

Application Number

P/2017/1019

Site Address

Land At White Rock Way
Paignton
TQ4 7RZ

Case Officer

Miss Angharad Williams

Ward

Blatchcombe

Description

Formation of supermarket inc associated works.

Update Report

The subject planning application came before the Development Management Committee on 12th February 2018 where Members resolved to defer the application for two reasons:

1. Design of the proposed store (not considered to be of a quality that was acceptable for this site);
2. For the proposal to make the best use of the space. This refers to utilising floor space above the retail use, to accord with the principle set out in the previous outline consent relating to the site.

The applicant has worked with officers on the design of the proposed building and has submitted revised plans. In addition, a statement of justification as to why the second reason for deferral cannot be achieved by them at this site has been submitted.

Revised Recommendation

That the application be approved subject to the completion of a s.106 agreement for:

- Lidl store remaining in Victoria Square, Paignton for a minimum of 5 years after the approved store at White Rock opens for trading;
- Financial contributions to mitigate the detrimental effects on the highway network;
- Financial contributions towards the costs of any necessary traffic orders of Waddeton Road.

Together with the following conditions:

- Development shall begin before the expiry of three years from date of this permission;
- Works to be carried out in accordance with the approved plans;
- Use Class A1 foodstore opening hours shall be no longer than 08:00 -22:00 Monday to Saturday and 10:00 – 17:00 Sundays;

- Deliveries to 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. There shall be no loading on White Rock Way and no waiting on Waddeton Close;
- Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), there shall be no extensions, internal sub-division of the foodstore and no provision of mezzanine floors;
- Prior to the foodstore first trading the car parking and associated vehicular and pedestrian access points shall have been completed in accordance with the detailing set out in the approved plans, including cycle storage and electrical charging units;
- Prior to the installation of any external lighting on the outside of the buildings or elsewhere on the site full details including design, siting and illumination-type shall be submitted to the Local Planning Authority for approval. Only lighting that has been approved in writing by the Local Planning Authority shall be installed;
- Details on the Implementation of landscaping and ongoing maintenance including details of tree planting shall be submitted prior to commencement of development; hard landscaping (to include levels and details of materials, tree-pit size);
- Notwithstanding the details submitted, samples of the natural stone proposed and details of the mortar spec and finishing to be submitted to the LPA prior to commencement of development. Large scale details submitted prior to commencement of development above damp proof course level
- Travel plan and car parking management strategy with 30% modal shift and car parking management strategy prior to the occupation of the development.
- Drainage to be in accordance with approved details
- Submission of waste audit plan prior to commencement of development;
- No development to commence until a construction method statement has been submitted and approved;
- If, during development, contamination not previously identified is found to be present at the site then no further development (unless otherwise agreed in writing with the Local Planning Authority) shall be carried out until the developer has submitted to, and obtained written approval from the Local Planning Authority for an investigation and risk assessment and, where necessary, a remediation strategy and verification plan detailing how this unsuspected contamination shall be dealt with;
- Any vegetation clearance will be undertaken outside of bird nesting season;
- Integral nest boxes (10 'swift bricks'), details submitted prior to commencement and implemented prior to occupation

Final drafting of conditions to be delegated to the Executive Head for Assets and Business Services

Matters that required further resolution following the Planning Committee of 12th February

This update report will address only those matters related to the reasons for deferral, before setting out the original report that came before Members in February in Italics below..

For reasons of clarity, it should be noted that at the meeting on 12th February officers updated the recommendation to Members, confirming that the application was being recommended for refusal for the following reasons:

1. The proposed development would fail to deliver a good quality legible building on this highly visible corner site at the entrance to White Rock which is commensurate to the role of the building as a local centre providing a strong focal point for the emerging new community. The scale of the building would have a limited localised effect and would present a weak form of townscape out of scale and proportion with new development on adjoining sites. The quality of the design would be poor. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria: 2; 3; 12; 14; 15; 16; 18; 20; and 25.
2. Lack at present time of completed s.106 agreement to secure: Lidl store remaining in Victoria Square, Paignton for a minimum of 5 years after any store on application site opens for trading;

Financial contributions to mitigate the detrimental effects on the highway network;
Financial contributions towards the costs of any necessary traffic orders of Waddeton Road.

Matters if drainage are also still to be resolved, and whilst the applicant has submitted additional drainage information, comments from the Council's Drainage Officer are awaited,

Reason for deferral 1:

- Design of the proposed store

As outlined above the proposed development that was considered at the Development Management Committee in February was not considered to meet the requirements of Policy DE1 (Design) in the Torbay Local Plan 2012-30 that seeks to achieve good design, respecting and enhancing Torbay's special qualities. The planning history (specifically that of reserved matters application P/2016/0411) was considered to be a material planning consideration and it was expected that a similar approach would be taken with this full planning application.

Revised plans amending the design of the proposal have been submitted. In summary, the main changes that have been put forward to the scheme are as follows:

- Dummy windows/doors on the White Rock Way elevation have been removed and the overall façade has been enhanced in terms of the quality of materials, with interest created using narrower sections of natural stone and render. This also involves the introduction of natural limestone, which works contextually with the surrounding development and reflects the local vernacular.
- Atrium is proposed to be finished in render to match Innovation Centre.
- The tower element has introduced windows on the White Rock Way elevation to continue an appropriate vista on the corner.
- The canopy on the car park façade wraps around the corner of the building to the Brixham Road elevation does not continue across the entirety of this façade.
- The steps along Brixham Road have been widened up to the ramp, with a planter in the centre, creating greater emphasis on the entrance to the Local Centre, announcing the entrance to the store.
- The trees along White Rock Way have remained which enables the building to be read vertically as well as horizontally.

All of the above have been undertaken in accordance with the advice received from the Council's Urban Design Consultant, whose comments are outlined below:

“the fundamental deficiencies in terms of this project as an urban design response remain unchanged, but the architectural design does now seem to be improved.

My brief response is therefore as follows:

- Material strategy now acceptable (more detail on natural stone re mortar spec, samples and finish/coursing of stone, etc. would be needed as a pre-commencement condition, if application is approved)
- Good to see an appropriate generosity to the steps down from Brixham Road and that they also recognise the natural desire line of pedestrians approaching from the junction.
- The introduction of the double-height 'atrium' at the Brixham Road end of the store, although only two storeys, has a much-improved sense of scale and presentation to Brixham Road.
- Although not able to respond successfully to all of the conditions around the edge of the site, there is now a simple honesty and clarity which avoids 'dummy' windows etc.
- Very important to ensure that the columnar tree variety shown along White Rock Way (and providing a sense of scale here in lieu of a taller building) are able to healthily progress to good maturity – hope that the tree officer can verify the tree-pit size and detailing is adequate to allow this and/or

- these details can be demanded to be submitted for approval as a further pre-commencement condition?
- Working with the standard Lidl store typology, I think it is difficult to imagine any further substantial improvement on this version...”

As such, and in the planning balance, it is considered that from a design perspective, the application has improved. Whilst the building does not achieve what was envisaged at the site in the previous reserved matters application, the quality of materials and progress made in terms of the overall design should be noted. It is considered that the revised design now acknowledges local character, and relates to the surrounding built environment in terms of materials. The improved atrium appearance is also considered to improve the gateway appearance of the Local Centre, and would have a more positive relationship with the proposed Innovation centre.

Taking just the sole matter of design, and materials, it is considered that the proposed development has met more of the design criteria as outlined within Policy DE1, and has enhanced upon all previous versions. Whilst the proposed building cannot be said to evolve high quality architectural detail as stipulated under Criteria 16 of Policy DE1, the use of a sensitive palette of materials on balance is considered to be met. Taking this into account, and acknowledging that Lidl as the applicant have a typology, it is considered that the development now complies with criteria 12; 14; 15; 16; 18; 20; 25.

Matters that required further resolution following the Planning Committee of 12th February

Reason for deferral 2:

- The use of the site given that the application only proposed single retail use.

The applicant has been asked to address both the reasons for deferral of the application. They have advised that to provide an additional use on this site above the proposed retail floorspace is not feasible.

The applicant has provided the following statement which Members are asked to consider:

“I can confirm on Lidl’s behalf that we are not able to include additional use classes above our store for the two main reasons of financial viability and the fact that inclusion of active first floor uses would put Lidl at an unsustainable competitive disadvantage compared to the existing retail competition on Brixham Road. I will elaborate on both these points in the body of this letter using Plymouth – Union Street as a case in point.

1. *Financial Viability: We have incurred vast financial losses at Plymouth -*

Union Street for which we are not able to recover the build cost. Of 124 stores trading in the South West region (inclusive of those at the stage of live applications and in build) only one store, Plymouth – Union Street has residential accommodation above . This has proven to be a financially unviable proposition which does not stack up for the business and as such a mistake we are not prepared to replicate.

Furthermore, if an additional storey was constructed over the retail floorspace, trade would inevitably suffer due to the building's construction having to accommodate and support additional storeys as available merchandising space becomes compromised. This strain of an additional use would inevitably extend to car parking provision – the quantum of which is agreed to be at the minimum required level for the foodstore in isolation already. We must highlight again that the application site differs, and is smaller, than the one of the Reserved Matters Application.

- 2. Competitive Disadvantaged Position Lidl would Face: All other retail operators on Brixham Road operate from standard specification uncompromised stores where retail competition is strong. It is therefore both unviable and unreasonable to request Lidl to build the only compromised store in this corridor.*

The Policy position at Plymouth – Union Street differed from that at the subject site. A single storey

Lidl store was originally proposed for the Union Street site in 2006, however, the proposal was amended numerous times in response to the policy requirements of the Millbay and Stonehouse Area Action Plan (AAP), adopted in August 2007. Policy MS08 specifically applied to Union Street and sought mixed-use development of 3 to 5 storeys. Therefore, Lidl was obligated to provide an additional use above the store to comply with planning policies.

Reference is also made in February's Committee Report to the proposal's divergence from the principles of the design and access statement approved under Outline consent

P/2011/0197, which proposed student accommodation above retail uses in the indicative land use allocation plan (Section 4.3). Where local planning authorities wish to secure features shown on an indicative plan submitted with an outline consent, these may be secured by specific condition. Accordingly, Condition P1 attached to P/2011/0197 states that the development permitted shall be carried out in accordance with the principles outlined within the design and access statement. However, importantly, Outline permission P/2011/0197 has since lapsed.

It is a fundamental principle of the planning system that planning applications must be determined in accordance with the Development Plan unless material considerations indicate otherwise. It is clear that the development plans in force in Plymouth and Torbay set out very different planning contexts against which development proposals should be assessed. Lidl's Plymouth - Union Street store received planning permission almost a decade ago following a series of design iterations that responded to the stringent requirements of Policy MS08 and was subsequently amended in the context of the economic downturn in 2008, which prevented Lidl from bringing forward the high-density scheme originally approved.

By contrast to Policy MS08, the relevant design policies adopted in Torbay apply across the Council area and therefore their applicability to particular development proposals must be assessed on a site-by-site basis. Although planning history for a site is a material consideration, it does not constitute planning policy.

This issue has been raised with Lidl's Board of Directors who have categorically rejected accommodation above the proposed retail area for this Application for the two principle reasons outlined above, financial viability and the competitive disadvantaged position we would face which would represent a proven risk which we are not able to accommodate.

The proposed Application serves as a catalyst to the emerging Local Centre providing certainty and timescales to the construction of the proposed Waddeton Road link, jobs for local residents and the delivery of a foodstore on a site on which the principle of A1 food retail is already established and for which we have received an overwhelming level of support.

A full copy of the letter is available on the website.

As such, it is clear that any proposal on this site from the applicant will not be able to address the Council's concern over the diversity of use on this site and its ability to make the best use of space in terms of ground coverage and height. Consequently, the application is still not able to meet all of the criteria outlined in Policy DE1 of the Local Plan. Specifically, criteria 2; 3.

It is noted that whilst the planning history on this site remains a material planning consideration, there are no policies within the Local Plan that specifically dictate that residential accommodation should be provided above retail premises. Consequently, whilst this is desirable in this location it is considered that it would be difficult to defend refusing the application on this basis.

Conclusion on reasons for deferral:

The application has been deferred by Members for two reasons: 1, design and 2, the use of the site, with single retail use not considered to be appropriate.

The applicant has provided a revised design and has worked with the Council to

achieve what is considered to be the most appropriate design response to date. The revised design includes good quality material palette and the atrium design responds more appropriately to the street scene in which the building will sit. However, as the second reason for deferral cannot be addressed, namely the promotion of diversity through a balanced mix of uses that work together and encourage sustainable living, and making the best use of space in terms of ground coverage and height, directly conflicts with the overall design of the building.

For this reason, it cannot be said that the application is a fully policy-compliant scheme. Nonetheless, the principle of retail development is supported within this location under Policies TC1, TC2 and TC3, and the design of the building including the proposed materials have significantly improved. Whilst criteria 2 and 3 of Policy DE1 are not considered to be met, having due consideration to the remaining policies of the Local Plan, and the presumption in favour of sustainable development as set out in the NPPF, it is considered that on balance, the proposed development is acceptable.

The applicant has advised that it is not viable to provide accommodation above the retail store, and it can therefore not address the second reason for deferral. This is because of the impact it will have in relation to their competition of other operators along Brixham Road. In this situation, normal procedure would be to request a viability assessment as to why the position is unviable to Lidl. However, whilst the planning history on this site remains a material planning consideration, there are no policies within the Local Plan that specifically dictate that residential accommodation should be provided. Consequently, whilst such a mixed use is more than desirable for this location, in the planning balance, the latest design revisions are considered to weigh in favour of the application. There is therefore a recommendation to approve the application, subject to conditions.

Drainage 1:

The applicant has submitted further information in respect to the drainage of the site. The Council's Drainage Officer has been consulted and a verbal update on this matter will be made at Committee.

Highways

Additional information is awaited from the applicant in respect to parking accumulation figures for the weekend. An update on this matter will be provided verbally at the Committee.

Contributors:

In accordance with the Council's records, there are now a total of 222 contributors, with 208 in support of the application and 12 objections to the application.

A letter has also been received in support of the application from the Property Director at Lidl. The letter can be read in full on the Council's website but in summary, the letter outlines further justification as to why Lidl are not able to

provide residential/student accommodation above their store in this circumstance. A full copy of this letter together with the associated map is available on the Council's website.

S106 and CIL:

As outlined in the previous Officer Report, the development is CIL liable. The appropriate calculations are being undertaken. CIL is payable at the rate of £120 per sq. m. A S.106 agreement will be required to secure the following;

- Lidl store remaining in Victoria Square, Paignton for a minimum of 5 years after any store on application site opens for trading;
- Financial contributions to mitigate the detrimental effects on the highway network;
- Financial contributions towards the costs of any necessary traffic orders of Waddeton Road.

Previous officer report from DM committee meeting on 12.02.18

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 seeks full planning permission for the erection of a Lidl retail store that is single storey in height, with a small element of the building raised in height to give the impression that the building is three storey. It would have a gross internal floor area of 2,206sqm which includes a sales area of 1,323sqm. The recently approved reserved matters application for a retail store on this site (P/2016/0411) had a floor area of 1,652sqm gross retail floorspace (1,188 sqm net floorspace). This constitutes an increase of 554 sq m gross and 135 sq m net

Following the original submission design amendments have been undertaken to address Officer concerns of design, scale appearance, landscape and functionality.

It is considered that the revised proposal would provide a weak form of development in this location that would not be consistent with the strong 'principal frontages' to Brixham Road that have been approved and are under construction on adjoining sites. , Therefore, the proposal would not to comply with the Local Plan policies and the ambition to create quality places and buildings.

The proposed building is located at the junction on White Rock Way and Brixham Road. The proposal will include provision of 121 parking spaces (6 of which are allocated for disabled people, 8 parent and toddler 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. Materials include sandstone, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The application is also supported by a Landscaping Plan which propose a number of trees. Access to the site would be from Waddeton Close and White Rock Way.

The revised plans propose a single storey building with the elevation facing Brixham Road raised compared to the rest of the building to give the impression that the building is three storey, therefore attempting to address the context of the existing street scene. This part of the building attains a height of 10.75m with the remainder of the building (as it moves west on White Rock Way) attaining a height of 6.7m. 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 SDP3.5 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 and proposed Innovation Centre 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.

Reserved matters have 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 would warrant the refusal of the application.

The applicant has worked with officers and sought to overcome the objections to the application. Whilst the revised plans have gone some way to improving the proposed development it is considered that the quality of the submission would not meet the requirements of Policy DE1 in the Torbay Local Plan. It is concluded that the proposed development fails relate well to the surrounding built environment and would fail to positively address the street with a strong character in this corner location with limited active frontages The elevational treatment lacks good proportion and composition, and has a poor relationship with the existing street scene Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 of policy DE1 and Policy DE4 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. Therefore, 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. Since the submission of the revised plans, the Council's Strategic Transport Officer has been consulted and an update will be provided at Committee.

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

Recommendation

Refusal:

- 1. The proposed development would fail to deliver a good quality legible building on this highly visible corner site at the entrance to White Rock, which is commensurate to the role of the site as a local centre providing a strong focal point for the emerging new community. The scale of the building would have a limited localised effect and would present a weak form of townscape out of scale and proportion with new development on adjoining sites. The quality of the design would be poor with elevations that lack good proportion and composition. The proposal would fail to respond to local character and to reflect the identity of local surroundings. Overall the proposal would fail to deliver a high quality design and is considered contrary to criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20 and 25 of Policy DE1, and DE4 of the Torbay Local Plan and para. 64 of the NPPF which states 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.*
- 2. 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.*

- The applicant has not entered into a planning obligation to ensure that the Lidl store in Victoria Square, Paignton remains open for a minimum of 5 years after any store on the application site opens for trading, to secure financial contributions to mitigate the detrimental effect of the proposals on the local highway network and financial contributions towards the cost of any necessary traffic orders on Waddeton Road*

Reason for Referral to Development Management Committee

The application is a major application and is therefore required by the Council's 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 February 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 applications were approved under application 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 White Rock site 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, although the decision notice has not yet been issued. 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.

Since the application has been under consideration, a number of concerns have been raised predominately in relation to the design, scale and functionality of the building proposed. Officers advised the applicant that the development would need to be of a scale that was more appropriate for the street context and scale of the plot. It was suggested that the scheme should incorporate either residential or student accommodation above in order to obtain more height, whilst also making good use of the site in providing multiple use. Such matters were agreed in the extant reserved matters application that has been noted above.

The applicant has advised that they have concerns about viability in respect of the request to include residential accommodation of any form above the supermarket. Due to the change in levels between the site and the Brixham Road, the building is already at a disadvantage being at a level approximately 1m lower than the Brixham Road. Nevertheless, it officers consider that the building needs to sit comfortably within the street scene and relate to the context in which it sits. The further revised plans are still not considered to be at the standard that is would provide a good quality building at this key location.

The proposed building is located at the junction on White Rock Way and Brixham Road. To the north of the building are 121 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 sandstone buff brick, silver cladding, standing seam silver roof cladding, curtain wall glazing and render. The revised plans also include an updated Landscaping Plan which proposes a number of trees along Brixham Road, White Rock Way and along Waddeton Close. 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 must be supplied. 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: The revised plans are acceptable.

Earlier comments received advised that there were not considered to be any arboricultural features of merit at the site given the previous site usage and clearance works.

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: As noted above, there have been two events where revised plans have been submitted, and the Council's Design consultant has reviewed each set of plans on each occasion.

The professional opinion of the consultant has not altered significantly since the submission of the most recent revised plans, and it is still considered that the proposal is a significant departure from the design principles that have been specifically conditioned by the Outline Approval (P/2011/0197). It is considered that such principles 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 most recent plans received raised the height of part of the building adjacent to Brixham Road and attempted to address concerns over scale and design. The Urban Design Officer however remains of the opinion that the proposal is not acceptable and outlines that there is no meaningful relationship between the interior of the building and the street, which is also the case for the prominent north elevation and the remainder of the building. It is noted that the three storey element of the building albeit diminutive, provides a better presentation along the short eastern elevation towards Brixham Road, but due to its small size, the impact on the much longer southern and northern elevations are minimal. This evidently causes a concern regards scale.

The introduction of railings along the site boundary to Brixham Road is also considered to be unfortunate; however it is understood that some form of boundary treatment may be necessary here due to the changes in level.

The proposals are therefore not considered to comply with Torbay Local Plan Policy DE1, criteria 2, 3, 5, 12, 14, 15, 16, 17, 18, 19, 20, and 25 or Paragraph 58 of the NPPF. It is therefore recommended that the application be refused.

Senior Strategy and Project Officer (Transport): The initial plans submitted gave rise to concern over the levels of car parking being provided. With reference to Policy TA3, Appendix F of the Local Plan and using the Gross Floor Area, the scheme was considered to be providing a lesser number of parking spaces per sqm of gross floor area than applied to the previous reserved matters application (P/2016/0411). Based on the original submission, it was considered that the proposal would equate to 1 space per 18 sqm ratio and consequently there was a shortfall in parking provision and additional parking spaces were required. On the basis of 40 employees being proposed 20 cycle spaces should be provided for staff, and 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 also 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 also refers to HGV routes and how 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.

Since this initial response, revised plans were submitted in attempt to address these concerns, and it was considered at this time that the despite the revisions, the car parking provision would still be 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 was also requested to be provided along Waddeton Close.

In response to these concerns (and others as noted above) a meeting was held in January 2018 with the applicants whereby further concerns regards highways was raised. This included the request to ensure pedestrian connectivity through the car park from Waddeton Close to the store itself, requiring a widening of the footpath located to the north of the store. There was also a request to input a set of external stairs along the elevation of Brixham Road, in order to again enhance pedestrian connectivity. The latest plans received illustrate that such matters have been incorporated. An updated response to the revised plans will be provided to members at the Committee.

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

At the time of writing, 209 representations have been received (195 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 36,800m² gross employment floorspace, a local centre including food retail (up to 1652m² gross) with additional 392m²A1/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 dwellings 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 2255.9m² (GIA) of floor space, external lighting, circulation space, car parking and hard standing. PENDING CONSIDERATION

Key Issues/Material Considerations

The application seeks full planning permission for the formation of a supermarket and associated works.

The key issues to consider in the consideration of this application are:

- o Principle of development/sustainability;*
- o Appearance of the development (including design, layout and landscaping), and its potential impact on the character/appearance of the area;*
- o Impact of the development on residential amenity.*
- o Biodiversity,*
- o Drainage,*
- o Access and parking.*

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 has only recently completed its consultation stage, has not yet been the subject of an independent examination, nevertheless, taking into account the stage that the emerging Neighbourhood Plan has reached, some weight must be given 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.

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 building which is single storey retail use without provision of any form of accommodation above. A small element of the building provides an appearance of a three storey element and was added as a result of officer concern over the scale of the building proposed. However, this will be effectively 'dummy' space as there are no actual rooms 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.

It is considered that these figures could be an underestimate, but not significantly so. 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.

Whilst a considerable number of letters of support have been received, 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, this area of 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 after 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 the 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.

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.

Appearance of the development (including design, layout and landscaping), and its potential impact on the character/appearance of the area:

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.

Design evolution following Officer Concern

As outlined above, the application since being submitted initially has undergone several revisions in attempt to address officer concern over the design. The proposal was first amended to provide a single storey building of a maximum height of 8.5m, which sought to increase the height by approximately 2m. The building was brought closer to the Brixham Road, with the number of materials on the building reduced, and local stone specified. Such 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.

This was considered a reasonable request to make given that 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 2, 3, 5, 12, 14,

15, 16, 17, 18, 19, 20 and 25 and DE4 of the Torbay Local Plan.

Whilst the applicant agreed to revise the plans in order to try and address these concerns, due to the change in 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, was still considered to appear too low, thereby decreasing its prominence on the street scene and this important corner.

This was particularly evident from the submission of the Indicative Street Scene Plan which demonstrated the inadequate scale of the proposal in relation to the adjacent proposed and under construction buildings.

Further revised plans for the scheme have been submitted, and, the proposals are not considered to suitably address the concerns raised, nor provide a development that meets the aspirations for this site.

The scale proposed 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 lack of roof height which when moving down White Rock way starts to diminish. 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 relation to active frontage, it is acknowledged that the addition of windows within the 'dummy' additional storeys is an improvement; however the provision of 'dummy' storeys is not considered to be a good use of space. The insertion of strip windows incorporated in the elevation fronting on to White Rock Way has again improved upon the concern, but is still not considered to be satisfactory. This lack of active frontage is considered to be contrary to criteria 19 of Policy DE1 in 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 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.

Conclusion of design matters

In summary, it should be noted that at outline stage and a later reserved matters application, 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, although they have demonstrated flexibility in their most recent plans extending the height of the frontage onto Brixham Road.. 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 Policy DE1 in the Torbay Local Plan.

The proposal is not considered to comply with criteria 2, 3, 5, 12, 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, 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. The application was supported by a landscaping plan upon submission, which due to concerns raised has also undergone revision. The initial proposals illustrated a scheme with 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. This was considered to provide a lack of landscaping to the north of the building within the car parking area, which would be necessary to soften and integrate the site into the existing landscape.

Since the application proposals have been revised in attempt to address design and scale concerns, a revised landscaping scheme has also been submitted. This now proposes a number of trees along White Rock Way, Waddeton Close and Brixham Road. The Council's Arboricultural Officer has been consulted on the revision and advises that the applicant has overcome all previous concerns and that the landscaping scheme is considered to be acceptable.

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.

The development has been screened in respect of the Habitat Regulations and it is concluded that there will be no likely impact on the Berry Head component of the South Hams SAC.

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 suggests that the proposed development is acceptable provided that the recommendations outlined within the Ecological

Assessment and Ecological Management Plan undertaken by Devon Wildlife Consultants are followed and a number of conditions associated with any grant of planning permission.

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 conditions being associated with any grant of planning permission in line with the recommendations received from the Council's Ecological Consultants, together with 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 121 parking spaces (6 of which are allocated for disabled people, 8 are parent and child spaces and 2 are electrical charging spaces).

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 (the development plan 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. 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 prior to determination of the application, 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 proposals completed their Regulation 16 Publicity Period consultation on 18th December 2017. It is expected that they will be subject to Independent Examination in Spring 2018. As such they are at an advanced stage of preparation. National Planning Policy Framework paragraph 216 (in Annex 1) states that from the date of publication, decision takers may give weight to relevant policies in emerging plans (unless material considerations indicate otherwise) according to their stage of preparation, extent to which there are unresolved objections and degree of consistency with national planning policies. On balance, it is considered that the Neighbourhood Plans should now carry some weight as they have now completed two rounds of public consultation and reflect the wishes of the Neighbourhood Forums. They cannot be accorded full weight of an adopted/made development plan, although the degree of weight is a matter for the decision taker in accordance with the NPPF 216 criteria. Relevant policies of the Paignton Neighbourhood Plan include:

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 .

A S106 agreement will be required to secure 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

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 0m². The CIL liability for this development is £264,720. In line with the submitted CIL form, this is based on 2206sqm at £120 per m².

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.

As insufficient information has been submitted in support of the application to demonstrate that the proposed development will not result in flood risk due to surface water drainage within a Critical Drainage Area the proposal should be refused for this reason.

It is appropriate to include a third reason for refusal relating to the LPA not having a signed S106 agreement at the time of the decision confirming that the applicant agrees to retain the existing town centre use for a period of 5 years. This is so that, in the event the applicant is successful on appeal, the LPA can argue the need for the Section 106 agreement.

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