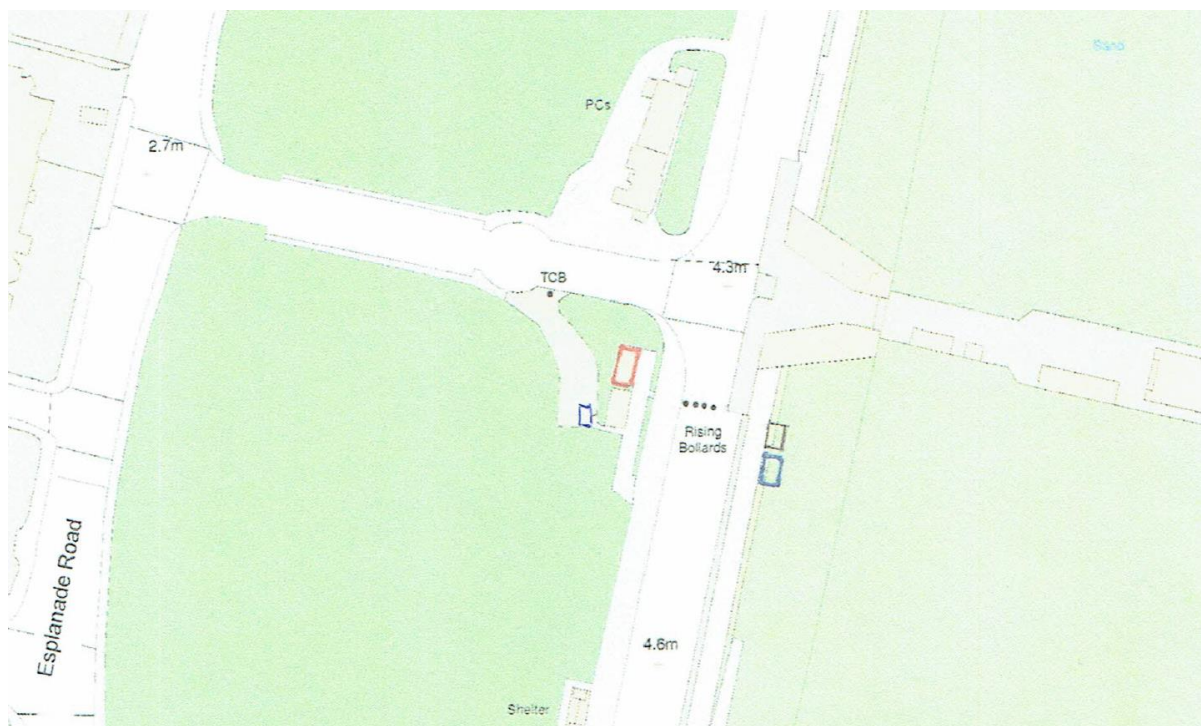




Application Site Address	Kiosk 1 Eastern Esplanade Paignton TQ4 6BW
Proposal	Change of use from beach manager's office to retail use (A1) with hot and cold food takeaway (A5) for a limited period.
Application Number	P/2019/0797
Applicant	Mr Michael Keates
Agent	Mrs Denise Pichler
Date Application Valid	06/08/2019
Decision Due date	01/10/2019
Extension of Time Date	13/12/2019
Recommendation	That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to the proposed development is on land owned by Torbay Council and the application has received objections.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site is a small single storey kiosk that was initially erected under Local Authority permitted development rights and originally served as a Beach Manager's Office. The site is currently operating as an unlawful use. The kiosk is approximately 18 square metres. The site is also located within Flood Zones 2 and 3.

Description of Development

The proposal seeks to regularise the current change of use from beach manager's office to retail use (A1) with hot and cold food takeaway (A5) for a limited period. The use of the kiosk is intended to alternate depending on the seasons of the year: during the summer for retail, the sale of beach goods and associated items, and in the winter for hot and cold food takeaway.

It is leased in tandem with a further kiosk on the opposing side of Eastern Esplanade, That kiosk (which is not the subject of this application) is removed out of season.

The two kiosks are advised as providing four part-time jobs, with the applicant working between the two kiosks on a full-time basis.

The change of use does not include any external alterations to the existing kiosk.

Any advertisement consent required would be subject of a separate application.

Pre-Application Enquiry

None.

Relevant Planning 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")
- The Adopted Paignton Neighbourhood Plan 2012-2030

Material Considerations

- 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:

Relevant Planning History

No relevant planning history relates to the site.

Summary of Representations

17 letters of objection have been received.

A summary of the concerns raised in objection include:

- Use of premises

- Impact on local businesses

Planning Officer Response: *Competition between businesses is generally not regarded as being a material planning consideration, however, the principle of a tourist facility is considered within the principle of development section of the report.*

- Public consultation

Planning Officer Response: *The application was advertised by both site notice and neighbour notification letters. The application has been advertised twice, given the change in description. Both times, the site notice was erected on the lamppost closest to the site.*

- Submitted plans

Planning Officer Response: *The application was validated in accordance with the Torbay Council's validation list. It is not considered necessary to submit proposed and existing elevations given no external alterations are proposed and any advertisement may require a separate application.*

Summary of Consultation Responses

Torbay Council's Senior Environmental Health Officer:

No objections.

- 1. Food areas must comply with Food Hygiene legislation, including registering the business with this Department 28 days prior to opening.*
- 2. You must have suitable refuse areas inside and outside the premises. Refuse must be deposited in closable containers which can be kept clean and disinfected. Refuse areas must be kept clean. Any other types of containers or system must be agreed by the Authority.*
- 3. You must have a commercial waste contract for collection of your trade refuse.*
- 4. Suitable equipment shall be installed to treat and disperse emissions from cooking operations on the premises. The developer would be best advised to have reference to the following document: Control of Odour and Noise from Commercial Kitchens Exhaust Systems – 2004 (Update prepared by NETCEN for the Department for environment, Food, and Rural Affairs). Details of the proposed equipment, including noise levels and odour abatement, shall be submitted to the*

Local Planning Authority for written approval prior to commencement of the development. Please refer to the suggested document's Appendix 2: 'Information Required to Support Planning Applications for Commercial Kitchens' and Appendix 3: 'Risk Assessment for Odour' for details of what is required to be submitted.

The equipment must be implemented in accordance with the approval. Following installation, the equipment shall be operated and maintained in accordance with manufacturer's instructions for as long as the proposed use continues.

5. *You must consider your legal obligations under the Health and Safety at Work etc Act 1974.*
6. *The premises must comply with the Health Act 2006 to ensure all enclosed areas are smoke-free. Any designated smoking areas must comply with the legislation and be non-substantially enclosed.*

Torbay Council's Senior Environmental Health Officer:

No objection in principal. However, I am aware that a number of kiosks serving food along the seafront have been found in the past not to have their sink waste connected to the foul sewerage system, and as such I would suggest that confirmation is sought that this is the case before approval is given. If you have any queries or concerns then please contact me on the above extension number.

Torbay Council's Highways Engineer:

No technical Highways issues.

Torbay Council's Senior Strategy and Project Delivery Officer:

This application site lies within the Paignton Neighbourhood Plan PNP1 b) Local Green Space PLGS 01 Paignton Green North, Central and south. The site is also located within PNP4 Seafront and PNP14 Paignton Neighbourhood Plan Core Tourism Investment Area and PNP15 Flood and Sea Defences (which includes financial contributions towards sea defences).

The Local Green Space was designated with these units in place, and it is not unreasonable to expect small kiosk facilities in the Core Tourism Investment Area Seafront Area (Torbay Local Plan Policy TO1) which complement and do not detract from Town Centre uses (Torbay Local Plan Policy TC3). I think this argument could be made in the context of PNP1b) above, as there is an existing unit on site.

I note the pedestrian ramped access to the esplanade but would seek cycle parking/storage for staff/visitors and if the car parking is included (and deemed acceptable) the provision of an electrical car charging facility. There is no clarity as to the number size and frequency of provision of deliveries which should not park on the

cycle lane or footpath. This should also consider the seasonal restrictions/bollards used on the Esplanade.

Environment Agency:

No response received.

Torbay Council's Drainage Engineer:

No objections, subject to the mitigation measures being carried out that are stated in the site specific flood risk assessment.

South West Water:

No objections.

Paignton Neighbourhood Forum:

No response received.

Key Issues/Material Considerations

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Flood Risk and Drainage

Planning Officer Assessment

1. Principle of Development

The proposal is for a change of use from a beach manager's office to a retail use (A1) with hot and cold food takeaway (A5) for a limited period. Kiosk 1 (the application site identified in red on the submitted block plan) is to be used for the sale of hot and cold food to takeaway (A5) when Kiosk 2 (identified in blue on the block plan) has been removed from the land, and at no other time. Objectors have raised concerns with regards to the operating use of the kiosk.

Policy TO1 of the Local Plan supports in principle the improvement of existing and provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark. Given that the application site is located within the Paignton Seafront, Harbourside and Green Core Tourism Investment Area, and as the proposal involves a change of use which retains a function as a tourist facility, it is deemed that the principle of the development is acceptable, subject to compliance with other relevant Local Plan policies.

Policy PNP4 of the Paignton Neighbourhood Plan is relevant to this application, which states that improvement of the seafront will be encouraged, including upgrading the public realm and public shelters to provide enhanced seating, weather protection and information facilities that improve the tourism offer. It is considered that the proposal complies with this policy.

Policy TC3 of the Local Plan is for retail development proposals in Torbay. The site lies in close proximity to Paignton Town Centre, and despite not lying within a retail centre, it is easily accessible from, well connected to and in close proximity to Paignton Town Centre and thus is covered by Policy TC3 as the site qualifies as an edge-of-centre proposal. Due to its diminutive nature, it is considered that the proposal is of a scale and nature which complements the role and character of the area, as it offers refreshments to those visiting the seaside location. The proposal would not result in harm to the vitality and viability of Paignton Town Centre and would provide a positive tourist facility to Paignton Seafront. The proposal should not cause any unacceptable impacts (individually or cumulatively) on the existing centre or undermine any special cultural or tourism appeal and will not result in the loss of key retail, tourism, cultural or other facilities. On balance, the proposal is considered to comply with Policy TC3 of the Local Plan due to its edge-of-centre location and diminutive nature and the guidance contained within paragraph 87 of the NPPF.

Policy PNP1(b) of the Paignton Neighbourhood Plan is applicable to this application, as the site falls within the designated Paignton Green Local Green Space. Policy PNP1(b) states that 'proposals for new developments will only be supported in very special circumstances. 'Very special circumstances' will not exist unless the potential harm of these Local Green Spaces by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations'. The Paignton Neighbourhood Plan was adopted in June 2019, the kiosk which is the subject of this application was in place prior to this designation and it is not unreasonable to expect a small kiosk serving a tourism purpose within an area which is also designated as a Core Tourism Investment Area. The siting of the kiosk is established and did not require planning permission as it was considered to be erected by the Local Authority exercising their permitted development rights.

There are no Development Plan policies indicating that the proposed development is not acceptable in principle.

2. Impact on Visual Amenity

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. 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 PNP1(c) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the proposal to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

The site is also located within the Paignton Green North Urban Landscape Protection Area (ULPA) as defined by Policy C5 of the Local Plan. Policy C5 states that development within the ULPA will only be permitted where:

1. It does not undermine the value of the ULPA as an open or landscaped feature within the urban area; and
2. It makes a positive contribution to the urban environment and enhances the landscape character of the ULPA.

As the kiosk is an existing structure within the ULPA, and no external alterations are proposed, it is considered that the proposal does not undermine the value of the ULPA as an open or landscaped feature within the urban area. The visual impact of the kiosk is established, as the kiosk is an established structure erected under permitted development.

There are a handful of permanent and seasonal kiosks located along Eastern Esplanade and within the nearby vicinity. Given its siting, scale, and design it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality. The proposal is considered to be in accordance with Policies DE1, C5 and PNP1(c) of the Development Plan, and the guidance contained in the NPPF.

3. Impact on Residential Amenity

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

Environmental Health have provided comments in relation to food and safety and raise no objection to the proposal. Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours.

The proposal is therefore considered to accord with Policy DE3 of the Local Plan.

4. Impact on Highway Safety

Policy TA1 of the Local Plan promotes improvements to road safety. Policy TA2 of the Local Plan requires appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety to satisfy the transport needs of the development. Policy TA3 of the Local Plan sets out requirements for appropriate provision of car, commercial vehicle and cycle parking spaces in all new development.

The site includes one existing dedicated parking space which is to the rear of the kiosk. There is also an existing delivery area to the rear of the kiosk that is to be kept clear and used by delivery vehicles and refuse vehicles. The proposal would involve the two deliveries a week. The Council's Highways Engineer raises no objection to the proposal. The Council's Senior Strategy and Project Delivery Officer has stated that due to the nature of the proposal a provision should be made for bicycle parking for both staff and visitors. Given the nature of the proposal, visitors will access the site on foot whilst visiting the area and such traffic will be in the form of passing trade. It should be noted that there is also a pay and display parking provision along Eastern Esplanade. Details of refuse and recycling storage has not been provided, therefore a planning condition is recommended to secure such details.

Subject to the aforementioned planning conditions, it is considered that the proposed development complies with Policies TA1, TA2 and TA3 of the Local Plan.

5. Flood Risk and Drainage

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy PNP1(i) of the Paignton Neighbourhood Plan states that developments will be required to comply with all relevant drainage and flood risk policy. Policy PNP15 of the Paignton Neighbourhood Plan is applicable, the Policy states development proposals in locations at risk of flooding from seawater will be required to make financial contributions towards the strengthening of sea defences in accordance with Torbay Council CIL regime or S106 Obligation.

The site is located within Flood Zones 2 and 3, and the application is accompanied by a site specific Flood Risk Assessment. The Environment Agency have not responded to the consultation request. South West Water raise no objections to the proposed change of use. The Council's Drainage Engineer raises no objection to the proposal, subject to a planning condition to secure the mitigation measures that are stated in the submitted site specific flood risk assessment. Given the diminutive nature of the proposal and it being an existing structure, it is not considered viable to require a financial contribution towards the strengthening of sea defences.

Therefore, a planning condition is recommended to secure the mitigation measures outlined in the submitted site specific flood risk assessment, and subject to the aforementioned planning condition, it is considered that the proposal complies with Policy ER1 of the Local Plan and Policy PNP1(c) of the Paignton Neighbourhood Plan.

Sustainability

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The proposed development is in a sustainable location inasmuch as it would be utilising a redundant kiosk.

Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8. 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 Act 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:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

EIA:

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

HRA:

Not applicable.

Planning Balance

Whilst objections have been raised to the proposal the report has considered and has concluded these are not of a weight to warrant refusal. The proposal is considered to be in compliance with the development plan and is considered acceptable.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, local amenity and retail/tourist offer, and; would provide adequate arrangements in relation to access and flood risk. The proposed development is considered acceptable, having regard to the Development Plan, and all other material considerations.

Officer Recommendation

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

Conditions

Flood Risk Assessment

The development hereby approved shall be operated in accordance with the submitted and approved flood risk assessment received 21st October 2019 (plan reference 'P2019-0797-10').

Reason: In the interests of managing flood risk to occupiers in accordance with the National Planning Policy Framework, and to comply with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030.

Bicycle Storage/Parking

Prior to the first use of the development hereby permitted, provision shall be made for the storage and parking of bicycles according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

Bin Storage

Prior to the first use of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

Ventilation/Extraction Systems

Prior to the first use of the development hereby approved, details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including the method of construction, odour control measures as appropriate, and noise levels, have been submitted to and approved in writing by the Local Planning Authority. The

approved scheme shall be fully installed before the use hereby permitted commences and thereafter shall be permanently retained.

Reason: In the interests of amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

Foul Water

Prior to the first use of the development hereby approved, details of the means of the disposal of foul water from the kiosk shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented before the use hereby permitted commences and thereafter shall be permanently retained.

Reason: In the interests of amenity and in adapting to climate change and managing flood risk, and in order to accord with Policies DE3, ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

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.

Relevant Policies

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

TA1 – Transport and Accessibility

TA2 – Development Access

TA3 – Parking Requirements

TC3 – Retail Development

TO1 – Tourism, Events and Culture

PNP1(b) – Local Green Space

PNP1(c) – Design Principles

PNP1(i) – Surface Water

PNP4 – Seafront

PNP15 – Flood and Sea Defences