

Application Number

P/2018/0219

Site AddressOxen Cove Car Park
Brixham**Case Officer**

Gary Crawford

Ward

Berry Head With Furzeham

Description

8m wide, 60m long jetty from Oxen Cove Car Park

Executive Summary/Key Outcomes

The application is for the construction of a jetty from within Oxen Cove car park and extending into Brixham outer harbour. The jetty would be 8m in width and 60m in length, and would be designed to accommodate an articulated lorry.

Oxen Cove and Freshwater Cove are identified in the Torbay Local Plan as sites for mixed use harbour-side development with a focus on marine-related employment uses. The proposal would provide additional port infrastructure to support the marine economy. It is considered that, subject to conditions, the proposal would be acceptable, and it is recommended that planning permission be granted.

Recommendation

Conditional approval (conditions at end of report).

Reason for Referral to Development Management Committee

As the development is on Council-owned land and objections have been received, the Council's constitution requires that the application be referred to the Development Management Committee for determination.

Statutory Determination Period

The determination date was 23rd May 2018. The application has exceeded the determination date to allow the submission of additional information.

Site Details

The site is comprised of Oxen Cove car park and an area of the harbour alongside it, all of which forms part of the Brixham Harbour estate. The car park was formed by land reclamation around 1990 and comprises of a rock armoured revetment and retaining bitmac-surfaced fill material. Oxen Cove car park is accessed via Freshwater car park and Blackball Lane. The South West Coast Path is routed through the application site, between the car park and the rock armour revetment. The nearest residential properties to the site are a block of flats at Dalverton Court which are approximately 30m to the west of the site.

The application site is located within the Brixham Town Conservation Area and Flood Zone 3. The site is approximately 400m south of the Lyme Bay and Torbay Special Area of Conservation (SAC); and 1.3km west of the South Hams SAC. The site is approximately 400m south of the Torbay Marine Conservation Zone (MCZ). Oxen Cove and Freshwater Cove are identified as a site for mixed use harbourside development with a focus on marine related employment uses in Policy SS5 (Employment Space) of the Torbay Local Plan and Policy J7 (Oxen Cove and Freshwater Quarry) of the emerging Brixham Peninsula Neighbourhood Plan identifies Oxen Cove as employment land, primarily marine related.

Detailed Proposals

The application is for the installation of a jetty supported by a steel tubular system. The submitted Design and Access Statement details that the purpose of the jetty is to provide a shellfish landing facility to service an offshore mussel farm. The jetty would be 8m in width and 60m in length, and would be designed to accommodate an articulated lorry. The jetty would feature security gates adjacent to the South West Coast Path to prevent unauthorised access, and downward lighting.

The submitted operating statement proposes that the jetty would be used for loading and unloading of goods and personnel only and that it would not be used as a permanent berth. As such, except in emergencies, vessels would not be granted permission to remain at the berth once loading and/or unloading operations were completed and it is not envisaged that vessels would remain overnight. Expected vehicular movements on and off the jetty are expected to be up to 3 lorries per day. A fork lift truck may also operate on the jetty to facilitate loading/unloading operations.

Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")

Material Considerations

- Emerging Brixham Peninsula Neighbourhood Plan
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters

referred to in this report.

Summary Of Consultation Responses

Brixham Town Council: Recommend approval subject to:

1. Agreement of the environmental policy
2. Proper management procedures being in place

Highways Engineer: The proposed swept path analysis drawings for the car park are acceptable.

Strategic Transport: A condition stating that no more than 4 to 5 deliveries (8 to 10 trips) per day, without prior written approval, should be included with any permission and the public foot path (South West Coast Path) should remain unaffected post construction. A Construction Management Plan should be required via condition.

Community Safety (Environmental Health): An objection was originally received from the Senior Environmental Health Officer to the proposed development on the grounds that it could lead to a significant adverse impact on the adjacent residential accommodation as the originally submitted Design & Access Statement detailed the jetty would be in operation 24 hours a day. However, following the submission of a revised Design & Access Statement which details that the planned in-service operation of the jetty would be 07:00 - 19:00, the original objection has been withdrawn subject to conditions regarding hours of operation, lighting, waste, noise, and construction.

Community Safety (Contaminated Land): Having considered the comments from the Environment Agency and from the information the Council holds, the Senior Environmental Protection Officer believes that part of Oxen Cove is made ground/landfill. Therefore, the Senior Environmental Protection Officer has recommended that a contaminated land condition be attached to the permission.

Natural England: No objection subject to a condition which states that notwithstanding the approved works, the planning permission shall not be implemented until a license from the Marine Management Organisation has been granted for works below the mean high water mark. The completed Habitats Regulation Assessment (HRA) has concluded that further assessment is not required in relation to the impact of the proposal on the Lyme Bay and Torbay SAC and South Hams SAC. However, an assessment of the proposed project on the features of the MCZ is also required.

Environment Agency: No ground water quality objections to the proposed development.

Marine Management Organisation (MMO): Any works within the marine area require a licence from the MMO.

Drainage Engineer: No objections:

1. This development is located in Flood Zone 3 and the developer has submitted a site specific flood risk assessment for the proposed works.
2. As the development is classified as water compatible, a development of this nature is appropriate in Flood Zone 3.
3. The works involve only the construction of a new jetty from Oxen Cove car park into Brixham Outer Harbour.
4. Surface water run-off from the new jetty will be discharged directly to coastal waters.
5. There is no increased risk of flooding as a result of the proposed works.

South West Water: No objection provided that no structures are constructed within 3 metres of the public foul rising main sewer located within the car park.

Senior Historic Environment Officer: No conservation issues. Although the proposal sits securely in Brixham Town conservation area, it is at the level of the foreshore, below cliff faces that were formerly quarried, and by some distance well below the terraces of Sea View off Black Ball Lane and those on North Furzeham Road. Further, its point of attachment is with land reclaimed in the later twentieth century. The World War II Scheduled Monument of Battery Gardens lies 250m to the northwest and will not be affected.

South West Coast Path: The Access Design Statement makes reference to temporary diversion of a Public Right of Way (PRoW) but does not provide any detail on how this will be achieved. This PRoW forms part of the South West Coast Path National Trail. In addition to being well used, this access is of high strategic significance.

Should the LPA be minded to approve this application, I recommend that there should be a pre-commencement condition requiring that a Construction Management Plan is submitted by the developer with works not commencing until such a plan has been approved by the Highway Authority. This plan should detail how the developer will manage public access, including provisions for temporary diversion of the South West Coast Path National Trail.

Highway Authority consent will be required before the PRoW can be temporarily diverted.

Public Rights of Way Officer: Does not envisage much disruption to users of the coast path if they are only going around the compound and then the path will return following completion.

Summary Of Representations

Twelve letters of objection have been received which raised the following issues:

- No public meeting has been held
- Impact on residential amenity in terms of noise, fumes, smells, artificial lighting, insect infestations, increase in seagulls and rodents
- Loss of car parking
- Loss of access to the town centre via Oxen Cove
- Impact on the transport network and access
- Highway safety
- Loss of moorings
- Impact on local area
- Not in keeping with local area
- Negative impact on tourism
- Impact on revenue from car park
- Jeopardise future expansion of the Plymouth University Blue Science Hub
- Negative impact on business/trade
- Negative impact on economy/jobs
- Negative impact on fishing industry/Oxen Cove
- Viability

Relevant Planning History

P/1996/1280: Erection Of Kiosk/ Building In Connection With Use As A Pumping Station. Approved 12/12/1996.

P/1998/1101: Erection Of Control Panel Kiosk. Approved 30/10/1998.

Key Issues/Material Considerations

The key issues to consider in relation to this application are:

1. Principle of the development
2. Economic Development
3. Amenity
4. Transport impacts
5. Ecology
6. Visual impact
7. Other matters

1. Principle of the development

Policy SDB1 (Brixham Peninsula) of the Local Plan states that Brixham will accommodate appropriate but limited new growth. Policy SDB1 details that a range of developments will be sought to sustain a viable retail function, maintain

an appropriate range of community facilities, and meet local housing and employment needs. Policy SDB1 notes further that Brixham's role as a fishing port and resort, with nationally important and historic working and creative harbour, will be enhanced. Policy SDB2 (Brixham Town Centre, Harbour and Waterfront) of the Local Plan specifies that mixed use regeneration is proposed in the Brixham Town Centre, Harbour and waterfront areas.

Policy TO3 (Marine Economy) states that the Council will support investment in marine-related development where this produces economic, social or environmental benefits to the area, and where proposals are consistent with wider environmental, historic environment, landscape, biodiversity, ecology, amenity and coastal defence objectives.

In light of the foregoing, the proposal is considered to be acceptable in principle.

2. Economic Development

Policy SS5 (Employment Space) of the Local Plan identifies Oxen Cove & Freshwater Cove as a site for mixed-use harbour-side development with a focus on marine related employment uses. Policy SS4 (The Economy and Employment) of the Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it encourages expansion and diversification of the economy of the Bay.

The submitted Design & Access Statement states that the proposed jetty would provide additional port infrastructure, specifically in support of the shellfish industry. The applicant has advised that the proposal would provide support for an estimated 15 fishing businesses and 20 jobs would be created. Given that the application site is located within Oxen Cove and the proposal would provide additional port infrastructure to support the marine economy, it is considered that the proposal would have a positive economic effect and would be in accordance with the aforementioned policies.

3. Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Concerns have been raised by local residents with regard to a number of amenity issues including the potential for noise, fumes, smells, artificial lighting, insect infestations, along with an increase in seagulls and rodents.

The originally submitted Design and Access statement detailed that the jetty would be illuminated to suit 24 hour operation. A revised Design & Access statement has been received which specifies that the proposed in-service

operation hours of the jetty are 07.00 - 19.00 and only vessel navigational lighting would be on outside of these hours.

The Principal Environmental Health Officer has raised no objections to the proposal subject to the use of conditions to control lighting, waste management, noise, and construction. Given that the proposed hours of operation can be secured by condition and that the jetty would only be illuminated during these hours of operation, and given the location of the site within a working harbour, it is considered that the proposal would not result in any significantly harmful impacts in terms of noise and artificial lighting.

With regard to fumes, the applicant has advised that the expected vehicular movements on and off the jetty may be up to 3 lorries per day. Due to the relatively low number of trips per day by lorries to the proposed jetty and due to the existing coach park in the Oxen Cove car park, it is considered that the proposal is unlikely to result in any unacceptable effects upon neighbouring amenity in terms of fumes compared to the existing situation. In any case, the Principal Environmental Health Officer has recommended that a condition be imposed, should planning permission be granted, requiring that vehicle engines be switched off during loading and unloading operations in order to mitigate against exhaust fumes and noise. With regards to odour and rodents/insects/seagulls, the Principal Environmental Health Officer has recommended that a waste management condition be imposed to prevent public health and nuisance issues.

Subject to the use of those conditions recommended, it is considered that the proposal would not result in unacceptable harm to local or residential amenity, and as such, would be in accordance with Policy DE3 of the Local Plan.

4. Transport impacts

Policy TA2 of the Local Plan requires that development proposals make provision for adequate accessibility and safety. Policy TA3 sets out the adopted parking requirements.

The Design and Access statement proposes that ten car parking spaces would be lost across Oxen Cove and Freshwater car parks in order to accommodate the proposed jetty and manoeuvring route for the associated HGVs. Additional space has been identified within the south east corner of Oxen Cove car park to provide replacement car parking spaces to mitigate for the loss of spaces and these details can be secured by condition. In addition, whilst the Oxen Cove and Freshwater car parks are known to be highly utilised outside of the winter months, the multi-storey Brixham Marina car park on the opposite side of Brixham harbour in Berry Head Road offers 450 parking spaces and is under-utilised.

With regard to the impact of the proposal on highway safety, given that Overgang

Road and Blackball Lane area already used by coaches on a daily basis that park in the Oxen Cove car park and that it is expected that no more than 3 lorries would visit the jetty per day, it is considered that the proposal would not result in any significantly unacceptable highway impacts over and above the existing situation. With regards to highway safety, the Council's Highways Engineer has confirmed that the proposed swept path analysis drawings for the car park are acceptable. The Strategic Transportation Team has raised no objections to the proposal subject to the use of conditions to limit HGV movements and to secure a construction management plan.

Subject to the use of conditions, the proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan.

5. Ecology

The application site is approximately 400m south of the Lyme Bay and Torbay Special Area of Conservation (SAC); and 1.3km west of the South Hams SAC. The site is approximately 400m south of the Torbay Marine Conservation Zone (MCZ). A Habitats Regulations Assessment has been completed which concluded that the proposed works to construct and operate the proposal would not result in a likely significant effect on the conservation objectives of either the Lyme Bay and Torbay SAC or the South Hams SAC, both alone and in combination with other projects. As none of the conservation objectives of these sites would be adversely affected by the proposal, it is concluded that the integrity of the sites would be maintained and thus not adversely affected. Natural England have requested an assessment of the proposed project on the features of the MCZ is also required and these details will be reported at committee.

A Marine Management Organisation (MMO) licence is required for the works below the mean high water mark and Natural England have commented that they have no objections to the proposal subject to the receipt of an assessment of the proposed project on the features of the MCZ and subject to a condition being included with any permission which states that notwithstanding the approved works, the planning permission shall not be implemented until a license from the MMO has been granted for works below the mean high water mark. An informative, which explains the applicant's obligations, is considered to be more appropriate and can attached to any planning permission that might be issued.

It is considered that the proposal would not result in unacceptable ecological harm, subject to Natural England's comments regarding the impact of the proposed development on the features of the MCZ, and is in accordance with Policies NC1 of the Local Plan.

6. Visual impact

Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public

space. Policy SS10 states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them.

The application site is located within the Brixham Town Conservation Area. Given that the jetty would be sited within an existing operational harbour, the proposal is deemed to be of an appropriate design. The proposed 1.8m high entrance gates to the jetty are required for security purposes to prevent unauthorised access to the jetty. The jetty would be situated at the level of the foreshore, below cliff faces that were formerly quarried, and by some distance well below the terraces of Sea View off Black Ball Lane and those on North Furzeham Road. Furthermore, its point of attachment is with land reclaimed in the later twentieth century. In addition, the World War II Scheduled Monument of Battery Gardens lies 250m to the northwest of the application site and will not be affected. The Council's Heritage Advisor has raised no objections to the proposal.

Given its siting, scale, and design it is considered that the proposal would not result in harm to any heritage assets, and would not result in any unacceptable harm to the character of the area, and is therefore in accordance with Policies DE1 and SS10 of the Local Plan.

7. Other matters

Contaminated land

Oxen Cove car park is reclaimed land and the Council's Senior Environmental Protection Officer has recommended that a contaminated land condition is included with any permission. Subject to the use of this condition, the proposal is considered to be in accordance with Policy ER3 of the Local Plan.

South West Coast Path

The proposed jetty would be constructed alongside the South West Coast Path. Given that the coast path would be re-routed around the construction compound in Oxen Cove car park during the construction of the jetty and the path would return following the completion of the jetty, it is deemed that the proposal would not adversely affect the coast path. Nevertheless, it is recommended that a pre-commencement condition be imposed, should planning permission be granted, requiring the approval of a construction method statement to ensure that any public rights of way affected during the construction process are properly managed.

Flood Risk

This application site is located within Flood Zone 3. As the development is classified as water compatible, a development of this nature is deemed appropriate in Flood Zone 3. Surface water run-off from the new jetty would be discharged directly to coastal waters and as such, there is no increased risk of flooding as a result of the proposed works. The proposal is considered to be in accordance with Policy ER1 of the Local Plan, and the guidance contained in the NPPF.

Neighbourhood Plan

The emerging Brixham Peninsula Neighbourhood Plan (BPNP) has recently completed its independent examination. The relevant policies of the BPNP include:

- Policy J4 (Local employment - increased employment and local amenity)
- Policy J7 (Oxen Cove and Freshwater Quarry)

Policy J4 states that development will not be allowed which generates unacceptable noise, air pollution, levels of traffic or where the residential amenity of the area will be adversely affected. Policy J7 identifies Oxen Cove as employment land, primarily marine related. In addition, the BPNP includes a Brixham Town Centre master plan which details that proposals for Brixham outer harbour include extending the existing commercial harbour and processing facilities and providing new opportunities for marine-based business and tourism-based facilities. Given that the Principal Environmental Health Officer has raised no objections to the proposal subject to conditions regarding lighting, waste, noise and construction, it is considered that the proposed development would comply with the relevant Neighbourhood Plan policies.

S106/CIL

Not applicable for this type of development.

Statement on 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

S106/CIL -

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA:

EIA screening

As the proposal is less than 1 hectare in area, the proposal falls below the size threshold set by the EIA Regulations. The proposal is not considered to constitute EIA development.

Conclusions

In conclusion, the proposal would provide additional port infrastructure to support the marine economy. Given the nature of the proposal, including its siting, scale, and design, it is considered that the use of planning conditions can prevent any unacceptable harm in relation to amenity, transport, ecology, and other impacts. The proposal is considered acceptable having regard to the Local Plan and all other material considerations.

Condition(s)/Reason(s)

01. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include measures for any necessary diversion of the public rights of way; prevention of dust-drift, light pollution, and construction traffic congestion; along with the storage of materials, plant, vehicles, and machinery. Any subsequent construction works shall be undertaken in strict accordance with the approved details.

Reason: In the interests of local amenity and in accordance Policy DE3 of the Torbay Local Plan.

02. The jetty hereby approved shall only be used between 07:00 - 19:00 Mondays to Fridays and not at all during weekends, bank, or public holidays.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

03. HGV movements associated with the jetty shall be restricted to three lorries per day. All vehicles used for the unloading and loading of goods shall be fitted with directional alarms to reduce the area over which these alarms are likely to cause disturbance. During loading and unloading operations, vehicle engines shall be switched off. No HGVs associated with the jetty hereby approved shall access Oxen Cover Car Park outside of the jetty's approved operating hours.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

04. 1. Site Characterisation

No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment must be undertaken by a suitably qualified person, and shall assess any contamination on the site, whether or not it originates on the site. Moreover, it must include: (i) a survey of the extent, scale and nature of contamination; (ii) an assessment of the potential risks to:

- human health, property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land
- groundwaters and surface waters
- ecological systems
- archaeological sites and ancient monuments.

2. Submission of Remediation Scheme

Where contaminated is found which poses unacceptable risks, no development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

3. Implementation of Approved Remediation Scheme

The approved remediation scheme shall be implemented and a verification report submitted to and approved in writing by the Local Planning Authority, prior to occupation or the development being brought into use

4. Reporting of Unexpected Contamination In the event that contamination is found at any time when carrying out the approved development, that

was not previously identified, it must be reported immediately to the Local Planning Authority. Development on the part of the site affected must be halted and site investigations shall be carried out. Where required by the Local Planning Authority, remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These shall be implemented prior to occupation, or the development being brought into use, on the site affected.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors.

05. Vessels shall only be moored alongside the jetty for the duration of loading and unloading operations.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

06. Aside from navigation and low level security lighting required for health and safety reasons, all operational lighting shall be switched off between the hours of 19:00 and 07:00. All operational lighting shall be designed so it does not directly illuminate nearby residential areas.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

07. Prior to the first use of the jetty hereby approved, a waste management plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include measures for the storage and timely disposal of all waste associated with the loading and unloading of vessels, along with baiting measures to tackle vermin. The jetty shall thereafter be operated in strict accordance with the approved details.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

08. Prior to the first use of the jetty hereby approved, security gates, which shall be under the direct control of the harbour authority, shall be installed in accordance with the approved drawing (reference: 10-6-7-8-21), received on 24 July 2018.

Reason: In the interests of neighbouring amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012 - 2030.

09. No development shall take place until a car park plan, which includes details of the proposed replacement car parking spaces, has been submitted to and approved in writing by the Local Planning Authority. The approved replacement spaces shall be provided, and the displaced spaces shall be deleted, prior to the development hereby approved being brought into use.

Reason: To ensure adequate parking facilities are provided, in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

Informative(s)

01. 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.
02. For the avoidance of doubt, a separate licence from the Marine Management Organisation will be required for any works below the mean high water mark.

Relevant Policies

DE1 - Design
DE3 - Development Amenity
SS5 - Employment space
SS4 - The economy and employment
SS5 – Employment Space
SDB1 - Brixham Peninsular
SDB2 – Brixham Town Centre, Harbour and Waterfront
TO3 - Marine Economy
ER1 – Flood Risk
ER3 - Contamination
SS10 – Conservation and Historic Environment
NC1 – Biodiversity and geodiversity
TA2 – Development Access
TA3 – Parking Requirements