

Application Number

P/2015/0961

Site Address

Torquay Pavilion And Marina Car Park And
Office And Adjoining Land
Vaughan Parade
Torquay
TQ2 5EL

Case Officer

Mrs Helen Addison

Ward

Tormohun

Executive Summary/Key Outcomes

1. Members will be aware that the resolution of the Development Management Committee of 27th February 2017, to grant planning permission for the development of Torquay Pavilion and Marina car Park, subject to the receipt of further information, the completion of a s.106 agreement and various planning conditions, is currently the subject of an application for Judicial Review. The Council is contesting the application, and is awaiting a decision from the High Court as to whether the application will be given permission to proceed.
2. Whilst the legal advice received is that the application that has been made is not well-founded, further consideration has been given to the overall decision-making process, and this has identified that the original officer report ('the Report') was not as clear as it might have been in certain respects. The legal advice is that it is prudent to address these matters at this stage, whilst the planning application remains outstanding, in order to ensure that any planning permission, if and when issued, is robust and not vulnerable to challenge on the basis of a technicality.
3. This report will clarify, for the avoidance of doubt, the policy assessment of the proposals against relevant provisions of the Local Plan and all other material considerations (including the Public Sector Equality Duty). It will also provide members with an update on the progress of the applications, particularly regarding matters where "clarification" was sought in the original resolution.
4. The policy assessment concludes that the proposals are in accordance with the Local Plan and that the application should be approved subject to a s106 agreement, receipt of additional information, and appropriate conditions.

Recommendation

- A. That the following additional information, submitted by the applicant as part of the application since 27 February 2017, is confirmed as being acceptable
 - a. clarification of the impact of 'shadowing' on the amenity of public space
 - b. opportunities for mitigating the impact of the lift shaft
 - c. confirmation that the balconies will be constructed as a continuous curve
 - d. detail in relation to the harbour walkway
- B. That conditional planning permission is granted for the proposal subject to
 - a. receipt of the following additional information
 - i. strategy for relocating the traditional railings and form and extent of new railing detail; and
 - ii. strategy for external and internal plant in relation to the listed building
 - iii. further details relating to the extended resurfacing between Offshore and

- the stone setts adjacent to the northern elevation of the hotel building approval of which is to be delegated to the Executive Head – Business Services
- b. completion of a S106 agreement to include the matters listed in the Minutes to the Committee meeting of 27th February 2017
 - c. final drafting of conditions to be delegated to the Executive Head of Business Services

Assessment of Proposals against provisions of the Local Plan

Guidance

5. All members of the Development Management Committee have had Spatial Planning, Member Induction training and are aware that planning decisions must be made in accordance with the up-to-date development plan (the Torbay Local Plan 2012-2030), unless material planning considerations indicate otherwise.
6. If a planning application accords with the provisions of the development plan, planning permission should be granted without delay.
7. It is considered that the officer report dealt with all issues comprehensively, however it did not explicitly reach a conclusion on compliance with the Local Plan before going on to consider whether material considerations indicate a different outcome to that indicated by the Local Plan. The Council has received legal advice which recommends that the committee's decision will be strengthened if this omission is addressed before any planning permission is granted. This advice does not apply to consideration of the application for Listed Building consent because there is no statutory requirement to have regard to the provisions of the development plan when determining such applications.

Description of Development

8. The proposals seek consent for the construction of a 60-bed hotel, which includes restoration of Pavilion to form hotel reception and spa including restaurant, bars and function rooms, together with 43 residential apartments and ground floor restaurant and retail uses adjacent to the harbour . Consent is also sought for a link between Pavilion and new hotel, a new harbour walkway, provision of 289 car parking places including 74 spaces on Cary Green (42 seasonal; 32 for hotel), a Marina office, berth-holder facilities, a Dockmaster's office and associated landscaping.

Assessment

9. With appropriate planning conditions and subject to additional control through a s.106 planning obligation, both as set out in the Report, the proposals will result in
 - a. large-scale urban regeneration which supports Torquay Town Centre and Harbourside by the provision of 43 good-quality town centre homes, a high-quality hotel and additional restaurant/retail facilities in Core Tourism Investment Area.
 - b. the renovation and long-term maintenance of the Pavilion through its integration into the hotel complex
 - c. improvement of the public realm in a key Harbourside location and the provision of public changing facilities for adults with disabilities.
 - d. the creation of up to 179 jobs in the hotel/restaurants and, through the use of a s.106 planning obligation, the use of local labour, training for local people and use of local produce.

10. The proposals accord with policies SS11 (Sustainable communities), TO1 (Tourism events and culture), SDT1 (Torquay Strategic Policy Area), SDT2 (Torquay Town Centre and Harbour), SS1 (Growth strategy), HE1 (insofar as it supports proposals which will help to conserve the historic fabric and character of a Listed building), H1 (Applications for new homes), DE1 (Design), DE2 (Building for Life), DE3 (Development Amenity), ER1 (Flood Risk), ER3 (Contamination), ER4 (Ground Stability), TC5 (Evening and night-time economy), SS14 (Low carbon development and adaptation to climate change), TA1 (Transport and Accessibility), TA2 (Development Access), TA3 (Parking requirements).
11. The Environment Agency and the Council's drainage engineer are satisfied with the Flood Risk Assessment; there are no land contamination or ground stability issues and the minimisation of carbon emissions will be secured by condition.
12. Natural England have confirmed that providing a Construction Management Plan is in place then there would be no adverse impact on habitats.
13. Although there are no specified minimum (or maximum) parking thresholds for town-centre uses in the Local Plan, the amount of car parking provided on site is considered to be the minimum necessary for successful delivery of the various proposed uses of the scheme and parking that is not related to the marina, hotel or apartments will not be provided.
14. The Council's Strategic Transport/highways teams consider that the proposals are acceptable subject to modelling of the roundabout, review of TRICS data and implementation of minor highway works which can be carried out via a S278 agreement.
15. The Local Plan contains a number of additional policies, not specifically mentioned in the Report, which reinforce the aim of the Local Plan to support sustainable development. These include: SS3 Presumption in favour of Sustainable Development, SS4 The Economy and Employment, SS5 Employment Space, SS10 Conservation and the Historic Environment, SS12 New Housing, SS13 Five year housing land supply. The site is within Torquay Town Centre and Policy TC1 promotes the regeneration of key sites as expanded in Policies SDT1 and 2. Several of the proposed uses (hotel, leisure, retail and food and drink) are main town centre uses, which are supported by Policy TC1, TC2 and TC3 of the Local Plan.
16. The Torquay Town Centre Masterplan identifies the whole application site as a key regeneration site.
17. **Design and height/mass of the building** – the Report concludes that the building is 'well designed and has inherent merit'. Subject to ensuring that the detailed appearance and use of good quality robust materials by the imposition of planning conditions, on balance, the proposals accord with policy DE1 (Design). As the building will deliver significant wider public benefits, and alternative ways of delivering those benefits have been considered and discounted, the proposals are accordance with policy DE4 (Building Heights) and HE Advice Note 4 'Tall Buildings'.

18. **Affordable Housing** - Policy H2 (Affordable Housing) sets out a requirement to provide 20% affordable housing. The policy states that developers would be required to provide an independent assessment of viability in order to be permitted to reduce significantly the provision of affordable housing. Policy H2 further states that in order to secure additional investment in disadvantaged areas, the Council may agree to a reduction or zero provision of affordable housing. Development of such sites should provide significant benefits in terms of creating sustainable, balanced communities. The application was supported by an IVA and is located within a Community Investment Area (Policy SS11 area). On this basis, despite not providing affordable housing, the proposals accord with policy H2
19. The Report confirms that
“The principle of development is therefore not at issue but the concern strongly emerging though consultation is over the scale and impact of the proposals in terms of both the size of the proposed building and the loss of Cary Green to provide car parking and the impact this could have on the wider Conservation Area, on the setting of nearby listed buildings and on the Registered Park and Garden”
20. **Effect on Heritage Assets** - The Report assesses in detail the effect of the proposed building, and the loss of Cary Green (as part of the setting of adjacent listed buildings) on various Heritage Assets and concludes that the development is harmful to the setting and significance of key listed buildings (Members should note that, contrary to heading 11 on p. 51 of the report, the quay walls adjacent to the site are not listed), to the setting and significance of the Registered Princess Gardens and to the character and appearance of the Torquay Harbour Conservation Area as a consequence of its size, height and design. The Report concludes that
- a. the extent of the harm caused by the building is ‘significant’ but ‘less than substantial’
 - b. the proposed alterations to Cary Green are acceptable in heritage terms
21. Sections 66 & 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 (the ‘Listed Buildings Act’) imposes a duty on Local Planning Authorities when determining planning applications to pay special attention to the desirability of preserving Listed Buildings, their setting or any features of special architectural or historic interest (s.66) and preserving or enhancing the character or appearance of the Conservation Area (s.72).
22. Paragraph 134 of the NPPF provides that ‘where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal, including securing its optimum viable use’.
23. Policy SS10 (Conservation and the historic environment) reflects the requirements of sections 66 & 72 of the Listed buildings Act but then reflects the more discretionary NPPF guidance in terms of assessing the impact of proposals on the historic environment.
24. SS10 states that proposals may affect heritage assets will be assessed on eight criteria. Criterion 7 is particularly relevant. It includes a test that allows any harm caused to

heritage assets to be balanced against (and potentially outweighed by) public benefits. In addition, para 4.4.30 of the supporting text to explain Policy SS10 suggests that it contains “sufficient flexibility” to ensure that any heritage harm is weighed against wider benefits.

25. The report acknowledges that the harm to heritage assets is ‘significant’ or ‘considerable’ but goes on to state that
- a. Subject to conditions, the design of the building and improvements to the public realm will lift the quality of spaces around it and achieve ‘place making’ regeneration to offset some of the harm to the historic environment
 - b. The public benefits of the scheme (discussed in full in section 4, p37 of the Report) are :
 - i. The restoration of the Pavilion – the cost of repairing the building to provide 25 years life has been estimated at £2.76m
 - ii. Public realm improvements round the Pavilion (although in part subject to a deferred contribution) as per p10 of the Committee Report
 - iii. Delivery of a 4* hotel and the contribution this will make to maintaining Torbay’s position as a premier resort. The Council’s Tourism Strategy “Turning the Tide” identifies a shortage of higher ranking hotels, and a need for modern purpose built accommodation. Tourism accounts for about 22% of Torbay’s employment and the GVA generated by the development is estimated to be about 1% of the value of the tourism sector.
 - iv. Economic benefits estimated at being £32m of construction and 20 TFE construction jobs; plus 98 FTE jobs in the hotel and 81 jobs from the operation of bars and restaurants. The value to the local economy of this is estimated to be £4.27m per year. Up to an additional 136 jobs and £2.9m per year of economic benefit are assessed to arise from “net additional local impacts” arising from local sourcing and multiplier benefits.
 - v. Broader (and difficult to quantify) catalyst for urban renewal and regeneration as sought by the Local plan (SS1 etc) and the Corporate Plan. The development of nearby Palm Court has significantly regenerated this part of Torquay’s waterfront.
 - vi. The provision of 43 dwellings.
 - vii. Torbay is one of the most deprived areas in the South West. The indices of Deprivation 2015 indicate that its rank of average indices of multiple deprivation puts it at 46th out of 326 Local authority areas in England. By concentration of deprivation and employment deprivation, Torbay has even more severe indicators at 37 most deprived by concentration, 32 by average income and 14th by employment. Torquay Harbour (and most of Torquay town centre) falls within the top 10% most deprived lower super output areas. Deprivation has become steadily more pronounced over successive indices. The IMD picture is reflected in employment, income, GVA and benefit statistics. This is a material consideration in determining the weight that should be given to economic regeneration benefits.
26. The Report concludes, (in section 7, page 43) that
- “given the vital need for jobs, investment and economic stimulus coupled with recent modifications to the design and the significant improvement in terms of

the scale, scope and quality of the public realm improvements that the strong presumption against approval enshrined in the 1990 Act is just outweighed by the identified benefits.”

The officer recommendation is therefore that the proposals accord with Local Plan policy SS10 (Conservation and the Historic Environment).

27. Policy HE1 (Listed buildings) accords with the LPA’s statutory duty as imposed by the Listed Buildings Act. It requires development proposals to have ‘special regard’ to the desirability of preserving listed buildings or their settings states but also states that suitable uses for listed buildings will be supported where this would help to conserve their historic fabric and character.
28. The report acknowledges that there will be some harm to the setting of the Grade I Listed St Johns Church and the Grade II listed Mallocks clock tower. However it concludes that the benefit of saving the Pavilion outweighs the harm the development will cause. The proposals therefore accord with Local Plan policy HE1 (Listed Buildings).

Material Considerations

29. Government Guidance – The National Planning Policy Framework (NPPF) contains the government’s planning policy. The presumption in favour of sustainable development (para 14) does not apply to designated heritage assets (which include conservation areas and listed buildings). However the Ministerial Foreword indicates that development means growth, and that the planning system should enable positive growth. Paragraphs 6-10 indicate that the planning system should play an active role in promoting sustainable development.
30. Paragraph 17 sets out Core Planning Principles. Bullet 3 indicates that every effort should be made to meet the needs of an area. Bullet 4 seeks high quality design and good standards of amenity.
31. Specific policy on conserving and enhancing the historic environment is set out in Chapter 12. Paragraph 131 requires planning authorities, when determining planning applications, to take account of:
 - i. The desirability of sustaining and enhancing the significance of heritage assets, and putting them to viable uses consistent with their conservation.
 - ii. Positive contributions that conservation of heritage assets can make to sustainable communities including their economic viability.
 - iii. The desirability of new development making a positive contribution to local character and distinctiveness.
32. Paragraph 133 indicates that proposals that lead to substantial harm to, or total loss of, a designated heritage asset, should be refused *unless the substantial harm is necessary to achieve substantial public benefits that outweigh that harm or loss*; or all of four criteria apply. In summary these criteria are:
 - There are no reasonable uses of the site due to the nature of the heritage asset.
 - No viable use of the heritage asset can be found in the medium term.
 - Conservation is demonstrably not possible.
 - The harm or loss is outweighed by the benefit of bringing the site back into use.

33. Paragraph 134 of the NPPF indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm must be weighed against the public benefits of the proposal, including securing its optimum viable use.
34. The Glossary of the NPPF defines heritage assets and significance. Significance means value for this and future generations, and includes a number of factors including setting.
35. The NPPF is elaborated on by the online (National) Planning Practice Guidance (PPG). Paragraph 18a-017-20140306 defines substantial harm in terms of the impact on the significance on the heritage asset. Assessing whether a proposal causes substantial harm is a matter for the judgement of the decision taker, but it is noted that “in general terms substantial harm is a high test”.
36. The PPG defines public benefits in relation to heritage assets at 18a-020-20140306. These include (but are not limited to):
 - Sustaining or enhancing the significance of heritage assets
 - Reducing or removing risks to a heritage asset
 - Securing optimum viable use of a heritage asset in support of its long term conservation.

Emerging Torquay Neighbourhood Plan

37. The Torquay Neighbourhood Forum consulted on a Regulation 14 Draft version of the Torquay Neighbourhood Plan between 22 August and 3 October 2016. This document identifies that the Pavilion and Torquay Marina Car Park site has potential for development. The plan states that building height should be carefully considered so that the impact is not detrimental. In addition a number of ideas/alternative proposals are suggested as possible options for development. The draft Torquay Neighbourhood Plan specifically allocates the area known as Cary Green as a Local Green Space, which has a meaning in the NPPF (para. 77) of ruling out development within this area other than in very special circumstances.
38. (National) Planning Practice Guidance states that an emerging neighbourhood plan may be a material consideration in determining planning applications. However, Paragraph 216 of the NPPF says that decision-takers may give weight to emerging neighbourhood plans from the **date of publication**, and only then according to how advanced the plan preparation is, the extent to which there are unresolved objections and the degree of consistency with the NPPF. As the Torquay Neighbourhood Plan has only reached Regulation 14 Pre-submission Consultation, only limited weight can be afforded to the Plan as it may be subject to change following consultation and prior to submission to the local authority. The plan has not yet been checked for legal compliance (carried out at Submission) and has not yet been tested against the Basic Conditions (carried out at Examination).

Public Sector Equality Duty

39. 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.

40. In terms of direct impacts the proposal is most likely to affect people with disabilities; although there are likely to be age related issues pertaining to the economic benefits arising from regeneration.
41. The proposal provides through S106 requirements public realm enhancements including extension and improvement of paving.
42. Mencap requested that changing facilities be provided in the building for people with disabilities, which will be provided to “Changing Places” standard.
43. The building will need to comply with accessibility requirements under building regulations; however the proposed 43 dwellings are below the 50+ dwelling threshold in Policy H6 of the Local Plan for 5% to be built to Building Regulations Standard M4(2) accessible and adaptable standard).

Conclusion

44. For the reasons stated above your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

Other issues

Receipt of further information

The following additional information has now been submitted;

Opportunities for mitigating the impact of the lift shafts.

45. There are two lift shafts that will be visible on the roof of the development. One will be on top of the tower and the other on top of the five storey element of the building. Both over runs will project 1.4 metres above the roof. The lift overrun on the tower was concealed from view within the previous design but was subsequently exposed due to Historic England’s views on the assertiveness of the roof profile which, in their view, increased the impact on the setting of the Pavilion when viewed from nearby to the west. Historic England felt the most recent revisions made the proposals less assertive. However the changes to the design of the roof on the tower increases the prominence of the lift shafts.
46. There isn’t a straightforward solution to this issue and the applicant has explained that it is difficult to devise a strategy that will hide the appearance of the lift shafts. This is explained in more detail below. Due to the topography of the surrounding area the lift over runs will be visible from elevated locations that overlook the site. The applicant has submitted an assessment of the views of the lift shafts from a number of locations. The most notable locations that the lift shafts will be visible from are the Church of St John the Apostle and the Terrace car park.
47. The applicant advises that they have considered the following options for mitigation;
 - i. Revert to previous roof profile –this would not be acceptable due to previous HE concerns
 - ii. Raise main roof to reduce relative height of overrun –this would not be acceptable as height is not needed internally and HE would be likely to consider this a negative step in heritage terms

- iii. Revise layouts to move lifts further inboard – the applicant advises this would require fundamental replanning which may alter external facade and would increase circulation and reduce usable floor area on lower floors
- iv. Change materials / appearance of overrun – possible but will have limited impact as silhouette will remain the same
- v. Incorporate platform lifts in lieu of conventional lifts to remove overrun completely – not practical as excessive travel distance and travel times would be unacceptable
- vi. Change top two floors to duplexes –The applicant advises that visually there would be no net benefit as the removal of the overruns would be offset by introduction of external privacy screens to prevent overlooking between duplexes and their neighbours' balconies. A principle of the development is for the top floors to be as slender and uncluttered as possible and this would be a negative step in this regard. Also would almost certainly cost more to build for less useable floor area.

48. The lift overrun on the tower would have a greater impact on the appearance and character of the Conservation Area than the overrun on the lower level because it would project above the height of the building and would to some extent compromise the distinctive design and appearance of the tower. The visual assessment shows that it would be less apparent when viewed from the north and west as it would be seen against a backdrop of development on Parkhill Road and above. It would have a greater visual impact when viewed against an open background, which would occur in views from the north of the site, particularly St Johns Church and the Terrace car park.

49. Considering the applicant's comments, the submitted evidence that the lift shaft on the tower would not be visible from a number of locations around the site and the context of the visual impact of the development as a whole it is considered that the proposed lift shaft overruns would be acceptable.

Clarification of 'shadowing' on the amenity of public spaces

50. A shadow study with a summary of the effects of shading from the proposed development has been submitted. The images show minimal overshadowing of public external space at mid – summer with the lower block shading only the car park and the areas immediately in front of its own A3 units. The shadow of the tower element will pass over the car park during morning and shade the proposed development for the majority of the day without affecting other properties. By the evening the shadow of the building is shown to pass across parts of the harbour, with only the top storeys shading a small section of Victoria Parade after 7pm, which is approximately 1 hour before the sun retreats behind Waldon Hill.

51. The impact on Victoria Parade would be limited, with the shadow of the top few storeys shading only a small proportion of the street from April to September in the last hour before the sun retreats behind Waldon Hill. For most of autumn and all of winter the shadow of the building is shown not to reach as far east as Victoria Parade at any point of the day.

52. Shading of the area between the proposed new hotel wing and Vaughan Parade is minimal at the height of summer, with the new building shading mostly the area immediately in front of its ground floor restaurant unit, peaking at around 2pm. In spring and autumn (March, April, September and October) the shadow will extend further across the street with the area in front of Offshore also shaded during the middle of the day.

Confirmation that the balconies will be constructed as a continuous curve and that the aluminium framework can also deliver the quality of detail.

53. The sectional perspective of the prow of the Fish Quay building has been updated to show the curvature of the balcony edge and balustrading. Images have been submitted of the type of aluminium cladding which is proposed for these details. It would have curved rather than faceted profiles, recessed joints, concealed fixings and folded rather than jointed corners / edges. It would be appropriate to impose a condition requiring large scale details of the proposed balconies and a specification of materials in order to ensure this key element of the external appearance of the building is of sufficiently high quality.

Additional detail in relation to the harbour walkway and strategy for relocating the traditional railings and form and extent of new railing detail.

54. An indicative plan showing the proposed relocation of the existing bollards and a specification of works to make good the quay wall is awaited. Similarly details of the new enclosure/railings that will extend up to the fish quay are also awaited. It would be appropriate to condition the strategy for relocation of the bollards to be agreed by the LPA prior to their removal as there may be implications for the operation of the harbour or health and safety issues which will need to be further considered by the Council including the Harbour Master.

55. Further clarification of how the habourside elevation of the walkway will be addressed has been submitted. This shows that the walkway will be cantilevered above the harbour walls with a mesh inserted in the gap between the wall and the walkway to prevent nesting by birds and accumulation of rubbish. A chamfered concrete capping will be placed on top of the harbour wall to match similar capping around other sections of the harbour walls. The detail is considered to be acceptable taking into account the fact that the harbour wall is not listed in this area.

56. A plan showing how the new walkway adjacent to the harbour will work in terms of public and disabled access has been submitted. This shows that level access can be achieved along the new walkway adjacent to the inner harbour.

Inclusion of extended resurfacing between Offshore and the stone setts adjacent to the northern elevation of the hotel building.

57. A revised plan has been received which shows natural stone paving extended to the site boundary opposite Offshore. In addition a previously indicated vehicular access to the southern side of the Pavilion adjacent to the marina has been deleted from the plan.

Clarification of the impact of external plant in relation to the listed building.

58. Revised plans have been submitted that show the existing plant to be removed from the outside of the Pavilion and the locations of new external plant. The majority of plant will be screened by existing balustrade walls apart from an area of plant on the eastern elevation, which is shown as being behind a new screen. A draft strategy clarifying how this will be addressed will be needed as this has the potential to be prominent in both the north and east elevations and further clarity to demonstrate that this can be achieved without resulting in harm to the architectural and historic character of the Pavilion is needed.

59. In respect of provision of internal plant a draft strategy has been requested. The needs to include method statements for removing redundant plant and installing new plant, confirmation that a conservation specialist will collaborate on the strategy, the method of monitoring the operation of the plant to ensure levels of humidity are not excessive.

Update on progress of S106 agreement

60. The S106 agreement is still being agreed between the applicant and the Council. Negotiations are ongoing.

Conclusions

61. For the reasons given in the Report and in this supplemental report your officers confirm that although the harm v benefits argument is very finely balanced, the significant harm to the historic environment is just outweighed by the overall public benefits of the scheme and that, as a result, the proposals accord with the provisions of the Local Plan.

62. The additional information submitted since 27th February is considered to be acceptable however, further information is still required. Approval of these minor outstanding matters can be delegated to officers.

63. As a result the recommendation remains that the proposals are approved subject to completion of s.106 agreement, conditions and the receipt of satisfactory additional information all as discussed earlier in this report.