

**Application Number**

P/2017/1019

**Site Address**Land At White Rock Way  
Paignton  
TQ4 7RZ**Case Officer**

Carly Perkins

**Ward**

Blatchcombe

**Description**

Formation of supermarket inc. associated works.

**Executive Summary**

The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared.

The application is for full planning permission for the erection of a single storey retail store with associated parking and cycle storage provision. The building is proposed to have a gross internal floor area of 2,206sqm which includes a sales area of 1,323sqm.

The proposed building is located at the junction on White Rock Way and Brixham Road. To the north of the building are 120 parking spaces (6 of which are allocated for disabled people and 2 are electrical charging spaces). Cycle parking is proposed to serve the retail use, the plans indicate that 7 cycle loops are proposed. Materials include natural stone, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The revised plans do not include a revised landscaping scheme however the previous revision included 3 trees to the Brixham Road elevation, 10 trees to the White Rock Way elevation and 5 trees to the access road elevation. 1 tree is proposed within the car park to the north of the proposed building. Access to the site would be from Waddeton Close and White Rock Way.

During the course of the application revised plans have been received to address concerns raised during the initial consultation process. The revised plans propose a single storey building of approximately 8.5m in height at the highest point alongside the proposed car park and reducing to approximately 5.5m in height at the lowest point alongside White Rock Way. Due to the change in levels between the site and the Brixham Road, the floor level of the building is at a level approximately 1m lower than the Brixham Road.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant developments to the north. Beyond White Rock Way to

the south of the site is existing residential development approved under reference P/2013/1229 and P/2014/0071 which is currently under construction.

The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head and in a potential Cirl Bunting wintering/breeding activity area. The site is also situated within Flood Zone 1, Critical Drainage Area.

Planning consent has been granted for a smaller retail store with student accommodation on first and second floors on the site under application reference P/2016/0411 in August 2017. This consent is extant.

The provision of retail uses at this site is supported by policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030. The principle of retail development of this scale in this location is considered acceptable subject to securing the retention of the existing Lidl store in the town centre for a minimum of 5 years from the commencement of any retail use at this store, in order to offset any impact on the town centre from the additional floorspace that is proposed compared to the previously approved scheme. However there are a number of concerns relating to the design of the proposal and whether it would provide a strong enough visual and legible presence on this important corner site, which when tested against the policies in the Torbay Local Plan 2012-30 warrant the refusal of the application.

The proposed development fails to have a clear urban structure and grain that would integrate with the surrounding context, relate well to the surrounding built environment that integrates with the surrounding context, and would fail to positively address the street with active frontages and respect the existing street frontage and built form. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 3, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and Policy DE4 of the Torbay Local Plan.

In addition the proposed development fails to provide a suitable landscaping scheme which would soften and integrate the site into the existing townscape and townscape of the neighbouring sites which are under construction or pending approval. The proposals would fail to deliver a high quality landscaping scheme and is considered contrary to criteria 28 of policy DE1 and C4 of the Torbay Local Plan.

The application site is within a Critical Drainage Area as designated by the Environment Agency and Flood Zone 1. In the absence of a sufficiently detailed surface water drainage design, no proper assessment can be made of the impact of surface water run off or the drainage hierarchy. It is therefore unclear whether the proposed development or surrounding area could be kept safe from the effects of surface water. The proposal would not comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030, and would be contrary to paragraph 103 of the NPPF.

Finally there are number of outstanding matters which require resolution, these relate to the number cycle spaces being provided, whether the additional trips generated by the

development will require S106 contributions to mitigate the effects on the local highway network and whether the pedestrian routes through the development are acceptable in relation to criteria 22 of policy DE1 and policies TA1 and TA2 in terms of providing vehicular and pedestrian access to a safe standard. If these issues are not resolved by the date of the Committee meeting these may represent additional reasons for refusal.

The proposal constitutes CIL liable development. A CIL contribution of £264,720 would be required from the development.

### **Recommendation**

Refusal:

The proposed development fails to have a clear urban structure and grain that would integrate with the surrounding context, relate well to the surrounding built environment that integrates with the surrounding context, and would fail to positively address the street with active frontages and respect the existing street frontage and built form. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 3, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and DE4 of the Torbay Local Plan.

The proposed development fails to provide a suitable landscaping scheme which would soften and integrate the site into the existing townscape and proposed townscape of neighbouring site which are under construction or pending approval. The proposals would fail to deliver a high quality landscaping scheme and is considered contrary to criteria 28 of policy DE1 and C4 of the Torbay Local Plan.

The application site is within a Critical Drainage Area and Flood Zone 1. In the absence of a sufficiently detailed surface water drainage design, no proper assessment can be made of the impact of surface water run off or the drainage hierarchy. It is therefore unclear whether the proposed development or surrounding area could be kept safe from the effects of surface water. The proposal would not comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

Precise wording of reasons for refusal delegated to the Executive Head of Assets and Business Services.

### **Reason for Referral to Development Management Committee**

The application is a major application and is therefore required by the constitution to be determined by DM committee.

### **Statutory Determination Period**

13 weeks. An extension of time to determine the application has been agreed with the applicant to allow further consideration of the application and for it to be considered at the January Development Management Committee.

### **Site Details**

Outline consent was granted in April 2013 for approximately 37,000 square metres of employment space, 350 new homes and a local centre under reference P/2011/0197 and

subsequent reserved matters application were approved under applications references P/2013/1009 for industrial buildings, P/2013/129 and P/2014/0071 for dwelling houses and P/2016/0188 for a sports pavilion and associated pitches. Reserved matters consent was granted for a smaller retail store with student accommodation on first and second floors on the site under application reference P/2016/0411 in August 2017. This consent is extant, but the outline consent for the wider has now expired.

The application site relates to the eastern bowl of the wider White Rock site which is largely grassed scrubland. The specific part of the wider White Rock site subject of this application was previously occupied by a number of light industrial units, an office and Sure Start centre, the site has now been cleared. Part of the wider site is under construction under the approved reserved matters scheme P/2013/1229 and P/2014/0071 with a number of dwelling houses complete and occupied.

The application site is noted as a committed and other deliverable development site under policy SPD3.5 of the Torbay Local Plan for both housing and employment uses. The application site is also identified as a Proposed Local Shopping Centre under policy TC2.3.19 of the Torbay Local Plan and is located to the west of the Brixham Road, part of the Torbay Major Road Network. The site is bounded by White Rock Way to the south and existing hotel and restaurant developments to the north. In addition to the north of the application site, is the site of the proposed Innovation Centre, which has been resolved for approval under application reference P/2017/0685. Beyond White Rock Way to the south of the site is existing residential development approved under reference P/2013/1229 and P/2014/0071 which is currently under construction.

The application site falls within a greater horseshoe bat sustenance zone associated with the Special Area of Conservation (SAC) roost at Berry Head and in a potential Cirl Bunting wintering/breeding activity area. The site is also situated within Flood Zone 1, Critical Drainage Area.

### **Detailed Proposals**

The application is for full planning permission.

The proposal is for the erection of a retail store with associated parking and cycle storage provision. The building is proposed to have a gross internal floor area of 2,206sqm which includes a sales area of 1,323sqm.

During the course of the application revised plans have been received to address concerns raised. The revised plans propose a single storey building of approximately 8.5m in height at the highest point alongside the proposed car park and reducing to approximately 5.5m in height at the lowest point alongside White Rock Way. Due to the change in levels between the site and the Brixham Road, the building is at a level approximately 1m lower than the Brixham Road.

The proposed building is located at the junction on White Rock Way and Brixham Road. To the north of the building are 120 parking spaces (6 of which are allocated for disabled people and 2 are electrical charging spaces). Cycle parking is proposed to serve the retail

use, the plans indicate that 7 cycle loops are proposed. Materials include natural stone, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The revised plans do not include a revised landscaping scheme however the previous revision included 3 trees to the Brixham Road elevation, 10 trees to the White Rock Way elevation and 5 trees to the access road elevation. 1 tree is proposed within the car park to the north of the proposed building.

Access to the site would be from Waddeton Close and White Rock Way.

### **Summary Of Consultation Responses**

Environment Agency: Planning permission can be granted subject to the imposition of a condition relating to unsuspected contamination to ensure the protection of controlled water from any contamination on site that is encountered. Without this condition, the Environment Agency would object to the application.

South West Water: No objection.

Drainage Engineer: Hydraulic calculations have not been submitted for the surface water drainage system connecting to the attenuation tanks. These are required to confirm that there is no risk of flooding or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. No details of the proposed manhole cover levels, invert levels, pipe diameters, pipe gradients and the impermeable areas discharging to each pipe length have been identified. All of this information is required within the hydraulic modelling. It must be demonstrated that the surface water drainage for the development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Hydraulic calculations for the entire surface water sewer system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 50% for climate change. These details are required prior to the determination of the application.

Natural England: The proposal is unlikely to affect any statutorily protected sites.

RSPB: Recommends inclusion of 10 integral nest sites within the building to ensure enhancements to biodiversity in accordance with policy NC1 of the Torbay Local Plan and paragraph 118 of the National Planning Policy Framework.

Arboricultural Officer: There are no arboricultural features of merit at present given the previous site usage and clearance works. To soften the entrance to the store car park opportunity should be taken to plant a large tree in the square bed adjacent to bays 25 and 26. Similarly a space exists adjacent to bay 29 but for a more slender tree. There is an objection to the erection of the totem pole display at the site entrance adjacent to parking bays 25 and 26 as this would curtail the use of the space for a large sized tree that would soften the entrance to the site which is presently sparse in large tree planting terms. Alternatively there are opportunities for planting beds to be created amongst parking bays. In the absence of either of these options, there is an objection to the landscaping of the application.

Senior Environmental Health Officer: Concerns regarding noise from deliveries affecting residents in White Rock Way. Deliveries should only be made via Waddeton Close and no traffic to the site should arrive via White Rock Way between the hours of 23.00 and 08.00.

Police Designing Out Crime Officer: It is recommended that the store is constructed to achieve full Secured by Design compliance to ensure a consistent level of security throughout and opportunities for crime, the fear of crime, ASB and conflict are minimised.

Car parking areas appear to benefit from good natural surveillance from adjacent roads, paths and nearby dwellings but advise care is taken with planting to avoid impeding CCTV and creating short cuts. Vehicular access should be prevented to car parking areas when store is closed or car parking areas should be broken up with planters and landscaping to deter speeding and anti-social driving. Design of features and smooth surfaces should deter skateboarding etc. CCTV should form part of an overall security plan.

Senior Strategy and Project Officer (Retail): The store, when completed will be designated as a local centre (TC2.3.19) and therefore the relevant test in the Local Plan is set out in Policy TC3(B) which indicates stores should be of a scale appropriate to the centre and provides a range of services and facilities. The site has outline permission for a convenience store. On this basis a sequential test is not considered necessary. The Local Plan does not provide any guidance about the size of store that would be appropriate within a local centre, but the site has outline permission P/2011/0197 for a food store of up to 1652 sq m gross retail (of which 1,188 sq m is convenience), plus a smaller shop/café of 392 sq. m). A critical consideration in seeking to limit the extent of retail at local centres is to ensure that they do not grow to such an extent that they have a serious effect on town centres. On this basis it is appropriate to consider town centre impact. Given White Rock's local centre designation, it is not considered that there is sufficient evidence to object to the proposal per se. However, it is appropriate to seek safeguards that Lidl will retain a town centre store. The Impact Statement indicates that this is intended (para 5.26). It is considered that 10 years would be a reasonable period of time. If Lidl do not wish to enter such an agreement, then a more detailed assessment of town centre impact than is provided at Section 5 of FirstPlan's assessment is required.

**Following the submission of additional information the following comments were provided**

There are no objections to the principle of the proposal but it is still appropriate to seek a safeguard to retain a town centre store within Paignton. Seeking to safeguard a town centre presence is important and has strong Neighbourhood Forum support. Subject to robust requirements for Lidl to retain a town centre presence and given the local centre status of the application site, there is no objection to the requirement for Lidl to remain in the town centre for 5 years rather than 10 as previously suggested.

Urban Design Consultant: The proposal is a significant departure from the design principles that have been specifically conditioned by the Outline Approval (P/2011/0197), they should still prevail even if this is no longer a reserved matters application. The

principles were established through careful consultation and negotiation so as to create a satisfying, effective and acceptable urban design framework for the whole site. If this project were to be approved in its current form, then the coherence and quality of the wider place/new neighbourhood that is emerging at White Rock would be substantially undermined. The proposals do not comply with Torbay Local Plan Policy DE1, criteria 2, 3, 5, 8, 12, 14, 15, 16, 18, 19, 25 and 28 or Paragraph 58 of the NPPF.

**Revised plans have been submitted since this response, revised comments have been sought from the Urban Design Consultant and will be verbally presented to the Members at the Committee meeting**

Senior Strategy and Project Officer (Transport): With reference to Policy TA3, Appendix F of the Local Plan and using the Gross Floor Area, the scheme provides a lesser number of parking spaces per sqm of gross floor area than applied to the previous reserved matters application (P/2016/0411). The current proposal would equate to 1 space per 18 sqm ratio. There is a shortfall in parking provision and additional parking spaces need to be provided. 40 employees are proposed and therefore 20 cycle spaces should be provided for staff, cycle parking should be provided for visitors. 10% of spaces should be provided for disabled persons. A Travel Plan with 30% modal shift and SMART targets is required (this can be conditioned unless it is required to mitigate the shortfall in parking and/or the impact of additional trip generation). A Parking Management Plan is required (this can be conditioned). Parent and child spaces should be relocated. The need for crossing points are highlighted.

The Transport Assessment refers to HGV routes and these will need to be secured by condition or legal agreement. The Transport Assessment implies that a HGV would find it difficult to enter the site from the south but also refers to Road Traffic Orders, which, if necessary would also need to be secured via 278/s106. It is reasonable to conclude that the trips generated are fewer than those assessed during the outline application, and that no further mitigation would be required. The contributions and works associated with the 2011 consent would still be necessary to ensure the impact is covered.

**Following the submission of additional information the following comments were provided**

Confirmation regarding the number of proposed cycle spaces has been requested. The car parking provision is still below the recommended standard and therefore, to prevent on street parking issues, a Traffic Order for 'no waiting' will be needed along the length of Waddeton Close. The south entrance of Waddeton Close will also require a 'prohibition of HGVs' at the junction with White Rock Way. A pedestrian access should be provided along Waddeton Close. Clarification regarding pedestrian crossings was also provided.

**Revised plans have been submitted since this response, revised comments have been sought from the Urban Design Consultant and will be verbally presented to the Members at the Committee meeting**

Paignton Neighbourhood Forum: The Paignton Neighbourhood Forum requests that a condition is attached to any consent that may be granted to the above proposal that requires Lidl as an operator to retain the store in Victoria Square as an operating retail store for a period not less than 10 years.

## **Summary Of Representations**

171 representations have been received (158 in support, 12 objections, 1 representation).

Issues raised:

- o Proposal will provide better parking facilities than the town centre store
- o Proposal will provide further choice of shopping and more competition
- o Proposal will increase jobs
- o Objection as the scheme will not encourage apprenticeships as it doesn't include student accommodation
- o Attempt to match the proposed Innovation Centre to the north but elevations do not take into account the sunken site and therefore will be out of scale with the proposed Innovation Centre and residential development to the south
- o Landscaping has been removed to allow for more parking
- o Will provide facilities bearing in mind the number of houses being built
- o Objection as there are enough supermarkets in the area
- o Much needed facility for people in Brixham and prevent needing to travel to Lidl in Torquay and Paignton
- o The proposed store may encourage Lidl to leave the town centre store resulting in less people visiting the town centre
- o Impact on traffic generation
- o A different type of retail store here would be more beneficial
- o Will reduce traffic going to Torquay for local people and traffic on the Newton Road towards the Torquay Lidl
- o Will allow residents to walk to a supermarket
- o Will remove an eyesore assuming that Lidl will be landscaping the area
- o Having a Lidl supermarket here will be convenient for people in Brixham
- o Will create better shopping and parking environment than at the Victoria Square Lidl store
- o Proposal is contrary to policy DE1 of the Torbay Local Plan and is not an attractive design, by removing the student accommodation this does not optimise the development of the site/space
- o Negative impact on town centre.

## **Relevant Planning History**

P/2011/0197 Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup> A1/A3 use and student accommodation, approximately 15 hectares of open space, sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application) APPROVED 29.04.2013

P/2013/1009 Reserved matters application for P/2011/0197 including appearance, landscaping, layout and scale of 2 industrial units, enabling work for new road, demolition of unit 31, relocation of 10 parking spaces for unit 33-34 APPROVED 16.10.2013

P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development APPROVED

P/2014/0071 Approval of appearance, landscaping, layout and scale in relation to 38



dwelling and associated development. Reserved Matters for P/2011/0197 APPROVED

P/2015/0918 Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development (Variation of condition P1 of P/2013/1229 - MMA to units 37, 94 and 237 to allow wheelchair access) APPROVED

P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 PENDING CONSIDERATION subject to the outcome of this application

P/2015/1229 Approval of appearance, landscaping, layout and scale in relation to 217 dwellings and associated development - EIA NOT REQUIRED

P/2015/1126 Approval of appearance, landscaping, layout and scale in relation to 216 dwellings and associated development REFUSED 13.04.2016

P/2016/0094 Erection of 42 dwellings and associated infrastructure REFUSED 24.08.2016

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0188 Approval of appearance, landscaping, layout and scale in relation to a sports pavilion and associated development including a sports playing pitch, multi-use games area and car park APPROVED

P/2016/0411 Reserved matters for a food retail store including parking and other associated works (relates to P/2011/0197) APPROVED 25.08.17

P/2016/0842 EIA Screening in relation to one industrial unit of 6,000 sqm floorspace - EIA NOT REQUIRED

P/2016/0880 Erection of Class B2 industrial building of 6,000 sqm floor space to include parking, external lighting, hardstanding and circulation space APPROVED

P/2017/1042 Construction of two Use Class B2 industrial manufacturing units, to provide 2255.9m<sup>2</sup> (GIA) of floor space, external lighting, circulation space, car parking and hard standing. PENDING CONSIDERATION

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

The key issues to consider are the principle of development, appearance, design and layout landscaping, biodiversity, drainage, access, parking and residential amenity.

### **Principle of the Proposed Development:**

The site is identified within the Torbay Local Plan (SDP3.5) as a committed strategic mixed use employment/housing development that will provide 8.5ha of employment land, local centre, around 1,200 jobs and around 350 dwellings largely over the first half of the Plan

period. The site is allocated as a proposed Local Centre as noted within policy TC2.3.19 of the Torbay Local Plan. The Paignton Neighbourhood Plan (submission version) does not allocate any sites for any form of development, however Policy PNP21 promotes employment at White Rock and nearby areas. Policy PNP2 seeks to protect the town centre, but does not set out a sequential or impact test for out of town centre stores. The Paignton Neighbourhood Plan has only recently completed its consultation stage, has not yet been the subject of an independent examination, as a result only limited weight can be afforded to the policies in that Neighbourhood Plan.

Whilst this proposal is a new full application the previous planning history on this site remains a material consideration which, in the absence of significant changes in circumstances, should be afforded significant weight. Outline consent has been granted for the mixed use development of the site. This application was approved following extensive consultation. It was subject to Habitat Regulation Assessment and was accompanied by a detailed Environmental Statement. The principle of retail development in this location was established by this application (albeit of a smaller floor area) and the general position of the proposal is in accordance with the indicative layout agreed at outline stage being within the Eastern Bowl which was highlighted for mixed use development and more specifically the local centre including food retail and student accommodation uses. The design and access statement submitted with outline application reference P/2011/0197 specifically stated that the local centre was to incorporate a local convenience food store, restaurants and/or small complimentary retail or services uses, offices above the ground floor level, residential apartments and student study bedrooms. A public open space was also to be incorporated with the local centre. Whilst the proposal now continues to be located within the Eastern Bowl as indicated as part of the outline application, the amount of retail floor area has increased and the form and scale of the building has reduced substantially as the proposal is for a single storey retail use without provision of student accommodation above.

Policy TC1 of the Torbay Local Plan supports new or enhanced district, local and neighbourhood centres that complement town centre facilities, provide a range of goods and services that meet the day to day needs of local communities, including the provision of healthcare facilities, local skills training facilities, local employment and local food outlets. Similarly Policy TC2 of the Torbay Local Plan supports retail development in local centres where it is appropriate to the role, function and scale of those centres. Supporting paragraph 6.1.1.8 states that local centres provide a range of small scale retail and other related services capable of meeting local needs, top-up shopping, and act as the focus for the local community such as post offices, newsagents, pharmacies and groceries. It notes that the provision of new local centres may be required to meet demand arising from major new residential developments, including White Rock. Policy TC3 of the Torbay Local Plan goes on to state that new retail development in local centres will be supported when the scale of the development is appropriate to the nature and size of the centre and will complement its role and character and it provides for and sustains a range of services and facilities which contribute to the long-term vitality and viability of the centre and the ability of people to meet their needs locally.

As noted above the amount of gross and net retail floor space has increased by 554 sq

m gross and 135 sq m net from that proposed at outline stage and therefore the retail impact of this increase in floor space needs to be assessed. The net (trading floorspace) is considered to be the most relevant figure although the gross figure should also be borne in mind. As the site is within a proposed local centre and has the benefit of outline consent and reserved matters consent for a retail store, the sequential test is not considered necessary. However it remains appropriate to consider the retail impact of the scheme on the town centre.

The Local Plan does not provide any guidance about the size of store that would be appropriate within a local centre, however the outline consent and subsequent reserved matters consent granted approval for a store of 1,652sqm gross retail floorspace (1,188 net convenience floorspace) which remains a material consideration. A key consideration in seeking to limit the extent of retail floorspace in local centres is to ensure that they do not have a serious impact on town centres and on this basis it is appropriate to consider town centre impact.

The proposal is for a gross retail area of 2,206sqm of which the net sales area is 1,323sqm. Of this 80% of sales would be food retail and 20% would be non-food retail.

The applicant submitted an initial retail assessment which suggests that the proposed Lidl will have a £4.4m less impact than the existing approval due to Lidl's lower benchmark trading figure. However the Council rejected this view and sought a re-assessment based on, what in the Council's view, are more realistic trading figures. The applicant has accordingly submitted further retail evidence which argues that the impact on the town centre will be minimal based on, White Rock being within a different catchment to the town centre and serving a different function. In addition the applicant's agent argues that much of the trade diversion will be from other stores along the Western Corridor, which are mainly out of centre. The applicant's revised assessment assesses that there will be a trade draw of £0.4m from Paignton town centre, representing 3.3% of the total store turnover.

The Council's Strategy Planner has advised that these figures could be an underestimate, but not significantly so. In his calculation the total trade diversion could be about £1.04 m per year, but it is accepted that a significant proportion of this would be from Western Corridor stores which apart from Yalberton Road (Aldi) are all out of centre.

The main policy concern is the potential impact on Paignton Town Centre. There are several food stores in the town centre including a small Tesco, Coop and Iceland. However, the most direct town centre impact is likely to be Lidl in Victoria Square assuming that the White Rock store is Lidl. However a different retail user could have a different pattern of impact

When operating, White Rock will enjoy status as a local centre, and the previous approvals on the site is also a material consideration.

It is considered that there is not sufficient evidence to warrant the refusal of the application on town centre impact grounds. However as there is evidence to indicate that there would

be a town centre impact. In order to ensure that there is not a significant adverse impact on the town centre, it is considered necessary to seek to ensure that Lidl remain in the town centre for a set period of time from the opening of the proposed store at White Rock.

There has been some concern raised by the applicant regarding the time period recommended by the Council's Senior Strategy and Project Officer. Initially a period of ten years was suggested and this has also been requested by the Paignton Town Centre Neighbourhood Forum. Lidl have raised concerns regarding this as they do not own the existing store in the Victoria Centre, which is leased from the Council. The Council has aspirations to redevelop the Victoria Centre and therefore the long term position of the site is not certain. Lidl have therefore argued that as the future of the Victoria Centre is uncertain it would not be reasonable or appropriate at this stage for Lidl to enter into a legal agreement to secure a town centre presence for 10 years.

It is noted that paragraph 26 of the National Planning Policy Framework that the impact of town centre vitality and viability should be realised in 5 years. Therefore it may be difficult to justify requiring Lidl to remain in the town centre for 10 years as requested by the Paignton Neighbourhood Forum and Senior Strategy and Project Officer in their original response. Since additional information has been submitted the Council's Senior Strategy and Project Officer has noted that they would not object to the requirement for Lidl to remain in the town centre for 5 years subject to the wording being robust and enforceable and the wording specifying that it would 5 years from the store's opening because this is when any town centre impact would arise. Legal advice on the exact wording of this is being sought and the Member's will be updated at the Committee meeting.

In line with the above and subject to the wording of a Section 106 agreement which requires the retention of the town centre store for a minimum of 5 years, the principle of a retail store of this scale in this location is considered acceptable and compliant with policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030.

### **Character and Appearance of the Proposed Development:**

Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition paragraph 58 states that planning decisions should aim to ensure developments will function well and add to overall quality of the area, establish a strong sense of place, optimise the potential of the site to accommodate development, respond to local character and reflect the identity of local surroundings and materials and are visually attractive as a result of good architecture and appropriate landscaping. Finally paragraph 64 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Consistent with these paragraphs, policy DE1 states that proposals will be assessed against their ability to meet design considerations such as:

- o whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials
- o whether they protect local and longer distance views and the impact on the skyline

- especially from public vantage points, having regard to the location and prominence of the site
- o whether they have a clear urban structure and grain that integrate with the surrounding context
  - o whether they relate to the surrounding built environment in terms of scale, height and massing
  - o whether they positively address the street with active frontages,
  - o whether they include the provision of high quality soft and hard landscaping
  - o whether they make best use of space in terms of ground coverage and height, and
  - o whether they positively enhance the built environment.

Policy DE4 of the Torbay Local Plan which refers to building heights states that new development should be constructed to the prevailing height within the character areas in which it is located, unless there are sound urban design or socio-economic benefits to justify deviation from this approach. The supporting text states that where deviations from the prevailing height are proposed, justification and supporting evidence should be provided as part of a design and access statement.

The design and access statement submitted with outline application reference P/2011/0197 included a context analysis of the immediate area and highlighted the positive and negative impact of existing built form which set the basis for the form, scale and location of the buildings proposed within the Eastern Bowl and particularly along the Brixham Road and White Rock Way frontages. This design and access statement stated that the Brixham Road corridor is poorly defined for much of its length and that previous developments have not addressed the importance of this corridor and have, for much of its length, avoided any positive frontage on to this route. The outline application aimed to create a positive principal frontage to the Brixham Road with a scale of development (3-4 storeys) that helps to define the corridor. This was to ensure good presentation of the overall development to the main Brixham Road and to form a civilised gateway into the site as one proceeds along the new primary street. The retail uses were to be located along this active frontage so that they are easily accessible from the surrounding area, legible as the most active and vital part of the new neighbourhood and therefore improve these facilities.

As part of this application limited context analysis has been submitted. The Design and Access Statement and a later Urban Design Rebuttal refer to the design being influenced by the design of other retail stores nearby, such as Aldi which is located at Yalberton Road, the aims of 'Secured by Design for Commercial Premises 2015' and the needs of the occupiers in terms of it being economically viable. The layout and arrangement of the store and car parking has been designed to reflect the size of the site, operator's format and the size proposed. The existing urban grain is referred to as disjointed within the Local Centre and stated that as the development to south of the site had not commenced at the time of submission, the innovation centre is pending approval and western side of the Local Centre has not been developed, and therefore as a result there is limited character and materials to respond to. The Design and Access statement states that the proposal does acknowledge local character and that it is important to consider the commercial nature of the proposal by its own merit without the surrounding residential

context which the proposal does not comprise.

The proposal is for a single storey building of a maximum height of 8.5m. Since the original submission the proposal has been amended to increase the overall height of the building by approximately 2m, the building has been repositioned closer to the Brixham Road, the number of materials on the building has been reduced, local stone has been specified and windows have been removed. These changes were in response to concerns raised by the Case Officer and aimed to try and achieve a greater sense of arrival to the White Rock Local Centre, increase the massing of the building as required by the earlier outline approval on the site, to simplify the material treatments on the building and to try and achieve a greater sense of place.

The approvals to date along the Brixham Road and those currently pending approval, each include building heights of 12m (residential apartments P/2014/0071 under construction), 16m (Innovation Centre P/2017/0685) and 10m (Premier Inn building and extension, completed and pending approval P/2017/0855). Each of these developments responds to the context analysis set out at outline stage, addressing the importance of the Western Corridor and providing positive frontages on to the Brixham Road in accordance with policy DE1, specifically criteria 3, 12, 13, 14, 15, 17, 19, 20 and 25 and DE4 of the Torbay Local Plan.

The proposed building has been increased in height (and repositioned closer to Brixham Road) in an attempt to reflect the importance of the location and create a more prominent and focal building on this important corner position. However due to the change in land levels, the building which is already 1.5m lower in height than the lowest building along the Brixham Road frontage of the Eastern Bowl development, appears lower again decreasing its prominence on the street scene and this important corner. The indicative street scene submitted also demonstrates the inadequate scale of the proposal in relation to adjacent proposed and under-construction buildings. The scale is not considered to satisfactorily announce the local centre and compares unfavourably to the terraced residential development which is already complete and undoubtedly to the residential apartments opposite to the site which are under construction. Whilst not yet approved, the Innovation Centre has been resolved for approval by the Development Management Committee and is of a much greater height than that proposed reflecting the importance of the Brixham Road frontage. In comparison, the proposal appears squat in the indicative street scene and emphasises the need for greater height in this location. The repositioning of the building closer to the South East corner of the site somewhat improves the massing, however this is still considered to remain weak due to the diminishing roof height towards the corner, together with the poor fenestration and lack of articulation at the corner of the building. Whilst the increase in height is acknowledged, it is not considered that this overcomes the original concerns raised regarding the design of the proposal and the lack of presence in the street scene despite the change in position. The building remains weak in this location both in terms of its character and appearance, producing an unacceptable townscape in this key location.

In addition to the concerns regarding the height of the building, the lack of active frontages along the White Rock Way frontage (noted as a primary street at outline stage) is a

concern. The Brixham Road frontage offers some positive activity and good presentation, but the lack of active frontage on the White Rock Way elevation which prevents any activity between the building and street would be contrary to criteria 19 of the Torbay Local Plan. Similarly the lack of active frontage to the front (north) elevation of the building is also a concern with limited fenestration which is not considered to be an adequate response to the site or the approach from the car park.

The simplicity of the material choices and use of natural stone (despite the exact type not being specified or noted as local on the plans) is noted however there remains insufficient information to confirm the architectural quality of the proposals in terms of material choices and criteria 16 of policy DE1 of the Torbay Local Plan.

It is also noted that at outline stage and a later reserved matters stage that additional uses were proposed at upper floor levels which contributed to achieving the additional height required in this location and a range of uses making best use of space in terms of ground height and coverage and helping to ensure economic and social viability in terms of density, mix, use and function as required by criteria 3 and 5 of the policy DE1 of the Torbay Local Plan. The applicant has stated that having additional uses at upper level is not a viable option for them and that they are interested in only delivering a new store to act as an anchor for the local centre. Whilst this is noted, a local centre is defined in the Glossary to the Local Plan as an area of shops and similar uses generally serving only the immediate area. The proposed local centre is shown in the Torbay Local Plan as covering a relatively small area, and whilst the principle of a larger retail store in this location is considered acceptable (subject to securing specific provisions), a mix of uses is important to ensuring the vitality of this space. Whilst it is noted that, as part of the wider commercial element of the Eastern bowl, other uses are established/proposed, the single use on this site, together with the lack of active frontages and open space, the proposal is not considered to comply with criteria 3 and 5 of the Torbay Local Plan.

The proposal is not considered to comply with criteria 3, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and DE4 of the Torbay Local Plan.

#### **Landscaping and Impact on the AONB and Surrounding Countryside:**

Whilst this proposal is not bound by the outline permission, off-site landscape mitigation and enhancement works secured by this permission and including significant belts of woodland planting on land to the south of the White Rock site will provide a strong landscape buffer between the development and undeveloped countryside to the south. The proposed development is separated from the wider countryside by the residential development approved under references P/2014/0071 and P/2013/1229. In light of the structural planting proposed to the south which will act to contain the site once established, the proposals are not considered to result in significantly greater impact in views from the AONB to the south or views from the South Hams.

Policy C4 of the Torbay Local Plan states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible. In addition proposals for new trees and woodlands will be supported in principle and will be a specific requirement in Strategic Delivery Areas and related Future Growth

Areas. Policy DE1 states that development proposals will be assessed against their ability to meet certain design considerations including the incorporation of existing trees and native species and the provision of high quality hard and soft landscaping.

There are no arboricultural features of merit on the site given the previous uses on the site and clearance works that have occurred in the past. During the course of the application, revised plans have been submitted primarily showing a revised position of the proposed building. This is likely to have an effect on the proposed landscaping particularly along Brixham Road. The revised plans do not include a revised landscaping scheme, the submitted layout plans does not show any proposed trees. However trees are shown on the submitted elevations so it is assumed that a similar level of landscaping as proposed as part of the original scheme are still proposed. The previous revision included 3 trees to the Brixham Road elevation, 10 trees to the White Rock Way elevation and 5 trees to the access road elevation. 1 tree was proposed within the car park to the north of the proposed building.

A revised landscaping scheme is required to show the exact level of landscaping proposed for the recently submitted revised scheme. However should the level proposed as part of an earlier revision continue as part of a revised landscaping scheme, an objection from the Council's Arboricultural Officer has been raised. This objection is due to the lack of landscaping to the north of the building within the car parking area which would be required to soften and integrate the site into the existing landscape. In addition were no revised landscaping plan received which relates to the recently submitted scheme, there would be an objection of landscaping grounds and the layout plan suggests no tree planting within or around the site.

In the absence of a revised landscaping scheme is required to show the exact level of landscaping proposed for the recently submitted revised scheme the proposal is not considered to comply with criteria 28 of policy DE1 and C4 of the Torbay Local Plan.

### **Biodiversity:**

Policy NC1 of the Torbay Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. The policy continues to state that development should not result in the loss or deterioration of irreplaceable habitats or wildlife corridors. It also notes that all developments should positively incorporate and promote biodiversity features.

The proposed development site falls within a greater horseshoe bat sustenance zone associated with the SAC roost at Berry Head. Sustenance zones are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC. The permanent loss of existing or potential habitat within the sustenance zone and in proximity to the Berry Head roost has the scope to adversely affect the favourable conservation status of the Berry Head maternity colony. It is recognised that the development needs to be screened in terms of the Habitat Regulations Assessment, which has to be carried out prior to the decision being issued. The comments from Natural England are however noted; Natural England have advised that the proposal is unlikely to affect any statutorily



protected sites or landscapes.

Comments from the Council's Ecological Consultants have been sought and the outcome of this consultation will be presented to the Members at the Committee meeting. The submitted ecological report has identified habitat suitable for a number of species including badger, birds and reptiles on site. The report stated that the proposed works will result in the loss of low quality habitats which are of limited value to nesting birds and commuting/foraging badgers. The report identified that no reptiles were found during the survey of the site. The report recommends precautionary timing and suitable control measures in order to minimise potential impacts during vegetation removal and construction. The report states that additional habitat will be created as part of the scheme and will provide new commuting/foraging habitat. The report concludes that the scheme is likely to result in a minor positive impact on the ecology of the site.

Comments from the RSPB have recommended the inclusion of bat and nesting bird features by way of swift bricks and were the application to be recommended for approval these could be sought by way of condition. Subject to receiving comments from the Council's Ecological Consultants, which confirm the findings of the submitted reports, a HRA screening confirming no likely significant effect on the South Hams SAC, conditions relating to nesting features and a satisfactory level of landscaping being achieved on site which helps achieve a biodiversity gain, the proposal would be considered compliant with policies SS8 and NC1 of the Torbay Local Plan.

### **Residential Amenity:**

The proposals are to be sited to the north of the approved residential development (P/2013/1229 and P/2014/0071). The position of the proposals in relation to the residential development reflects that shown within the indicative layout shown at outline stage. Paragraph 17 of the National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Policy DE3 of the Torbay Local Plan 2012-2030 states that developments should be designed to not unduly impact upon the amenity of neighbouring and surrounding uses, with one of the criteria for assessment being the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution. The proposed building is positioned some distance from residential dwellings and is separated by White Rock Way. The proposals are not considered to result in any serious detriment to residential amenity by reason of loss of light, loss of privacy or by reason of being unduly dominant or overbearing due to the separating distances involved which are a minimum of approximately 22m.

In terms of noise, the proposals have the potential to impact upon residential amenity. Details of any proposed extraction and ventilation to serve the retail unit can be secured by condition to ensure any potential impact is minimised. Concerns regarding the impact of deliveries on residential amenity has been raised by the Council's Senior Environmental Health Officer and this was previously raised by the Committee as part of the reserved matters application. This potential impact can be resolved through preventing access to the site for HGVs from White Rock Way and requiring access only from Waddeton Road

to the north of the site via the use of Traffic Regulation Orders. Such Orders can be secured by condition.

**Access and Parking:**

The amount of retail floor space has increased since the outline application established the principle of retail development in this location. The increase in floor area since the outline scheme forecasts an increase in trips of 30 in the AM peak and 67 in the PM peak which equates to approximately 1 extra trip every two minutes in the AM peak and one extra trip every minute in the PM peak. The applicant's Transport Consultants have concluded that the proportional increase is very low and should be considered within the context that many of these trips will be pass-by trips already on Brixham Road rather than trips new to highway network. They also conclude that given the scale of infrastructure introduced by the outline permission the very low increase in trips will have little discernible impact upon the operation of either junction on Brixham Road which will be used by customers to access the store. Comments from the Council's Senior Project and Strategy Officer are awaited on this point and the Members will be updated at the Committee meeting.

The position of the access to the site largely reflects that agreed at outline stage with two points of access from Waddeton Road and White Rock Way. A new section of road is already in situ, enhancing Waddeton Road and including a roundabout with access in to the development site.

Revised plans have been submitted which show a revised layout to the car park, a number of points have been raised by the Council's Senior Strategy and Project Officer and confirmation is awaited from this officer as to whether all have been successfully resolved. These related to pedestrian crossings and access and whether Waddeton Road is to remain private or it is to be adopted. The Members will be updated on these points at the Committee meeting.

The Council's Senior Strategy and Project Officer has also raised matters of vehicle parking and cycle parking. The proposal includes 120 parking spaces (6 of which are allocated for disabled people, 8 are parent and child spaces and 2 are electrical charging spaces). Cycle parking is proposed to serve the retail use, the plans indicate that 7 cycle loops are proposed.

Policy TA3 in the Torbay Local Plan states that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development and that development proposals will be expected to meet the guideline requirements as set out in appendix F. Appendix F states that in local centres, a minimum level of parking provision will be negotiated taking into account the impact of the use and existing parking provision. The previous outline consent (P/2011/0197 refers) included a supporting Transport Statement which stated that the parking provision for the development would not exceed the maximum standards set out in the adopted Local Plan 1995-2011 (at the time of the outline consent). No parking provision figure was provided for the retail element within the Transport Statement but it was noted that at the time of the outline consent, policy T25 of the Torbay Local Plan 1995-2011 stated that parking provision

should be provided at a maximum level of 1 parking space per 14sqm of gross retail floor space and therefore 118 spaces maximum. At the time of this Local Plan (1995-2011) there was no differentiation between out of centre and local centre proposals. The current Local Plan 2012-2030 however recognises this retail hierarchy defining local centres as areas of shops and similar uses generally serving only the immediate area. In line with this, they tend to be located within or adjacent to residential estates and accessible by a range of transport modes including walking, cycling and public transport. There is therefore a case for a lower level of parking provision than that required for out of centre retail proposals which are subject to a different standard. This is also supported by policy TA1 of the Torbay Local Plan 2012-2030 which states that developments should ensure that the use of cars is reduced wherever possible and that the most sustainable and environmentally acceptable modes of transport are promoted as integral parts of developments. In line with this it is not considered appropriate to provide an oversupply of parking such that it would encourage use of the private car when the location of this development is such that it should encourage access via walking, cycling and public transport predominantly.

The location of the development within a proposed local centre has been taken into account when considering the level of parking provision required. This consideration has also taken into account the opportunities for alternative modes of transport and relevant TRICS data (database of trip rates for developments in the UK). Having considered this information, in consultation with Highways Officers, an approximate parking provision level of 1 space per 17sqm of gross retail floor space within a local centre was considered appropriate taking into account use of sustainable modes of transport. This would have require approximately 129 parking spaces to serve the retail store. However in line with policy TA3 and associated appendix F, this is a guideline requirement only and is negotiable taking into account the impact of the use and existing parking provision. The proposed ratio of parking provision would be 1 space per 18.4sqm of gross retail floor space. On balance, this level of parking provision is considered acceptable by Officers in light of the local centre location and subject to securing a travel plan to encourage sustainable transport use and a car park management strategy to address the operation of the parking by condition along with Traffic Regulation Orders to secure no waiting on White Rock Way and the prohibition of HGV access from the junction of White Rock Way and Waddeton Close.

In terms of cycle provision, the proposed plans indicate that 7 cycle loops are proposed. This would be below the recommended standards as set out in appendix F of the Local Plan. Cycle storage to serve the retail store for both visitors and staff will also be required. Cycle loops are considered appropriate to serve visitors to the store however cycle storage for staff will be required to be secure and covered to ensure its use. As this level of cycle storage would need to be appropriately designed into the scheme, revised plans would be required to indicate where this storage will be proposed rather than this being secured by condition. Electrical charging points are provided and these can also be secured by condition. The Senior Strategy and Project Officer has requested clarity on the number of cycle spaces being provided and the Members will be updated on this point at the Committee meeting.

### **Drainage:**

The application site is within the Critical Drainage Area as designated by the Environment Agency. Policy ER2 requires all development to seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will firstly discharge to an adequate infiltration system, a main river or watercourse, a surface water sewer or highway drain or as a last resort a combined foul sewer where discharge is controlled to be at a greenfield discharge rate.

The Council's Drainage Engineer has requested additional information particularly with regarding the hydraulic calculations and modelling for the proposed surface water drainage design. Torbay has been designated by the Environment Agency as a Critical Drainage Area (CDA). As a consequence, all development requires a basic Flood Risk Assessment (FRA) and all new development must deliver a reduction in run-off rates. This requirement applies to brownfield sites. The explanatory text to Policy ER1 of the Local Plan states that all off-site surface water discharges from new development should mimic greenfield performance up to a maximum 1 in 10 year discharge. On site, all surface water should be safely managed in conditions up to the 1 in 100 event plus an allowance for climate change. In order to satisfy the requirements arising from the Critical Drainage Area designation. It must be established that these measures can be accommodated prior to permission being granted. These measures cannot be secured by condition and therefore unless this information is submitted the proposal will not meet the aims of policies ER1 and ER2 or the aims of the National Planning Policy Framework insofar as it seeks to ensure flood risk is not increased elsewhere.

### **Emerging Paignton Neighbourhood Plan:**

The Paignton Neighbourhood Plan has only recently completed its consultation stage, has not yet been the subject of an independent examination, as a result only limited weight can be afforded to the policies in that Neighbourhood Plan.

The Paignton Neighbourhood Plan (submission version) does not allocate any sites for any form of development, however Policy PNP21 promotes employment at White Rock and nearby areas. Policy PNP2 seeks to protect the town centre, but does not set out a sequential or impact test for out of town centre stores.

### **Other Issues:**

Policy SC1 of the Torbay Local Plan states that all developments creating over 1,000sqm of floorspace will be required to undertake a screening for a Health Impact Assessment and a full Health Impact Assessment if necessary, proportionate to the development proposed and to demonstrate how they maximise positive impacts on health and healthy living within the development and adjoining areas. No health impact assessment screening has been submitted with the application. Whilst in line with Policy SC1, a screening is required, the information submitted in support of the application is considered sufficient to determine that a health impact assessment will not be required.

### **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:**

The proposal would result in the provision of retail space which would benefit the local economy as a result of providing 40 jobs. The construction phase will also benefit the local economy.

**S106/CIL:**

**S106:**

The Planning Contribution and Affordable Housing SPD states that developments in Torbay will be assessed to identify where they generate net additional trips and therefore contribute towards sustainable transport. Table 4.3 of the SPD indicates Sustainable Transport contributions will be sought at a rate of £7,530 per 100sqm for retail developments within the town centre but that mitigation will usually be provided for job creation/regeneration. In this case, (without any mitigation) this would amount to £41,641 towards sustainable transport. This calculation is on the basis of the additional 553sqm of gross additional floorspace between the outline consent and full application now proposed. Regard however will be given to the cost of providing other mitigations to transport such as measures incorporated in travel plans. Mitigation for job creation and economic prosperity is a high priority for the Council and therefore it is particularly important that planning obligations do not impede upon job creations. On this basis, mitigation from tariff style contributions will be given for jobs created by development proposal. This is matter that is being considered further by the Council's Senior Project and Strategy Officer and the Members will be updated at the Development Management Committee.

**CIL:**

The application is for retail development (Class A1 retail over 300sqm) where the Community Infrastructure Levy (CIL) is £120 per square metre of additional gross internal floor area created. The existing gross internal area in lawful use for a continuous period of at least six months within the three years immediately preceding this grant of planning permission is 0m<sup>2</sup>. The CIL liability for this development is £264,720. In line with the submitted CIL form, this is based on 2206sqm at £120 per m<sup>2</sup>.

### **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.

### **Proactive Working:**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

### **Conclusions:**

The provision of retail uses at this site is supported by policies TC1, TC2 and TC3 of the Torbay Local Plan 2012-2030. The principle of retail development of this scale in this location is considered acceptable subject to securing the retention of the existing Lidl store in the town centre for a minimum of 5 years from the commencement of any retail use at this store, in order to offset any impact on the town centre from the additional floorspace that is proposed compared to the previously approved scheme. However there are a number of concerns relating to the design of the proposal and whether it would provide a strong enough visual and legible presence on this important corner site, which when tested against the policies in the Torbay Local Plan 2012-30 warrant the refusal of the application.

The proposed development fails to have a clear urban structure and grain that would integrate with the surrounding context, relate well to the surrounding built environment that integrates with the surrounding context, and would fail to positively address the street with active frontages and respect the existing street frontage and built form. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 3, 5, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and Policy DE4 of the Torbay Local Plan.

In addition the proposed development fails to provide a suitable landscaping scheme which would soften and integrate the site into the existing townscape and townscape of the neighbouring sites which are under construction or pending approval. The proposals would fail to deliver a high quality landscaping scheme and is considered contrary to criteria 28 of policy DE1 and C4 of the Torbay Local Plan.

The application site is within a Critical Drainage Area as designated by the Environment Agency and Flood Zone 1. In the absence of a sufficiently detailed surface water drainage design, no proper assessment can be made of the impact of surface water run off or the drainage hierarchy. It is therefore unclear whether the proposed development or surrounding area could be kept safe from the effects of surface water. The proposal would not comply with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030, and would be contrary to paragraph 103 of the NPPF.

Finally there are number of outstanding matters which require resolution, these relate to the number cycle spaces being provided, whether the additional trips generated by the

development will require S106 contributions to mitigate the effects on the local highway network and whether the pedestrian routes through the development are acceptable in relation to criteria 22 of policy DE1 and policies TA1 and TA2 in terms of providing vehicular and pedestrian access to a safe standard.

**Relevant Policies**

TC1 - Town Centres

TC2 - Torbay retail hierarchy

TC3 - Retail Development

TA1 - Transport and accessibility

TA2 - Development access

TA3 - Parking requirements

DE1 - Design

DE3 - Development Amenity

DE4 - Building heights

NC1LFS - Biodiversity and Geodiversity

SS8 - Natural Environment

SDP1 - Paignton

SDP3 - Paignton North and Western area

ER1 - Flood Risk

ER2 - Water Management