy context has changed since the scheme was last renewed in 2012 - the new Local Plan is due to be adopted and Policy SS10 carries significant weight. Considers the scheme will not sustain and enhance the Conservation Area, contrary to new Local Plan Policy SS10, and it will cause less than substantial harm to the Conservation Area, as it is not subservient to the host historic building and will be highly visible in the street scene. The proposed height and massing are considered inappropriate, and fail to take the opportunities available to improve the character and quality of the area (NPPF Para 64). This principle was supported by the Inspector in the recent Gleneagles appeal. A well proportioned building would make good use of this space and would have the potential to meet Policy SS10 of the new Local Plan. No Statement of Heritage Significance submitted.

Senior Historic Environment Officer: The site has known archaeological potential. A desk based assessment is not required, however standard archaeological condition should be imposed.

Urban Design Officer (Landscape): No response.

Strategy and Project Delivery Team - Energy Matters: No response.

Summary Of Representations

12 objections have been received; 8 of these are from residents of Kirkam Court to the west of the site. The following issues have been raised:

- Scale is overpowering and will dominate area
- Impact on drainage system
- Could increase flooding risks to properties below
- Cramped
- Will block light to neighbouring properties
- Integrity of retaining wall - rear of Redburn Road properties
- Impact on highways - increased traffic/parking
- Impact on privacy of neighbouring properties from overlooking
- Overshadowing
- Design does not take into account Conservation Area
- Insufficient parking
- No space for children to play
- Too large and high
- Will do nothing to improve the character of the neighbourhood
- No guest parking
- Nowhere to park in vicinity of site
- Not in keeping with surrounding properties
- Noise - traffic/parking
- A 50-year old tree will have to be cut down and it will also affect the wildlife in the field
- Too near old wall
- Overdevelop area.

Relevant Planning History

P/2012/0984: Extend time limit - formation of 3 dwellings with altered access drive and pedestrian/vehicular access - application P/2009/0574/PA: Approved 01/04/2014 (NB. This relates to the adjoining site, which shares the proposed access of the current application)

P/2012/0516: Extend time limit - Formation of 12 - 2 bedroom flats with pedestrian/vehicular access (revised scheme) application P/2009/0281/MPA: Approved 04.09.2012

P/2009/0574: Formation of 3 dwellings with altered access drive and pedestrian/vehicular access: Approved 04/09/2009 (NB. This relates to the adjoining site, which shares the proposed access of the current application)

P/2009/0281: Formation of 12 no. 2 bedroom flats with pedestrian/vehicular access (revised scheme): Approved 12/06/2009

P/2008/0560: Formation of 12 no. 1 bedroom flats with pedestrian/vehicular access: Approved 03/07/2008

P/2007/0007: Erection Of 12 No 1 Bedroom Flats With Pedestrian/Vehicular Access; Remedial Works To Existing Building: Refused 06/03/2007. (NB. This application was subsequently dismissed at appeal; however, the Inspector stated in his decision that "the scheme would enhance the character and appearance of the conservation area" and "would provide adequate parking for residents and visitors to the site".)

P/2006/0490/PA: Erection of 12 one bedroom flats: Refused 15/01/2006

P/2004/1131: Planning application for the erection of 3 dwellings with altered access drive and pedestrian vehicular access within the grounds of 1 Southfield Road: Approved 26/08/2004

P/2004/0079: Erection of two houses on land off Colley End Road within the grounds of 1 Southfield Road: Refused 04/03/2004

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Development
 2. Affordable Housing
 3. Design and Impact on Conservation Area
 4. Amenity Issues
 5. Access and Impact on Highways
 6. Car Parking
 7. Impact on Trees
 8. Biodiversity
 9. Surface Water Drainage and Flood Risk
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1. The Principle of the Development

At the time of writing this report the development plan comprises the Adopted Torbay Local Plan 1995-2011. The emerging Torbay Local Plan - A landscape for success 2012-2030 is a material consideration, which, since 12 October 2015, has carried significant weight, as it was found to be sound by the Inspector subject to main modifications. The Council will receive a report in December 2015 recommending adoption of the new Local Plan, subject to the main and additional minor modifications. The Council will make a decision whether to adopt the new Local Plan at the Council meeting on 10 December. If it is adopted, it will become the development plan for Torbay and the current Local Plan will no longer apply.

The site is part brownfield, part greenfield. The part of the site where the new

building is proposed is greenfield, as it comprises the grassed, amenity area of an existing block of flats sharing the same access. The NPPF excludes land in built-up areas such as private residential gardens, parks, recreation grounds and allotments from the definition of 'previously developed land' (brownfield). It also excludes land that was previously-developed, but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time. The existing access and parking court are brownfield; however, for the purposes of the application, it is considered that the site should be treated as greenfield, as this is where the new building will be sited. Therefore, the local and national policies promoting the reuse/redevelopment of brownfield land are not considered to apply in this case.

Having stated this, apart from the Conservation Area, there are no designations affecting the site that restrict its development for new housing. It is well located, close to the shops and facilities within Paignton Town Centre, allowing ease of access by sustainable modes of travel, such as walking and cycling (current Local Plan Policies H2 and T1, and new Local Plan Policies SS12 and TA1). Furthermore, the planning history of the site has already accepted that the site can be developed for new housing.

Therefore, the principle of developing the land for new housing is considered by officers to be acceptable.

2. Affordable Housing

Affordable housing was not sought for the previous applications, as the number of flats was below the thresholds set in Policy H6 of the current Local Plan and the Planning Contributions and Affordable Housing SPD. Policy H2 of the new Local Plan lowers these thresholds on greenfield sites. As stated above, the site is to be treated as greenfield, as the new building will be sited on the grassed, amenity area of the existing block of flats; therefore, in accordance with the new Local Plan, 20% affordable housing should be sought.

The application was validated on 4 September 2015. At this point in time, the statutory development plan comprised the current Adopted Local Plan and the new Local Plan was a material consideration with some weight - no objections were received to lowering the affordable housing thresholds. After 12 October 2015, the policies in the new Local Plan carry significant weight, as the plan was found to be sound by the Inspector, subject to main modifications (these modifications do not affect Policy H2 - Affordable Housing); however, the statutory development plan still comprises the current Adopted Local Plan. The Council will decide whether to adopt the new Local Plan on 10 December. If the Plan is adopted, it shall become the statutory development plan for the Bay and Policy H2 will apply.

Notwithstanding the recommendation to refuse the application, taking into

account the shifting policy context above, officers have not sought affordable housing as part of the development during the course of the application. This also takes into account that the 13 week determination date is 5 December 2015. Whilst Members must make the decision, officers consider affordable housing should not be sought in this case. This remains the case if the new Local Plan is adopted, due to the material consideration of the dates stated above.

3. Design and Impact on Setting of Conservation Area

The site is located within and on the edge of the Old Paignton Conservation Area. Therefore, the relevant heritage policies of the current and new Local Plans apply. An application by the same applicant for a slightly smaller, 4-storey block of flats (12 no. 1-bed flats) was refused by the Council in 2007, in part due to its:

"unsympathetic design and appearance which would make it out of keeping with the long-established layout of this part of the town, would detrimentally impact upon the Old Paignton Conservation Area within which it sits, and the street scene in general, and would have a poor relationship with the historic church next door."

Whilst the subsequent appeal was dismissed, the Inspector stated that the scheme 'would enhance the character and appearance of the conservation area'. The Inspector considered that the sloping, grassland area on which the building would be sited 'provides limited visual benefit to the locality and, due to its topography, limited recreational value to the existing block of flats.' The Inspector went on to state that the building would:

"positively relate, in terms of height and scale, to the existing building to the east and would be orientated to take reasonable advantage of the southern aspect and to respect the arc of the lower highway and the immediately adjacent buildings. The proposed design would represent a reasonable development density and a contemporary interpretation of a substantial 'villa' with sufficient articulation within its front elevation to alleviate the overall mass of the structure in a manner that would enhance the immediate mediocrity of its current surroundings."

As this appeal decision was a material consideration carrying a high degree of weight at the time, the subsequent planning applications made for the same/similar buildings in 2008/2009 were approved.

The appeal decision was made in January 2008 at which time the relevant planning policy context comprised: the current Adopted Local Plan; the Urban Design Guide SPD (May 2007); chapters 13-19 of the Environmental Guide SPG (Sept 2004); and national advice contained within various PPGs/PPSs. This national advice has now been abolished and replaced by the NPPF. The Inspector did not reference the Urban Design Guide SPD in his decision and

instead referenced the Environmental Guide SPG, which appears to have been an oversight.

The current planning policy context comprises: the current Adopted Local Plan; the emerging new Local Plan, which carries significant weight since 12 October 2015; the Urban Design Guide SPD (May 2007); chapters 13-19 of the Environmental Guide SPG (Sept 2004); and national policies and advice contained within the NPPF and online Planning Practice Guidance (PPG) respectively. A recent appeal decision (APP/X1165/W/15/3006520) received on 12 November 2015 to dismiss a block of flats on the Gleneagles Hotel site affecting the setting of an adjacent conservation area is a material consideration. The Inspector in this case stated that the Urban Design Guide SPD is a material consideration of significant weight. He also stated that the design and heritage policies of the new Local Plan can be afforded significant weight. He went on to state that whilst the relevant Built Environment policies of the current Local Plan still form part of the development plan, 'these were adopted some 11 years ago and whilst there is a large degree of consistency with the Framework [NPPF], there is evidently now a greater focus on taking opportunities to improve the character and quality of an area.'

An application to extend the time limits to implement planning permission P/2009/0281 was approved in September 2012. This took into account the policies in the NPPF. It also took into account national guidance within 'Greater flexibility for planning permissions' (CLG, Oct 2010) stating that 'local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly.' This guidance was cancelled in 2014 and replaced by the online PPG.

The Senior Heritage and Design Officer has objected to the application highlighting the significance of Policy SS10 of the new Local Plan as a new material consideration. This policy requires development to sustain and enhance heritage assets, including conservation areas, which make an important contribution to Torbay's built and natural setting and heritage, for their own merits and their wider role in the character and setting of the Bay. It goes on to state that proposals that may affect heritage assets will be assessed on a range of criteria, including 'The need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, while allowing sympathetic development within them' and 'Whether new development contributes to the local character and distinctiveness of the area, particularly through a high quality of design, use of appropriate materials, or removal of deleterious features'. The Senior Heritage and Design Officer considers that the scheme will not sustain or enhance the Conservation Area, but considers that the harm that will be caused is 'less than substantial'. In these cases, paragraph 134 of the NPPF states that 'this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The Senior Heritage and Design Officer notes that Historic England (the statutory consultee for development that

would affect the character and appearance of a conservation area where the development involves the erection of a new building or the extension of an existing building, and the area of land in respect of which the application is made is more than 1,000 sq m (PPG - Para 57)), has raised similar concerns with the proposal. In their response, Historic England encourages the Council to consider the advice within paragraph 137 of the NPPF, which states that 'Local planning authorities should look for opportunities for new development within Conservation Areas... to enhance or better reveal their significance.'

Whilst not quoted by the Senior Heritage and Design Officer, Policies DE1 and DE4 of the new Local Plan are also considered to be material considerations. Policy DE1 emphasises the importance of local distinctiveness in design, and Policy DE4 states that new development should be constructed to the prevailing height (the most commonly occurring height) within the character area in which it is located, unless there are sound urban design or socio-economic benefits to deviate from this approach. It is considered that there is nothing in the design that acknowledges the distinctive features of the Conservation Area. The Urban Design Guide SPD is an important material consideration and states that 'Designers should use local materials, building methods and details where appropriate to help to enhance local distinctiveness' (Para A6). In terms of the height, whilst the proposed building is the same height as the existing building on the site, this is not the prevailing height of the locality which is 2-3 storeys. Officers consider that there are no sound urban design or socio-economic benefits that justify the height of the proposal. It is considered that the new building should be subservient in height to the existing 'host historic' building adjoining the site. The Urban Design Guide SPD states that 'Designers should consider the scale, massing and height of proposed development in relation to that of adjoining buildings; the topography; the general pattern of heights in the area; and views, vistas and landmarks' (Para A7).

As can be seen, this issue is finely balanced when taking into account all the material considerations above, including the new policies and previous decisions. It is clear that the Inspector for the 2007 appeal had a different view to the Council's conservation specialist of the effect of the scheme on the character and appearance of the Conservation Area. Whilst the appeal decision was made in January 2008 and the Inspector considered that the scheme would enhance the character and appearance of the Conservation Area, the planning policy context has changed since this time, including publication of the NPPF and emergence of the new Local Plan. The main change to the policy context since this time with regards to design and heritage issues is the greater emphasis on enhancement and taking the opportunities available to improve the character and quality of an area. It is clear that the Inspector believed this will be the case. However, officers are mindful that the scheme has not gone before Torbay's independent Design Review Panel, as endorsed by the NPPF (Para 62), and Historic England has raised concerns; in addition HE state that they were not consulted on the original 2009 application. Therefore, officers consider the application should be refused,

as it is considered that it will not sustain or enhance the character of the Conservation Area, contrary to Policies BES and BE5 of the current Local Plan, and Policy SS10 of the new Local Plan. It is also considered that it has failed to take the opportunities available for improving the character and quality of the area (NPPF Para 64), and the proposed design does not contribute to the distinctiveness of the area (current Local Plan Policy BES and new Local Plan Policies SS10 and DE1). It also does not follow the lower prevailing building height of the locality (new Local Plan Policy DE4).

Officers consider the scheme will cause 'less than substantial harm' to the Conservation Area. Paragraph 134 of the NPPF requires this to be weighed against the public benefits of the proposal, including securing its optimum viable use. In this case, officers do not consider that there are any public benefits of the scheme that would outweigh this harm. Whilst the delivery of new dwellings is a positive impact, there is no reason why an alternative, lower density scheme which does not cause harm to the character and appearance of the Conservation Area could not be developed on the site with similar benefits.

Officers took a different view when the application to extend the time limits to implement planning permission P/2009/0281 was approved in September 2012. At this time, officers considered that the scheme would not have a significant impact on the Conservation Area, taking into account Section 12 of the NPPF. However, this pre-dated the appeal decision for the Gleneagles Hotel, which is a material consideration, and the emerging policies of the new Local Plan. It also took into account guidance at the time, encouraging local planning authorities to take a positive approach towards 'extend the time limit' applications which improve the prospect of sustainable development being taken forward quickly. This has not happened in this case, as the scheme remains unimplemented.

4. Amenity Issues

The issues of overlooking and overshadowing have been raised as concerns by a number of local residents, particularly those living at Kirkham Court to the west. There are a number of windows on the west elevation of the proposed building, including 'habitable rooms', such as bedrooms and living rooms.

Officers are mindful that this issue was assessed for the previous applications and has not been raised as an issue by the Council before. Therefore, it is considered that the proposal will not have an adverse impact on the amenities of neighbouring properties, in terms of overlooking or overshadowing.

Policy DE3 of the new Local Plan deals with development amenity. It states that 'All development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.' Relevant criteria when assessing amenity issues include: 'Satisfactory provision for off-road motor vehicle parking, bicycles

and storage of containers for waste and recycling' and 'Provision for useable amenity space, including gardens and outdoor amenity areas'.

Whilst a refuse bin area is proposed adjacent to the new building, officers are mindful that occupiers of the flats will need to carry waste and recycling bins to the street for collection, as a refuse vehicle is unlikely to be able to access the site and turn through 180 degrees to exit the site safely. Whilst there is little to be done in this regard and of itself this should not prevent the site from being developed, it is considered that the proposals should provide space near the site entrance for waste and recycling containers to be stored.

In terms of the provision of useable amenity space, whilst the existing grassed area is sloping, it provides a relatively large area for the occupiers of the existing flats to use for recreation purposes or to dry clothes etc. Whilst some space will be left over behind the proposed new building, officers do not consider that this will be enough to serve the amenity needs of both buildings. This issue should form part of the rationale for a revised design on the site.

5. Access and Impact on Highways

Comments are currently awaited from Strategy officers regarding the impacts of the development on the highway network and the proposed new access. These will be reported to Members as a late representation. However, these issues were assessed previously as part of the earlier applications and found to be sound.

6. Car Parking

The proposed level of car parking provision is considered by officers to be acceptable. 1:1 parking is proposed for the existing and new flats, and three spaces will be provided for the adjoining development site of three dwellings fronting Colley End Road. This level of provision accords with Policy T25 of the current Local Plan. It accords with Policy TA3 of the new Local Plan, except provision is not made for commercial vehicles.

7. Impact on Trees

There is a mature Cherry tree on the site to the west of the existing car park. Officers consider this to be an attractive feature of the site that should be retained and protected. The Council's Arboricultural Officer considers the scheme is suitable for approval on arboricultural merit provided this tree is protected during construction and additional tree planting is provided as part of detailed landscaping proposals. These matters can be dealt with by condition if the application is approved.

8. Biodiversity

Whilst the Green Infrastructure Coordinator has questioned whether an Extended Phase 1 Habitat Survey should be submitted, as the site comprises an area of short amenity grassland and parking court, officers did not consider that this was a requirement when the application was submitted.

No information has been provided to show how biodiversity will be enhanced on the site in accordance with the NPPF and Policy NC1 of the new Local Plan. Given the planning history of the site, officers consider this could be dealt with by condition if the application is approved, such as the incorporation of bird nesting and bat roosting sites into the built fabric of the building, and additional plantings as part of detailed landscaping proposals.

9. Surface Water Drainage and Flood Risk

Since the previous applications were determined, the majority of land in Torbay has been designated a Critical Drainage Area (CDA) by the Environment Agency. Detailed drainage proposals must now form part of planning application submissions accordingly. These should investigate the practicality of sustainable drainage systems as a first priority, by undertaking infiltration testing of ground conditions on the site.

In this case a Flood Risk Assessment (FRA) has been submitted. It states that 'The potential for adding to flood potential elsewhere in the town is significant and must be addressed prior to work starting on site. Sustainable drainage systems must be incorporated which will include the use of soakaways, self draining paving and soft landscaping to eliminate the potential for surface water to leave the site.' No further details are provided, including details of any infiltration testing of the site.

The FRA states that 'percolation tests will need to be undertaken in the areas likely to take any such soakaways and this is presently not possible due to existing use of the land...' It goes on to say this should be covered by planning condition. No further information or justification is provided why infiltration testing cannot be carried out before planning permission is granted. Having visited the site, officers do not see any practical reason why infiltration testing cannot be carried out.

Therefore, officers consider that insufficient information has been provided to demonstrate that the proposal will not result in downstream flooding within the CDA. The application should therefore be refused in accordance with Policy EPS of the current Local Plan, Policy ER1 of the new Local Plan, and paragraphs 102 and 103 of the NPPF

S106/CIL - The contributions for the application are set out below, in accordance

with Adopted Local Plan Policy CF6, new Local Plan Policies SS7 and the adopted Planning Contributions and Affordable Housing SPD and its Update 3.

Waste Management (Site Acceptability) =	£600
Sustainable Transport (Sustainable Development) =	£20,640
Education (Sustainable Development) =	£4,920
Lifelong Learning (Sustainable Development) =	£2,640
Greenspace and Recreation (Sustainable Development) =	£13,440
TOTAL =	£42,240

Justifications:

The waste management contribution is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policy W1. It will pay the costs of providing waste and recycling bins to the dwellings.

The sustainable transport contribution is justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and TA2. It will be used to pay for sustainable transport network enhancements in the local area for use by future occupiers/visitors of the proposed development.

The education contribution is justified in paragraphs 4.40-4.46 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards funding projects at schools in Paignton as part of Children's Services Capital Programme. The dwellings will place additional demand on local schools and the contribution will ensure local schools are provided with funding to mitigate the proposed development.

The lifelong learning contribution is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards the cost of improving provision at Paignton Library, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and the contribution will ensure these services are provided with funding to mitigate the proposed development.

The greenspace and recreation contribution is justified in paragraphs 4.52-4.58 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS9. It will be used towards improving maintenance, management and equipment at existing facilities within easy walking distance of the site. The dwellings will place additional demand on these facilities and the contribution will ensure these

facilities are provided with funding to mitigate the proposed development.

Status:

As officers are recommending refusal of the application, Legal Services has not been instructed to prepare a s106 agreement.

Conclusions

The principle of developing the site for housing is considered to be acceptable. However, notwithstanding the planning history of the site where applications for the same or similar development have been approved, officers consider the design of the proposed development to be unacceptable and would harm the character and appearance of the Conservation Area. The design lacks distinctiveness and the height does not fit in with the prevailing height of buildings in the area. It is considered that the benefit of providing new housing on the site does not outweigh the harm to the Conservation Area, as a result of the poor design. A lower density development could provide similar benefits without harming the character of the Conservation Area. Furthermore, it is considered that there is limited useable amenity space in the proposal to serve residents of the proposed flats and the existing flats adjoining the site. Therefore, the application should be refused in accordance with Policies BES, BE1 and BE5 of the current Adopted Local Plan, and Policies SS10, DE1, DE3 and DE4 of the new Local Plan.

In addition, insufficient information has been provided with the application to demonstrate that the proposal will not result in downstream flooding within the Critical Drainage Area. Furthermore, there is a lack of detail and justification within the submitted Flood Risk Assessment why infiltration testing of the site cannot be carried out before the application is determined in order to investigate whether a sustainable drainage system is feasible in accordance with local and national guidance. Therefore, the application should be refused in accordance with Policy EPS of the current Adopted Local Plan, Policy ER1 of the new Local Plan and paragraphs 102 and 103 of the NPPF.

If Members consider that the application should be approved, a s106 legal agreement will need to be prepared to secure necessary contributions to mitigate the impact of the proposal on local infrastructure. In addition, the drafting of appropriate planning conditions should be delegated to officers. Depending on the status of the new Local Plan, Members will also need to decide whether affordable housing should be sought in accordance with Policy H2 of the new Local Plan, although officers consider that there are material considerations in this case not to do so.

Condition(s)/Reason(s)

01. The proposed development will not preserve or enhance the character of

the Conservation Area contrary to Policies BES and BE5 of the Adopted Torbay Local Plan 1995-2011, and Policy SS10 of the emerging Torbay Local Plan - A landscape for success 2012-2030. It fails to take the opportunities available for improving the character and quality of the area in accordance with paragraph 64 of the NPPF. The proposed design is not distinctive to the character of the area contrary to Policy BES of the Adopted Torbay Local Plan 1995-2011 and Policies SS10 and DE1 of the emerging Torbay Local Plan - A landscape for success 2012-2030. The proposal does not fit in with the prevailing building height of the locality contrary to Policy BE1 of the Adopted Torbay Local Plan 1995-2011 and Policy DE4 of the emerging Torbay Local Plan - A landscape for success 2012-2030. The benefits of the proposal do not outweigh the impacts of the scheme on the character of the Conservation Area. Furthermore, the level of useable amenity space is considered inadequate for the occupiers of the proposed flats and the existing flats adjoining the site contrary to Policy DE3 of the emerging Torbay Local Plan - A landscape for success 2012-2030.

02. There is a risk the proposal will result in downstream flooding from an increase of impermeable area on the site. The site is within the Critical Drainage Area and no details have been provided with the application to demonstrate that this will not be the case. The Flood Risk Assessment lacks adequate detail and justification why infiltration testing cannot be carried out to investigate whether a surface water drainage system is feasible on the site. Therefore, the proposal does not accord with Policy EPS of the Adopted Torbay Local Plan 1995-2011, Policy ER1 of the emerging Torbay Local Plan - A landscape for success 2012-2030, or paragraphs 102 and 103 of the NPPF.
03. No s106 agreement has been prepared to secure the necessary contributions in accordance with the Council's Planning Contributions and Affordable Housing SPD. The Local Planning Authority considers that it would be inappropriate to secure the required contributions by any method other than a legal agreement and therefore the proposal is contrary to Policy CF6 of the Adopted Torbay Local Plan 1995-2011 and Policy SS7 of the emerging Torbay Local Plan - A landscape for success 2012-2030.

Relevant Policies

HS - Housing Strategy

H2 - New housing on unidentified sites

H9 - Layout, and design and community aspects

H10 - Housing densities

H11 - Open space requirements for new housing

CFS - Sustainable communities strategy

CF2 - Crime prevention

CF6 - Community infrastructure contributions

W7 - Development and waste recycling facilities
L9 - Planting and retention of trees
L10 - Major development and landscaping
NCS - Nature conservation strategy
EPS - Environmental protection strategy
BES - Built environment strategy
BE1 - Design of new development
BE2 - Landscaping and design
BE5 - Policy in conservation areas
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T25 - Car parking in new development
T26 - Access from development onto the highway
SS1 - Growth Strategy for a prosperous Torbay
SS3 - Presumption in favour of sustainable dev
SS7 - Infrastructure, phasing and employment
SS8 - Natural Environment
SS9 - Green Infrastructure
SS10 - Conservation and Historic Environment
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
SS14 - Low Carbon and Climate Change
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements
C4 - Trees, hedgerows and natural landscape
NC1 - Protected sites - internationally import
H1 - New housing on identified sites
H2 - New housing on unidentified sites
DE1 - Design
DE2 - Building for life
DE3 - Development Amenity
DE4 - Building heights
SC1 - Healthy Bay
ES1 - Energy
ER1 - Flood Risk
ER2 - Water Management
W1 - Waste management facilities