

**Application Number**

P/2011/0035

**Site Address**

Former Royal Garage Site  
4-24 Torwood Street  
Torquay  
Devon  
TQ1 1EB

**Case Officer**

Mr John Burton

**Ward**

Wellswood

**Description**

Demolition works; formation of mixed use development to form hotel, A3 units, 2 external purpose units ( D2 use for fitness centre and B1 use for office suite) and 14 apartments with vehicular and pedestrian access

**Update report in relation to s106 negotiations**

**Executive Summary/Key Outcomes**

This item was last reported to the Committee on 8th April 2011 when it was resolved that the proposal should be approved subject to a number of items being delegated to the Executive Head for Spatial Planning. These are as follows:

- (i) the receipt of satisfactory revised drawings in relation to the finish of the buildings and the design of the west elevation of the building on the Terrace;*
- (ii) following receipt of a satisfactory viability assessment, the signing of a Section 106 Agreement securing appropriate contributions to be signed within six months of the date of this Committee;*
- (iii) the conditions and informative set out in the submitted Report; and*
- (iv) an additional condition with regard to sustainable renewable energy sources being used where appropriate.*

Discussions on the s106 legal agreement in respect of this scheme have been ongoing since the decision in April. Unfortunately it has not been possible to conclude negotiations by the agreed time, i.e. within 6 months of the April committee meeting. As such this item is returning to members for confirmation that the terms of the s106 agreement are acceptable and to request additional time to complete and sign the agreement.

As such this constitutes an update report in relation to the s106 agreement. The original report, including a summary of all of the key considerations as well as a description of the site and the proposed scheme, is appended for information.

### **Recommendation**

That the terms of the 106 agreement shall include those listed within this report and that the s106 agreement shall be completed and signed within 3 months of the date of this committee.

### **Key Issues/Material Considerations - S106/CIL**

The previous scheme (P/2009/0690) was approved following the signing of a s.106 agreement which secured the following contributions:

- £280,000 towards sustainable transport/public realm improvement in the area
- £20,000 to pay for inspections of the highway wall at the rear of the site.

Due to the new mix of uses that this latest scheme includes it is considered necessary to revisit this issue. Taking account of the new Supplementary Planning Document (LDD6) and fully mitigating for the existing uses on the site the required contribution would be as follows:

Waste Management	£ 400
Lifelong Learning	£ 2,400
Green Space	£ 16,400
Sustainable Transport/Public Realm -	£341,540
Highway Inspections	£ 20,000
<b>Total</b>	<b>£380,740</b>

Following the committee resolution in April an independent viability assessment was undertaken. The conclusions of the viability assessment are that the development is made unviable by the need to make the full s106 contributions. As a result an offer of £100,000 has been made by the developer and this is considered fair in relation to the outcome of the viability assessment, as this would still be likely to result in a relatively low profit on cost.

A s106 agreement has now been drafted and agreement is anticipated on the detailed wording of the draft prior to the committee meeting. When Members resolved to approve the application back in April, this was conditional (amongst other matters) upon the signing of a section 106 agreement securing appropriate contributions within six months from the date of the Committee. As this has not been possible, the matter is being reported back to members for further authority to agree the s106.

In addition to the usual and general legal terms and requirements, the key terms of the draft legal agreement are as follows:-

#### *Sustainable Transport/ Public Realm Contribution*

To pay the Sustainable Transport/ Public Realm Contribution in three instalments

as follows:-

1. £35,000 to be paid prior to Commencement of Development
2. £35,000 to be paid prior to the first occupation of the ground floor A1 and A3 units erected pursuant to the Planning Permission; and
3. £30,000 to be paid prior to first occupation of the hotel erected pursuant to the Planning Permission

#### *Highway Wall*

A range of measures are included as per the agreement signed in relation to the previous consent (P/2009/0690), to ensure that the highway retaining wall at the back of the site is properly maintained, during and after the development.

#### *Travel Plan*

Measures are included to secure the provision of acceptable travel plans for the various uses on the site.

#### *Stone from Parapet Wall*

The terms provide for the careful removal and potential re-use of the stone from the parapet wall.

#### *Review of Viability*

The viability of the development will be looked at again if the scheme is not complete within 3.5 years from the date of approval. In such an event an independent viability assessor will be appointed and if he/she concludes that the Development will produce a profit in excess of 20% of GDV (gross development value) then additional contributions will be payable up to a maximum sum of £280,470 (the residual contributions payable under the SPD).

#### **Conclusions**

Members resolved to approve this scheme subject to the signing of a s106 legal agreement in terms acceptable to the Executive Head within 6 months of the date of the April committee. This has not been possible to achieve in the timeframe, however, agreement on the wording of the draft is expected to be reached by the committee meeting. As such it is recommended that members give authority to officers to conclude matters and sign the agreement.

#### **Previous Reports**

##### **Update**

Members considered the application at a meeting on 21st March 2011, it was deferred in order to report additional information on a number of matters, which will be addressed below:

*The relationship of the proposal with the Building Heights Strategy*

Members will be aware that the Building Heights Strategy was commissioned by the TDA. At present the report does not carry a great deal of weight as it does not constitute Council policy. However it is likely to be used within the Development Management process for considering where there are opportunities for taller buildings and will form part of the evidence base for the emerging Core Strategy.

Firstly it must be considered whether the proposal constitutes a 'tall building'. Due to the fact that the building is made up of three different elements and that it faces two streets which are on different levels, the consideration of whether the building should be considered as 'tall' is not as straight forward as it might otherwise be.

The element of the building which fronts Torwood Street is not significantly taller than the frontages which exist along this street (the prevailing context). Similarly the rear element of the building which fronts The Terrace is of a similar height to the terrace buildings which also front this street. As such the building has not been considered to fit into the category of a 'tall building', although it is acknowledged that the total number of storeys from 'floor to ceiling' is 8, which is above the prevailing height of buildings in the locality. Therefore considering the proposal against the Building Heights Strategy is a valid exercise.

Within the document there is a plan which identifies the Town Centre, including Torwood Street as an 'Area of Search' where tall buildings are considered to be appropriate in principle, subject to a set of considerations. It sets out three main objectives for Torquay Town Centre; to reinforce the character of fine-grained 3 storey buildings and a varied roofscape, to promote vibrancy and vitality of the town centre through a flexible approach to building height and to reinforce Torquay's role as the primary centre in Torbay. The proposed development has sought to integrate into the fine-grained character of the conservation area, particularly along the Torwood Street frontage. The building elements do exceed three storeys, however, the proposal is crucial in fulfilling the second and third criteria.

The acceptability of a tall building within a certain area turns on a number of key considerations such as the impact on views, whether the development breaches the sky line and how it responds to the topography of the area. The view of Torquay harbour is analysed within the strategy. It refers to the backdrop of the view being tree covered slopes loosely developed with medium scale development. It identifies that this view is sensitive to tall buildings which could harm the balance of the view, particularly in the foregrounds, on hill tops or where it would break the sky line. The design of the proposal has come forward as a response to similar analysis of how the site fits within its context. This has resulted in the breaking up of the building into smaller elements which are not perceived as tall when viewed from key vantage points around the harbour area.

As has already been mentioned the proposed development has not been considered to constitute a tall building, for the reasons outlined. However the criteria for assessing a tall building are similar to those which have been used in assessing the proposal in any event. These are its location, conservation, views, topography, design, public realm, streetscape, microclimate, amenity, land use and sustainability.

In summary, the Building Heights Strategy does not constitute Council Policy as yet and therefore has limited weight. The proposal is not considered to be a tall building due to the way in which the elements have been positioned on the site. In any event, if the proposal were to be considered as a tall building it is considered to be in accordance with the guidance provided within the strategy. Importantly the site is within the area of search, where tall buildings can have acknowledged benefits by way of regeneration and vitality.

#### *Impact of Increased Height on the Conservation Area*

The approved proposal was considered, on balance, to result in an enhancement of the conservation area, due to the overall package of works which were proposed and the quality of the design which came forward. As discussed above, the overall height of the building is less of an issue, the key consideration being the heights of the various elements of the building and the composition of these on the site.

There are two key changes in this composition, the lowering of the middle 'band' of development, set back from the Torwood Street frontage and the increase in the height of the rear section which fronts The Terrace. Whilst there is nothing within policy or guidance which dictates how high is 'too high', the relationship of the rear section of the building with the buildings beyond, in particular the car park and the Terrace buildings, has been considered important in assessing how well the building will assimilate itself in the conservation area.

The building is still lower than the flat roof of the Terrace buildings, however, it does now exceed the height of the parapet of the Terrace buildings. It is considered that a building of the height now proposed can be successfully integrated into the conservation area, provided the treatment of the upper storeys of the rear section of the building (on The Terrace) is appropriate. The key in this case is to ensure that the top of that part of the building appears as a roof, is recessive, lightweight and not overly dominant.

#### *Additional computer modelling*

Additional visual information will be made available to members both prior to and during the committee meeting. This will assist in understanding the proposal as well as being able to assess how well it assimilates into its surroundings.

#### *Servicing*

The servicing arrangements were negotiated during the consideration of the

approved scheme for the site. It is proposed to form a shared coach parking and service bay on Torwood Street with coach parking permitted between the hours of 10:00 and 20:00 and servicing permitted to take place between 06:00 and 10:00.

Highways have agreed the hours of use and the dimensions of this bay. Servicing would take place either from the loading bay on Torwood Street or directly from The Terrace. The applicant's highways consultant have submitted drawings which indicate that it will be possible for delivery vehicles to access The Terrace for servicing and Highways have not raised any objection to these arrangements.

Whilst the composition of the uses within the building differs from the approval these servicing arrangements are considered to be appropriate for the current proposal. The hours available for servicing will assist in ensuring that there is limited conflict of movements on Torwood Street with general traffic and or coaches.

#### *Update from English Heritage*

The visual impact assessment documents which were provided for the presentation to committee were forwarded to English Heritage. This additional information has given rise to concerns, in that the penthouse levels on development to the Terrace were to be of a lightweight, glazed construction, which helped in its mitigation and effected a contrast with the more 'solid' floors below. This does not appear to have been achieved, specifically when viewed from higher up Torwood Street adjacent to the bowling alley.

The additional information has led English Heritage to be less comfortable with the increase in height than they previously had been. They have said that this may be down to the presentation and imagery, or may require additional negotiation in order to overcome these concerns. The additional modelling which is to be provided for members may assist in overcoming or clarifying these issues.

Officers are continuing to negotiate this part of the scheme in order to redesign this element and effect a change in the visual impact of the building on the Terrace from Torwood Street. It is considered that this detail can be appropriately designed and as such the scheme could be approved subject to the resolution of this part of the scheme.

#### *Clarification of proposed floorspace*

The total floor space provided by the flats is 1206 sqm, broken down as follows:

- 1 x 60 sqm
- 2 x 82 sqm
- 4 x 85 sqm
- 5 x 89 sqm

1 x 91 sqm

The non-residential floor space which is as follows:

A1 (shops) – 391 sqm (net loss of 78.9sqm)

A3 (café/restaurant) - 1034 sqm (net increase of 822.3 sqm)

B1 (office) - 294 sqm

C1 (Hotel) - 5749 sqm

D2 (leisure) - 327 sqm

This is a significant increase over the approved scheme. The increase is predominantly achieved by the removal of the cinema, which required 2 storey height rooms for the cinema screens and through the addition of a storey at the rear on The Terrace. Officers are confident that this additional floor space has been successfully accommodated on the site.

### **Site Details**

The site comprises the frontage buildings of 4 – 24 Torwood Street and includes the land to the rear of these buildings, which is currently being used as a car park. It is bound to the south by Torwood Street and to the north by a concrete faced rock wall of approximately 10m in height beyond which is The Terrace at the higher level. To the west of the site is a public right of way which provides pedestrian access between the two roads. The car park originally provided stabling and garaging for the former Royal Hotel, to the west of the application site. The site area is approximately 0.23ha.

In terms of constraints; the site is within the Torquay Harbour Conservation Area. The Torquay Harbour Area Character Appraisal identifies most of the buildings on the site as key buildings within the conservation area with largely unspoilt frontages. Within the Local Plan the frontage buildings are identified as being within a Secondary Shopping Frontage. Most of the site is allocated for mixed use development which could include retail, leisure, employment and residential. Torwood Street is part of the major road network.

The existing buildings on the site are as follows:

4 Torwood Street – “Tictocs’n’rocks” – Retail  
6 Torwood Street – “Devon Kebab House” – Takeaway  
8 Torwood Street – “Trents” – Bar  
10 Torwood Street – “Legends” – Restaurant  
12–16 Torwood Street – “Brights of Nettlebed” – Retail  
22 Torwood Street – “Wild Jacks” – Takeaway  
24 Torwood Street – “The Gold Shop” - Retail

### **Relevant Planning History**

Various applications have been submitted in relation to the existing buildings on site including changes of use, minor alterations including shop-front alterations

and signage.

Various applications were submitted in the 1980's as follows:

P/1983/1792	Retail unit/multi-storey car park. Refused 4/6/1984
P/1984/3237	84 Sheltered flats and wardens flat. Refused 29/1/1985
P/1985/0361	49 flats. Refused 2/4/1985. Appeal dismissed 5/9/1985
P/1986/2379	Erection of 43 sheltered flats plus wardens accommodation, offices and retail/storage space. Approved 25/9/1987

Subsequently an application for a certificate of lawfulness was submitted in 2005 in an attempt to prove that work had commenced on the scheme which was approved in 1987, thereby allowing the work to continue. The certificate of lawfulness application was refused on 6/3/2006 and subsequently dismissed at appeal on 22/08/2007.

P/2009/0689	Demolition Works. Approved 06/07/2010
P/2009/0690	Demolition of 4 – 24 Torwood Street. Redevelopment of site comprising 12 residential apartments with residential parking, 80 bedroom hotel and associated facilities, 6 screen cinema. 1 retail unit and 3 restaurants. Approved 6/1/11

#### **Relevant Policies**

HS	Housing Strategy
H2	New Housing on Unidentified Sites
H3	Residential Accommodation in Town Centres
H6	Affordable Housing on unidentified sites
H9	Layout, design and community aspects
H10	Housing densities
ES	Employment strategy
E1	New employment on identified sites
E9	Layout, design and community aspects
TUS	Tourism Strategy
TU1	Harbourside and waterfront regeneration
TU5	New holiday accommodation
SS	Shopping strategy
S1	Town Centres
S2	Town centres mixed use developments
S4	Secondary shopping frontages
S5	New town centre shopping developments
CF6	Community infrastructure contributions
W6	New development and minimisation
W7	Development and waste recycling facilities
EP1	Energy efficient design
EP7	Contaminated land
EP8	Land stability



- BES Built environment strategy
- BE1 Design of new development
- BE5 Policy in conservation areas
- BE6 Development affecting listed buildings
- TS Land Use Transportation Strategy
- T1 Development Accessibility
- T2 Transport Hierarchy
- T3 Cycling
- T19 District Distributor Road Network
- T25 Car Parking in New Development
- T26 Access from development onto the highway

Supplementary Planning Documents:

“Planning Contributions and Affordable Housing: Priorities and Delivery”  
 “Urban Design Guide”

- PPS1 “Delivering Sustainable Development”
- PPS3 “Housing”
- PPS4 “Planning for Sustainable Economic Growth”
- PPS5 “Planning for the Historic Environment”
- PPG13 “Transport”
- PPS25 “Development and Flood Risk”
- Good Practice Guide on Planning for Tourism (replacement for PPG21)

**Proposals**

As mentioned above a mixed use scheme involving the demolition of the existing buildings and the erection of a replacement structure has been approved. Members resolved to approve that scheme in June 2010 and following extensive negotiations in relation to the s.106 agreement and finalising the detailing of the scheme, it was approved in January 2011.

This proposal is a revised version of the approved scheme which incorporates a different mix of uses and a revised building envelope.

The main changes in terms of the mix of uses are summarised below:

**P/2009/0690**

- 12 flats
- 80 bedroom hotel
- 1 x retail unit
- 3 x restaurant
- 6 screen cinema

**P/2011/0035**

- 14 flats
- 113 bedroom hotel
- 1 x retail unit
- 3 x restaurant
- Office
- Gym

The accommodation would be laid out as follows:

### *Ground Floor*

It is proposed to provide 4 units on the ground floor. Three of these would be in A3 use (of 367/270/371 sqm) and one would be in A1 use (361 sqm). The western-most of the A3 units (adjacent to the existing footpath) would also have a first floor mezzanine. The frontage of the retail unit would be recessed with access to the lift, providing access to the hotel above. Leading from this recess steps would lead up to a new public footpath which provides pedestrian access between Torwood Street and The Terrace.

### *First Floor*

The main pedestrian access to the hotel would be off the new footpath. This floor of the hotel provides the public facilities; reception, bar, meeting and working areas, breakfast area, kitchen, office and WC facilities. A central light well is accessible from the public areas. Beyond the hotel facilities, adjacent to the highway wall would be a gym of 327 sqm, including welcome desk, changing rooms and plant room. This would be accessed from The Terrace.

### *Second Floor*

Above the gym would be a purpose built office of 294 sqm, with ancillary toilets and kitchen. This would also be accessed from The Terrace. The remainder of this level is given over to hotel rooms and a fitness room.

### *Third Floor (ground floor from The Terrace)*

This storey of accommodation is at the level of The Terrace. 14 parking spaces are provided for the residential accommodation. Entrances are provided into the office/gym area of the building and also to the residential flats. There is also a secondary access to the hotel. The remainder of this level is given over to hotel rooms and ancillary functions.

### *Fourth Floor (first floor from The Terrace)*

This floor is given over wholly to hotel rooms and associated circulation space.

### *Fifth Floor (second floor from The Terrace)*

From this floor upwards the accommodation is only provided within the rear section of the building which faces onto The Terrace. At this level 2 flats are provided, the remainder of the floor is given over to hotel rooms.

### *Sixth Floor (third floor from The Terrace)*

This floor provides 9 flats, 6 of which are duplex style with bedrooms on the floor above.

### *Seventh Floor (fourth floor from The Terrace)*

In addition to the upper floors of the 6 duplex apartments, 3 additional flats are provided on this floor.

In terms of building form the current scheme is very similar to the previous

scheme in that it presents 3 storeys to Torwood Street. There are also still two linear elements in the same locations as the approved scheme. The front element which is set back from the Torwood Street elevation is still two storeys in height. However, it is 1m lower than the approved scheme. The rear element, which fronts onto The Terrace now has an additional storey and is 2m higher than the approved scheme. The two upper storeys of this element are set back from The Terrace elevation by 1.8m.

The materials are similar to the approved scheme comprising white render, cedar cladding, zinc, grey interlocking cladding, lime stone, sand stone and areas of glazing.

### **Consultations**

*Environment Agency:* No objections to the proposal, provided the finished floor levels are set no lower than the 5.6 AOD shown on drawing no. 3145-212.

*English Heritage:* Full text copied with representations. Extract below:  
“... we do not believe that the extra height to The Terrace block will generate a sufficiently additional strategic impact on the historic townscape of the area to prompt fundamental objection on our part, nor do we consider it a significant and unjustified departure from the guidance contained in the recently completed Building Height Strategy.

*The ‘penthouse’ treatment of the uppermost tier of the building further assists in its mitigation... One aspect of the approved scheme which generated significant attention in principle was the treatment of the new roof above and set back from the Torwood Street frontage. While an acceptable solution was achieved eventually, we welcome the opportunity provided by the need to review the scheme which allows this element to be improved and its impact to be further reduced.*

*Structural Engineer:* No objection in relation to the rear wall, subject to conditions.

*Sustainable Transport Officer:* Require a full SPD contribution towards Sustainable Transport/Public Realm, payable on commencement. Double clearway bus box required which can accept loading 1600 to 1000 daily. Each dwelling must have at least one secure, lit and covered cycle space and there should be travel plans for all the commercial uses.

*Drainage:* Requested to see detailed Flood Risk Assessment (Subsequently supplied). Details of sustainable drainage system required.

*Highways:* No objection. Levels of parking appear to be acceptable, The Harbourside car park opposite will be able to accommodate any additional demand. Improvements are required to existing footpath. Footways on both sides

of Torwood Street should be widened. Slight amendments to the loading bay design will be required.

### **Representations**

At the time of writing approximately 15 letters of objection had been received which relate to the following issues:

- Building should not be any higher than was previously agreed
- Negative impact on views from the harbour and from The Terrace car park
- Negative impression for visitors
- Building heights should be limited around the harbour
- Size and scale is inappropriate
- Heritage justification tests in PPS5 have not been met. Demolition should not be approved.
- Negative impact upon properties in Museum Road and Braddons Hill
- General concern about the Mayoral Vision and Torwood Street's part in it
- Scheme is in direct contravention of a number of policies and documents some of which were not in place when previous scheme was approved.
- Negative impact upon nearby listed buildings
- Cinema was an excellent part of the approved scheme. Its loss is regrettable
- The hotel does not appear to be of a high standard
- The loading bay will lead to a bottle-neck on Torwood Street
- Materials are inappropriate
- No mention of green technology or renewables
- Concern that buildings will be demolished and site will remain vacant
- Proposed gym will not help in providing family visitor attraction
- There are already too many gyms in Torquay
- Viability arguments are spurious
- Consultation has been inadequate
- Drawings are misleading

These have been re-produced and placed in the Members Room.

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

The key issues in determining this application are considered to be (1) The principle of the uses, (2) the demolition of the existing buildings, (3) the size, design and impact on the conservation area, (4) parking and access issues, (5) appropriate planning contributions, (6) Impact on residential amenity, (7) land conditions.

#### *Principle*

The land is allocated for mixed used development within the Local Plan. Policy S2 states that the Torwood Street site is suitable for retail and leisure uses. The approved scheme included a cinema, this has now been removed from the proposal for commercial viability reasons. Many people supported the idea of a cinema in this location and the quarry-like nature of the site seemed to lend itself

to this use. However there is no policy reason to object to its removal from the proposal.

The alternative package includes a larger hotel than which was approved, 2 additional residential units and, within the void at the rear, an office suite and a gym. This mix of uses is considered to be equally in line with policy and as such the principle is considered to be acceptable. It is considered that the mix of uses and their disposition on the site will contribute positively to the viability and vitality of this part of the town centre. The scheme has the advantage of being financially viable, whereas the developers have stated that the previous scheme was not. The alternative mix of uses and the increase in scale has had a consequent impact upon the building envelope as described above. The consequences of this change are considered in detail below.

#### *Demolition*

The demolition of the buildings on the site was approved as part of the earlier scheme. There is extant conservation area consent for their demolition. The applicant has submitted a fresh application for demolition although this is technically not required. Members will recall from considering the approved scheme that the principle of the demolition of these buildings within the conservation area was closely linked with the quality of the replacement scheme.

It was shown that an acceptable scheme, which delivered regeneration benefits, was well designed and appropriate to the conservation area was possible on this site. English Heritage agreed to the demolition on this basis and after all the possible ways of retaining the building were explored and discounted. It was therefore concluded that all the tests of PPS5 were met. The merits of the revised design will be discussed below. The demolition of the buildings is considered to be acceptable. The concurrent conservation area consent application is recommended for approval subject to a condition which prohibits the demolition of the buildings until planning permission is approved for a replacement scheme and a contract let for the work.

#### *Visual Impact*

Significant levels of negotiation were required in order to bring forward an acceptable scheme for the site. This involved the applicant employing new architects to bring forward a fresh approach from the site which moved from a very vertical form of development to a more horizontal form of development which sits much more comfortably in the landscape and respects the topography of this part of Torquay. This followed consideration by both the local and regional design review panel. The revised scheme was successful in securing the support of English Heritage and of the Development Management committee. The proposal was delegated in order to finesse the small scale details of the scheme and it was subsequently approved.

The key consideration here is the impact that the revisions have had on the

proposal both in terms of its quality as a piece of architecture and also in terms of how well it relates to the townscape.

The most significant change in terms of visual impact is the increase in the height of the rear element of the building, which fronts The Terrace, by one storey. The architect has managed to accommodate the increase of one storey within a 2m increase by rearranging the internal spaces. The upper two storeys are recessed from the main elevation on to The Terrace which assists in reducing the perceived mass. In terms of context, the height of the building now sits between the eaves and ridge of the listed terrace immediately to the north west of the development.

The proportions of the building have changed, however the elevational treatment to The Terrace has been adjusted to accommodate this. There is no doubt that this part of the development is larger, and therefore closer to the limit of what is considered to be too tall for the site. However the height is still comparable to similar scale buildings nearby e.g. The Terrace and it is not considered that the scheme has moved so significantly beyond what has been approved as to be considered unacceptable.

The other significant change to the building envelope is that the 'middle row' of development is now 1m lower in height. This is considered to be a significant benefit as it reduces the visual impact of this element of the scheme then viewed from Torwood Street and from the harbour. Therefore on balance the changes to the building envelope are considered to be acceptable. This view is supported by English Heritage.

Other changes have been made to the elevations which are considered to be generally acceptable, although it will be necessary for the same level of detailed information to be produced for this proposal as was produced for the approved scheme. The drawings indicate that the cladding would be dark grey, rather than the approved muted blues. It is considered that the blue colour scheme would be far more appropriate for the upper parts of the development and the applicant has been asked to amend this. Subject to this additional level of detail being agreed, the visual impact is considered to be acceptable.

#### *Parking and Access*

This issue is unchanged from the previous application. Although the exact patterns of vehicular activity and associated parking demand associated with the application will not be identical due to the changed nature of the scheme, this has not given rise to any new areas of concern. The provision of the loading/bus bay was negotiated through the original proposal and is not required to be changed. The proposed footpath is unaffected by the revisions to the proposal. Similar conditions will be attached to the new consent securing detailed design of these areas and improvements to the existing foot path.

### *Planning Contributions (s.106)*

The previous scheme was approved following the signing of a s.106 agreement which secured the following contributions:

- £280,000 towards sustainable transport/public realm improvement in the area
- £20,000 to pay for inspections of the highway wall at the rear of the site.

At the time of the application the applicant stated that this was the maximum contribution the scheme would yield without making the scheme unviable. Due to the new mix of uses that the scheme includes it is considered necessary to revisit this issue. Taking account of the new supplementary Planning Document and fully mitigating for the existing uses on the site the required contribution would be as follows:

Waste Management-	£ 400
- Lifelong Learning	£ 2,400
- Green Space	£ 16,400
- Sustainable Transport/Public Realm	£341,540
- Highway Inspections	£ 20,000
<b>Total</b>	<b>£380,740</b>

The impact of this requirement upon the viability of the new proposal has not yet been confirmed and negotiations were not concluded at the time of writing. This matter will be updated at the meeting.

### *Impact on Residential Amenity*

The increase in the height of the rear section of the scheme will undoubtedly make the scheme more visible to people who live up-hill from the site. However as members will be aware, private views are not protected under planning law. Given the distances involved the proposal would not have an overbearing impact on any nearby residential properties and would not result in a loss of privacy or light.

### *Land Conditions*

A standard land remediation condition is recommended. Council Engineers and the applicant's engineers have been in discussions in relation to the issue of the rear wall which retains the highway above (The Terrace). A series of conditions and items included in the s.106 agreement were agreed in order to ensure that the development proceeds and operates in a way which does not jeopardise the stability of the rear wall or its future maintenance. An additional condition is required on a technical matter, however subject to the appropriate conditions and clauses this issue is considered to be acceptable.

### *Flood Issues*

No new issues, the proposal is acceptable from a flood risk perspective.

### *Sustainability*

The site is in a highly sustainable location and would involve the re-use of a brownfield site. Its presence would encourage people to holiday and recreate in the town centre, rather than make trips further away. No explicit reference is made to the use of green technologies which is regrettable, however this is not yet a mandatory requirement. Current Building regulations will have to be met.

### *Crime and Disorder*

The police architectural liaison officer was happy with the approved scheme. No comments have been received in relation to the current application however it is not considered that the changes to the scheme impact on this issue.

### *Disability Issues*

Lift access is provided to all floors. The proposal would need to be compliant with the Disability Discrimination Act.

### **Conclusions**

The proposal has had to change in order to become a viable and realistic proposal. Taken in the round the changes are not considered to be detrimental. Therefore the scheme still represents a significant opportunity for investment into the town centre. The range of uses, whilst different from the approval would still offer significant regenerative benefits to this part of the town.

### **Recommendation**

That the application be delegated to the Executive Head of Spatial Planning for approval subject to the following:

- receipt of satisfactory detailed drawings in relation to the finish of the buildings and the design of the west elevation of the building on Terrace
- the signing of a s.106 securing an appropriate level of contributions

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

01. Prior to the first use or occupation of the dwellings hereby approved as part of the development, the car parking shown on drawing number 3079-203 Revision 0 shall be provided in accordance with said plan and shall be retained thereafter for the purposes of residential parking for the approved flats unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to provide off street parking for the residential element of the proposal, in accordance with policy T25 of the Saved Torbay Local Plan 1995 – 2011.

02. Prior to the first use or occupation of the dwellings hereby approved as part of the development, the cycle parking shown on drawing number 3079-203



Revision 0 shall be provided in accordance with said plan and shall be retained thereafter for use by the residents unless otherwise agreed in writing by the Local Planning Authority.

Reason: To encourage residents to utilize sustainable modes of transport, in accordance with policy T3 of the Saved Torbay Local Plan 1995 – 2011.

03. Prior to the first use or occupation of the dwellings hereby approved as part of the development the bin storage area shown on drawing number 3079-203 Revision 0 shall be provided in accordance with said plan and shall be retained thereafter for the sole purpose of bin storage in connection with the residential units unless otherwise approved in writing by the Local Planning Authority

Reason: To ensure that there is adequate space within the development for waste and recycling purposes, in accordance with policy W7 of the Saved Torbay Local Plan 1995 – 2011.

04. Prior to the commencement of the development hereby approved samples of all the materials to be used externally in the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed using only the approved materials. The Pantone colours to be used in the glazing system for the elevations shall be restricted to lighter shades which shall be agreed in writing by the Local Planning Authority prior to the commencement of works.

All sections of new stone wall shall be constructed of natural stone laid on its natural bed and lime mortar. A sample panel shall be constructed on site and agreed in writing by the Local Planning Authority prior to the construction of any new sections of wall.

Reason: To ensure that the appearance of the finished development is acceptable, in accordance with policies BES, BE1 and BE5 of the Saved Torbay Local Plan 1995 – 2011.

05. Provision shall be made for keeping foul drainage separate from clean surface and roof water and connected to the public sewerage system, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of the efficient drainage of the site, in accordance with policy EP11 of the Saved Torbay Local Plan 1995 – 2011.

06. The development hereby approved shall be carried out in strict accordance with the submitted Flood Risk Assessment ref. R22509Y001/B dated June 2010 and the update of October 2010, unless otherwise approved in writing by the Local Planning Authority.

Reason: To ensure that the development does not result in unacceptable flood risk, in accordance with policy EP11 of the Saved Torbay Local Plan 1995 – 2011

07. The finished floor levels of the development shall be no lower than 4.45 AOD, unless otherwise approved in writing by the Local Planning Authority.

Reason: To reduce the risk of flooding in the vicinity of the site, in accordance with policy EP11 of the Saved Torbay Local Plan 1995 – 2011.

08. Prior to the commencement of the development hereby approved (or at such other time as may be agreed with the Local Planning Authority), a scheme to deal with the risks associated with contamination of the site shall be submitted to and approved, in writing, by the Local Planning Authority. That scheme shall include the following elements, unless otherwise agreed in writing by the Local Planning Authority:

a) A desk study identifying:

- all previous uses
- potential contaminants associated with those uses
- a conceptual model of the site indicating sources, pathways and receptors
- potentially unacceptable risks arising from contamination at the site.

b) A site investigation scheme based on a) above to provide information for an assessment of the risk to all receptors that may be affected, including those off site.

c) The results in the site investigation and risk assessment and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.

d) A verification report on completion of the works set out in c) above confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Reason: To prevent pollution of the water environment and in the interests of the well-being of future users, in accordance with policy EP11 and EP7 of the Saved Torbay Local Plan 1995 – 2011.

09. Prior to the commencement of the development hereby approved a noise impact assessment shall be carried by a suitably qualified person of the existing noise climate within the area likely to be affected by noise produced by the development. The assessment shall identify all residential and commercial properties likely to be affected by such noise and provide predictions of the noise

impact of the proposed development on these properties. Regard shall be had to guidance contained in the document 'British Standard 5528:2009. Code of practice for noise and vibration control on construction and open sites – part 1: noise'.

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EP4 of the Saved Torbay Local Plan 1995 – 2011.

10. Demolition or construction works that are likely to be audible in neighboring properties shall be carried out only during the following times:

08:00 – 18:00 hours Mondays to Fridays (excluding Bank Holidays)

08:00 – 13:00 hours Saturdays

All deliveries shall only occur during the above mentioned working hours.

No work of this nature is to be carried out on the site on Sundays or Bank Holidays.

In exceptional circumstances, where noisy works are believed to be necessary outside these hours, such works shall only take place on the following basis:

- prior approval for specified works must be obtained from Torbay Council's Environmental Health Team; and

- Notification must be provided to those local residents that are likely to be affected, of the nature and duration of the works.

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EP4 of the Saved Torbay Local Plan 1995 – 2011.

11. All equipment to be used in the construction of the scheme hereby approved shall be operated, sited and maintained so that disturbance to people living and working in the immediate areas is minimized. In particular, all items of machinery powered by internal combustion engines must be properly silenced and/or fitted with effective and well maintained mufflers in accordance with the manufacturers instructions.

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EP4 of the Saved Torbay Local Plan 1995 – 2011.

12. Any piling operations required in connection with the construction of the scheme hereby approved shall be carried out using the quietest practicable method available. The use of any other method shall first have been agreed in writing by Environmental Protection under the provisions of section 61 of the Control of Pollution Act 1974

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EP4 of the Saved Torbay Local Plan 1995 – 2011.

13. A method for controlling the vibration in relation to the construction of the scheme hereby approved shall be adopted and put in place before and/or during construction. This shall have regard to guidance contained in the document 'British Standard 5228:2009. Code of practice for noise and vibration control on construction and open sites – Part 2: Vibration'

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EPS and EP4 of the Saved Torbay Local Plan 1995 – 2011.

14. During the course of the demolition and construction of the development hereby approved all reasonable steps shall be taken to minimize dust and litter emissions from the site, including damping down site roads. An adequate water supply must be provided with a means of disposal of waste water. The perimeter of the site shall be screened to a sufficient height to prevent the spread of dust. Where this is not practicable, screening should be provided close to the source of the dust, unless otherwise approved in writing by the Local Planning Authority.

Reason: In the interests of the amenities of the occupants of nearby properties, in accordance with policy EPS and EP3 of the Saved Torbay Local Plan 1995 – 2011.

15. No development shall commence until a scheme for the off site highway works has been submitted to and approved in writing by the Local Planning Authority. These works shall include:

- Works to The Terrace of the type shown on drawing number 2239.03 A received on 18/01/11

- Works to Torwood Street of the type shown on drawing number 2239.02C received on 18/01/2011

- Details of the proposed hard landscaping of the type indicated on drawing number 3145-210 Revision 0.

The agreed works shall be completed prior to the first use or occupation of the development hereby approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of highway safety, in accordance with policy T26 and T27 of the Saved Adopted Torbay Local Plan 1995 -2011.

16. Unless otherwise agreed in writing by the Local Planning Authority, prior to the commencement of any development, details of a sustainable urban drainage system shall be submitted to and approved in writing by the Local Planning Authority, such system as may be approved shall be installed prior to the occupation of the development. The system shall be maintained effective at all times thereafter unless otherwise agreed in writing by the Local Planning Authority.

Reason: In order to reduce surface water run off in a catchment area where flooding occurs and to accord with the requirement of PPS25 "Development and Flood Risk" in respect of sustainable drainage.

17. No demolition/development shall take place/commence until a programme of archaeological work including a Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include: a programme and methodology for site investigation and recording; post-investigation assessment and analysis; publication; and archive deposition.

Reason: To ensure that any archaeological remains present on the site are appropriately recorded, preserved and stored, in accordance with Policy BE10 and advice contained in PPS5 "Planning for the Historic Environment".

18. No development shall commence until a scheme for improvements to the existing public footpath to the west of the site has been submitted to and approved in writing by the Local Planning Authority. This shall include new lighting, and/or such other proposals to mitigate the impact of the new building as shall be agreed with the Local Planning Authority.

Reason: To mitigate against the impact of the building on the footpath and to ensure that the path remains safe to use, in the interests of all users of the footpath, in accordance with policies TS, T1 and T2 of the Saved Torbay Local Plan 1995 – 2011.

19. No equipment, signage or plant shall be located on the roof, walls or in the grounds of the development hereby permitted (other than those indicated on the approved plans) unless otherwise approved in writing by the Local Planning Authority, including air conditioning units, aerials, tanks, satellite dishes and external lighting.

Reason: In the interests of the visual amenities of the conservation area, in accordance with policy BE5 of the Saved Torbay Local Plan 1995 – 2011.

20. The development shall not be commenced until the following information has been submitted to and approved in writing by the Local Planning Authority:

– Structural Engineers sectional sketches, method statements and risk assessment to assist in demonstrating that the parts of the development hereby approved, adjacent to the existing wall which retains the highway, can be constructed without materially affecting the stability of this wall.

- Preliminary calculations that indicate the critical stability conditions of the ground at the base of the retaining wall during the excavation phase in forming new reduced ground floor levels

The development shall be carried out in accordance with the submitted information.

Reason: To ensure that the development does not result in the movement of partial failure of the rear wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

21. Prior to the commencement of the development hereby approved details of a monitoring system shall be submitted to and approved in writing by the Local Planning Authority. The system shall include monitoring locations and methodology for monitoring the existing retaining wall and road surfacing behind the wall during construction period. The development shall be carried out in accordance with the agreed monitoring system.

Reason: To ensure that the development does not result in the movement or partial failure of the rear wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

22. No development shall commence until written confirmation has been submitted to the Local Planning Authority which confirms that the proposed development will not impart any dead or live loads on the existing wall retaining the highway.

Reason: To ensure that the development does not result in the movement or partial failure of the rear wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

23. An assessment shall be made of the change in relative member loadings being carried by the existing retaining wall at critical stages during and after construction, in accordance with a timetable which shall first have been submitted to and approved in writing by the Local Planning Authority, and their levels checked against the original designed loadings. Any significant changes in

loading shall be agreed in writing by the Local Planning Authority.

Reason: To ensure that the development does not result in the movement or partial failure of the rear wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

24. No development shall commence until information has been submitted to, and approved in writing by the Local Planning Authority, which demonstrates how the section of original masonry wall will be protected and supported during the construction phase. It will also demonstrate how the completed development will support the highway live and dead loads associated with this section of wall during the operational phase.

Reason: To ensure that the development does not result in the movement or partial failure of the rear wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

25. Prior to the commencement of the development hereby approved the results of an assessment into the following shall be submitted to and approved in writing by the Local Planning Authority:

- the impact on the existing upper level of masonry wall supporting The Terrace highway as a result of any material changes to the wall or its foundations, particularly in relation to the wall's ability to resist highway loadings during and after the construction phase of the development.

Any strengthening works recommended in response to the assessment shall be agreed in writing by the Local Planning Authority and carried out in accordance with a timetable which shall also be agreed in writing.

Reason: To ensure that the development does not result in the failure of the rear masonry wall and thereby to ensure that the function of the highway it retains can continue, in accordance with policy TS and T26 of the Saved Torbay Local Plan 1995 – 2011.

26. The gym hereby approved shall be used only for that purpose and for no other purposes within Class D2 of the Use Classes (Amendment) Order 2005 without the prior grant of planning permission.

Reason: To ensure that the mix of uses provided on the site is compatible with, and generates vitality in this key town centre site. In accordance with policies E1.10, S5.2 and S2 (TM4) of the Saved Torbay Local Plan 1995 – 2011.

**Informative(s)**

01. The applicant is advised that any works to the highway will require the consent of the highway authority.

**Relevant Policies**

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