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|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Application Site Address                  | Breakwater Beach<br>Brixham<br>Devon                                                                                                                                                                                                                                                              |
| Proposal                                  | Installation of 'Time and Tide' bell within shoreline of beach. (National initiative).                                                                                                                                                                                                            |
| Application Number                        | P/2019/0235/PA                                                                                                                                                                                                                                                                                    |
| Applicant                                 | Ms Pauline Neal                                                                                                                                                                                                                                                                                   |
| Agent                                     |                                                                                                                                                                                                                                                                                                   |
| Date Application Valid                    | 05.08.2019                                                                                                                                                                                                                                                                                        |
| Decision Due date                         | 30.09.2019                                                                                                                                                                                                                                                                                        |
| Extension of Time Date                    |                                                                                                                                                                                                                                                                                                   |
| 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 as the proposed development is on land that is registered as a Torbay Council asset and an objection has been received, the Council's constitution requires that the application be referred to the Planning Committee for determination. |
| Planning Case Officer                     | Ross Wise                                                                                                                                                                                                                                                                                         |

### **Site Details**

The application site is between the high and low mean water lines at Breakwater Beach, Brixham.

The site is located within the Brixham Coastal Change Management Area, the Brixham Harbourside and Waterfront Core Tourism Investment Area and the Sharkham Point to Berry Head Local Nature Reserve.

The site is not located within Brixham Town Conservation Area or the Lyme Bay and Torbay Special Area of Conservation (SAC), however it is in close proximity to both.

### **Description of Development**

The proposal seeks to install a 'Time and Tide' Bell within the shoreline of the Breakwater Beach as part of a national initiative to install a number of similar structures in waterside locations across the country.

### **Pre-Application Enquiry**

N/A

### **Relevant Planning Policy Context**

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 (BPNP)

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:

With regard to Conservation areas the Act requires that in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area

### **Relevant Planning History**

No relevant planning history pertaining to the site.

### **Summary of Representations**

1 objection has been received, concerns were raised regarding:-

- Health and Safety.
- Maintenance.

## **Summary of Consultation Responses**

**Harbour Authority:** *On behalf of the Harbour Authority I'm supportive of this application. It does not pose a hazard to navigational or personal safety to the best of my belief.*

**Marine Management Organisation:** *The Marine Management Organisation (MMO) is a non-departmental public body responsible for the management of England's marine area on behalf of the UK government. The MMO's delivery functions are; marine planning, marine licensing, wildlife licensing and enforcement, marine protected area management, marine emergencies, fisheries management and issuing European grants.*

### **Marine Licensing**

*Activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009. Such activities include the construction, alteration or improvement of any works, dredging, or a deposit or removal of a substance or object below the mean high water springs mark or in any tidal river to the extent of the tidal influence. You can also apply to the MMO for consent under the Electricity Act 1989 (as amended) for offshore generating stations between 1 and 100 megawatts in England and parts of Wales. The MMO is also the authority responsible for processing and determining harbour orders in England, and for some ports in Wales, and for granting consent under various local Acts and orders regarding harbours. A wildlife licence is also required for activities that that would affect a UK or European protected marine species. Environmental Impact Assessment With respect to projects that require a marine licence the EIA Directive (codified in Directive 2011/92/EU) is transposed into UK law by the Marine Works (Environmental Impact Assessment) Regulations 2007 (the MWR), as amended. Before a marine licence can be granted for projects that require EIA, MMO must ensure that applications for a marine licence are compliant with these regulations.*

*In cases where a project requires both a marine licence and terrestrial planning permission, both the MWR and The Town and Country Planning (Environmental Impact Assessment) Regulations*

*<http://www.legislation.gov.uk/ukxi/2017/571/contents/made> may be applicable.*

*If this consultation request relates to a project capable of falling within either set of EIA regulations then it is advised that the applicant submit a request directly to the MMO to ensure any requirements under the MWR are considered adequately.*

### **Marine Planning**

*As the marine planning authority for England the MMO is responsible for preparing marine plans for English inshore and offshore waters. At its landward extent, a marine plan will apply up to the mean high water springs mark, which includes the tidal extent of any rivers. As marine plan boundaries extend up to the level of the mean high water spring tides mark, there will be an overlap with terrestrial plans which generally extend to the mean low water springs mark. Marine plans will inform and guide decision makers on development in marine and coastal areas. On 2 April 2014 the East Inshore and Offshore marine plans were published, becoming a material consideration for public authorities with decision making functions. The East Inshore and East Offshore Marine Plans cover the coast and seas from Flamborough Head to Felixstowe. For further information on how to apply the East*

*Inshore and Offshore Plans please visit our Marine Information System. The MMO is currently in the process of developing marine plans for the South Inshore and Offshore Plan Areas and has a requirement to develop plans for the remaining 7 marine plan areas by 2021.*

*Planning documents for areas with a coastal influence may wish to make reference to the MMO's licensing requirements and any relevant marine plans to ensure that necessary regulations are adhered to. For marine and coastal areas where a marine plan is not currently in place, we advise local authorities to refer to the Marine Policy Statement for guidance on any planning activity that includes a section of coastline or tidal river. All public authorities taking authorisation or enforcement decisions that affect or might affect the UK marine area must do so in accordance with the Marine and Coastal Access Act and the UK Marine Policy Statement unless relevant considerations indicate otherwise. Local authorities may also wish to refer to our online guidance and the Planning Advisory Service soundness self-assessment checklist.*

**Brixham Town Council:** *No objection. Brixham Town Council fully supports this application.*

**Torbay Council Senior Environmental Health:** *Further to your recent consultation regarding the above application I would confirm that that I have no objections as having reviewed the application I am of the view that noise from the bell is unlikely to cause a statutory nuisance to nearby residents.*

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

1. Principle of development.
2. Visual Impact.
3. Impact on Residential Amenity.
4. Nature Conservation

### **Planning Officer Assessment**

#### **1. Principle of development.**

The proposal is for the installation of a 'Time and Tide' bell within the shoreline of the beach as part of a national initiative.

The site is located within the Brixham Harbourside and Waterfront Core Tourism Investment Area (CTIA) as defined by Policy TO1 of the Local Plan. Policy TO1 states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It is also stated that the Council wishes to see a wider range of new and refurbished facilities and services, with investment being focussed in CTIAs.

As a publicly accessible art installation, the proposal providing a landmark feature in the area, the proposal is considered to be consistent with the objectives of Policy TO1 of the Local Plan, along with the guidance contained in the NPPF.

Policy C3 of the Local Plan supports development that is compatible with coastal change management. Comments from the Harbour Authority and Environmental Health Officer have confirmed that the proposal does not appear to pose a navigational or health and safety issue.

The Marine Management Organisation (MMO) have been consulted on this application and provided information of the potential licences that may be required for the proposal based on its location below the mean high water line. The applicant has stated they will be applying for the relevant licences and have had consultation with Natural England who will provide a comment on the MMO licence application.

The proposal is considered acceptable in principle, having regard to Policies TO1 and C3 of the Local Plan.

## **2. Visual Impact**

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. The BPNP refers only to the design in terms of its housing policies and provides no comment for an installation as is proposed.

The site is located in a prominent position on the shoreline of Breakwater Beach below the mean high water line. The Bell would serve as a publicly accessible art installation that rings as the tide comes in.

Due to the nature of the proposal and its location, it will have varying degrees of visibility depending on the level of the tide. As the tide comes in the installation will be slightly obscured and partially covered by the sea.

The proposed materials are of significant robust quality that are considered to be appropriate for the marine location.

To ensure the installation does not become unsightly should it no longer be in use, a planning condition will be employed to secure its removal in a timely manner.

Given the proposal's siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality.

Subject to the planning conditions mentioned, the proposal is considered to comply Policy DE1 of the Local Plan, and the guidance contained in the NPPF.

### **3. Impact on Amenity**

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

In terms of impacts on amenity and Local Plan policies, due to the nature of the proposal and its location, the impact of noise is the only relevant consideration.

The Senior Environmental Health Officer has raised no objection to the proposal and has stated that the noise from the bell is unlikely to cause nuisance to nearby residents.

The proposal is considered to be acceptable with regard to Policy DE3 of the Local Plan.

### **4. Nature and Conservation**

Policy NC1 of the Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. Policy E8 of the Brixham Peninsula Neighbourhood Plan states that development affecting internationally protected sites and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to National Planning Policy Framework and conforms with policy NC1 of the Torbay Local Plan.

Given that the proposal would only involve the fixing of the structure into the existing rock, it is not considered that there would be any adverse impacts on the Lyme Bay and Torbay Marine SAC.

The MMO have provided information relating to the instances where a licence would be required for development. Due to the location of the proposal, it is likely that a licence will be required for the development. The application will have to provide the necessary information to the MMO to secure the appropriate licences.

The proposal is considered to be acceptable with regards to Policy NC1 of the Local Plan and Policy E8 of the BPNP.

### **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:** Not applicable. **CIL:** N/A

### **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.

### **Planning Balance**

The proposal is considered to represent an appropriate use which will provide a landmark in the local area and therefore enhance the Core Tourism Investment Area. The proposal in terms of design and visual impacts are considered to be acceptable. Whilst concern has been raised in respect of health and safety issues, these issues are addressed in the main body of the report and are not considered to be so significant as to warrant a refusal of planning permission.

### **Conclusions and Reasons for Decision**

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and provide acceptable arrangements in relation to access flood risk, and ecological constraints. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Brixham Peninsula Neighbourhood Plan, and all other material considerations.

### **Officer Recommendation**

That planning permission is granted, subject to the conditions stated 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**

#### **Removal.**

Should the approved installation become redundant, unsafe or damaged beyond economic repair, or cease to function for a period in excess of six months, it shall be permanently removed within a further period of three months.

Reason: In the interests of protecting the visual amenity of the area, and in accordance with Policy DE1 of the Torbay Local Plan.

## **Informatives**

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, any works to be undertaken below the mean high water mark may require a marine licence obtained from the Marine Management Organisation in accordance with the Marine and Coastal Access Act (MCAA) 2009

## **Relevant Policies**

### **Local Plan Policies**

TO1 – Tourism, Events and Culture.  
C3 – Coastal Change Management.  
DE1 – Design.  
DE3 – Development Amenity.  
NC1 – Biodiversity and Geodiversity.

### **Neighbourhood Plan Policies BPNP**

E8 - Internationally and nationally important Ecological sites and species.