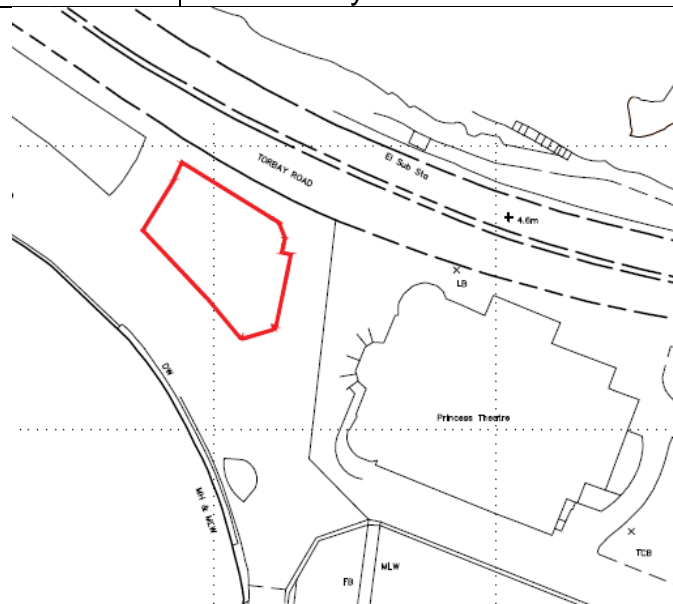


# **TORBAY COUNCIL**

Application Site Address	Pier Point Cafe Torbay Road Torquay TQ2 5HA
Proposal	Alterations and extensions to existing restaurant including change of use of part of site from retail (A1) to restaurant (A3). (revised plans received 27/08/2020)
Application Number	P/2020/0383
Applicant	Pier Point Torquay Ltd
Agent	Narracotts Architects
Date Application Valid	04.05.2020
Decision Due date	29.06.2020
Extension of Time Date	24.09.2020
Recommendation	Approval: Subject to; The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Change; The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Change, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	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	Rose Bailey-Clark



### **Site Details**

The application site, Pier Point Cafe, Torbay Road, Torquay, is a restaurant and bar, situated in a prominent location close to the pier, the seafront and the Princess Theatre.

The existing site comprises a single storey building, which is currently in use as a restaurant and takeaway with an adjoining souvenir and gift shop 'Promenade Gifts' which occupies a North East section of the building. The site is located adjacent to the Princess Theatre and sits within a pedestrian promenade with Rock Walk to the North of the site. Princess Pier, which is not listed, is immediately to the south. It is located close to Torbay Road (A379) and is prominent in the street scene and from the elevated Rock Walk footpath to the north.

A London Plane Tree is located immediately adjacent to the building. The freehold of the site is Torbay Council-owned and the building benefits from permission for a first floor extension granted in 2018 (P/2017/0638).

The site is located on land adjacent to Grade II Listed Princess and Royal Terrace Historic Gardens and part of the site also lies within the boundary of these listed gardens. The site is also located within:

- The Belgravia Conservation Area (BCA).
- The Promenade; Princess Gardens & the Sunken Gardens Local Green Space (TLGST2) as designated within the Torquay Neighbourhood Plan Policy TE2.
- The Harbour side, Waterfront and Belgrave Road Core Tourism Investment Area as defined within Policy TQ1 of the Local Plan.
- Flood Zones 2 and 3.
- Torquay Town Centre Community Investment Area (Policy SS11)
- Coastal Change Management Area (Policy C3)

### **Description of Development**

The proposal seeks to redevelop the existing restaurant by extending the existing footprint at ground floor level and providing a new first floor level. The ground floor would be extended to the northwest by approximately 8m and the new first floor would sit fairly centrally above the existing ground floor footprint being set in slightly from the ground floor level. A cantilevered terrace would be created at first floor and this would curve around the southern and western elevations, offering views out into the bay. The new restaurant would be largely glazed with white render and aluminium detailing. The first floor extension would be flat roofed, with large quantities of glazing.

The proposal also seeks to change the use of the retail element of the building into restaurant use.

### **Pre-Application Enquiry**

None.

## **Relevant Planning Policy Context**

### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan 2012-2030 (TNP)

### 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:

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. 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**

P/2019/1341 Alteration to existing opening to form counter for hot food takeaway. Addition of A5 Class to existing A3 Class. Approved 25.03.2020

P/2017/0638 First floor extension, terrace and alterations to restaurant & bar, solar PV and associated works.(Revised Plans received). Approved 12.02.2018

P/2013/1121 New door opening formed within existing glazed panel and sill to provide additional fire exit and means of escape. Approved 11/12/13

P/2007/0913 Change Of Use To Provide Tables And Chairs To Front Of Venue. Approved 23/07/07

## **Summary of Representations**

Approximately 17 letters representations have been received, 15 objecting to the scheme, 1 in support of the scheme and 1 neutral (15 of these were received from a single party).

The main concerns are summarised as follows:-

- Impact on the listed garden and its setting
- Impact on the conservation area
- Scale of development

- Not in-keeping with local area
- Impact on the adjacent trees
- Waste
- Inadequate cycle storage
- Access and parking

The comments in support of the scheme are summarised as follows:-

- Improves tourist facilities
- Impact on local area

## **Summary of Consultation Responses**

### **Historic England:**

#### *Historic England Advice*

#### *The significance of the heritage asset(s)*

*The Princess Gardens and Royal Terrace Gardens lie adjacent to the application site. They are a Registered Park and Garden (RPG) grade II, and date to 1892-94 when they were built as public leisure gardens by the municipal authority. The gardens were extended to create the sunken gardens and promenade 1928-30, and the nearby theatre was constructed in c.1961. The RPG and its surroundings represent a very attractive open space for the use of the public, with wide reaching views both along the promenade but also across the water.*

*The RPG is on Historic England's 'Heritage at Risk' register, albeit with an improving trend. Princess Gardens is also the subject of a Master Plan, commissioned and adopted by your authority in 2017. Proposals for the improvement of the sunken gardens which lie immediately to the west of the application site, are considered in section 5.2 (page 48) of that document and are a useful reference to your authority's aspirations for improvements.*

#### *The impact of the proposals on the heritage asset(s)*

*The application is for alterations and extensions to the existing restaurant including change of use of part of site from retail (A1) to restaurant (A3). A previous application for a similar scale of scheme was submitted in 2017, and approved.*

*The existing café building dates to the 1950s/1960s and is stylistically very strongly reminiscent of design of that period. It is an interesting building but one that has been altered and degraded over time by less sympathetic alterations, especially to the theatre facing east elevation. The visual relationship with the theatre and to those moving west from it along the promenade is unwelcoming and rather bleak.*

*Historic England finds that the current proposal is an improvement upon the previously approved scheme, which was of the same two storey height. The design proposed is reminiscent of the canopied and over-sailing roof lines of the existing building and also generally of seaside architecture. It creates good levels of interaction between the building and pedestrians using the promenade, through fully opening screens and large amounts of glazing. We consider that the development is likely to encourage*

*users to move westward into the sunken gardens and better appreciate the further reaches of the RPG, and promenade.*

*The Royal Terrace Gardens to the north of the application site (also a part of the RPG) will look straight down onto, and over the top of the roof of the development. We therefore recommend that your authority very carefully consider the visual impact of the installation of servicing units, solar panels and other associated paraphernalia, to ensure that these elements do not cause harm to important views from within the RPG. Equally, signage and advertising can enhance developments, or seriously erode their quality - we therefore recommend that such details are assessed and controlled with the settings of the RPG and conservation areas in mind, so that their special interest is protected.*

*We note the aspirations of the adopted Master Plan for the RPG which, whilst not inclusive of this site, has a close physical and visual relationship to it. The Master Plan (and the adopted Conservation Area Appraisal and Management Plan for Torquay Harbour) identifies opportunities for improved interpretation of the gardens, better signage and street furniture, and improvements to surfacing materials. We recommend that your authority consider if this development could provide a financial contribution towards those aims, through a CIL, section 106 agreement, or a legal undertaking. The benefits of the development could be further enhanced by improvements to the RPG in this way.*

#### *Recommendation*

*Historic England has no objection to the application on heritage grounds. However, we refer you to your own authority's adopted Conservation Area Appraisal and Management Plans and the adopted Princess Gardens Master Plan, and encourage your authority to seek financial contributions from this development for the aspirations for improved streetscape, street furniture, signage and interpretation within the neighbouring grade II Registered Park and Garden.*

*In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.*

#### **Further comment from Historic England:**

*We have obviously made a minor error by stating that the application site lies adjacent to the RPG, when in fact it lies adjacent to it and in part, within it. However, our advice remains the same and we do not feel (in this instance) that the inclusion of a very small part of the RPG within the development site would cause harm to the RPG. The small area is already used as an external seating area with hard landscaping, and makes minimal contribution to the character and appreciation of the RPG. That is not to say that incremental erosion of 'green' space is something that we could always support, but in the current case we do not have concerns. If the current development proposal goes ahead we would likely alter the RPG boundary to take this change into account. We presume that this part of the plot may once have been owned by Torbay Council*

*and perhaps was leased to the café for use as an external space, or has changed ownership because of this function.*

*Many thanks for checking about this with us. We do not feel the need to provide a formal amended letter to confirm our position, unless you feel otherwise.*

**Devon and Cornwall Police:** *Thank you for the opportunity to comment on the above. Having reviewed the application I would like to advise that the police raise no objections to the proposal at this stage but ask that from a designing out crime, fear of crime and disorder perspective the following advice and recommendations are considered and implemented where possible:-*

*1. To deter and assist in the prevention and detection of crime, fear of crime and antisocial or unacceptable behaviour a monitored CCTV system with a clear passport to compliance and carefully coordinated and compatible lighting must be factored in to the proposed scheme. The cameras should cover all external areas of the premises, including external doors and windows.*

*2. From a public safety point of view it is recommended that anti-ram bollards are installed to protect the roadside building elevations from malicious or accidental vehicle impact. The bollards should have been successfully tested to meet PAS 68 standard. Bollards are noted from the plans but it is not clear what these entail.*

*3. The external 'fire escape' flight of steps has the potential to attract 'out of hours' criminal activity or the antisocial to gather if left with open access, as such it is recommended that it is designed so it can be secured when the premises are not in use, without undermining fire regulations, or it is integrated internally.*

*If it is accepted that the external flight of steps should be secured when the premises are not in use then the take away counter and ice cream counter canopies should be of a design to prevent climbing or they are capable of being lowered and secured.*

*4. It is recommended that suitable storage facilities for outside furniture is factored in at this early design stage. Alternatively the furniture should be capable of being stacked and securely stored in a designated place and covered by CCTV. By implementing this will provide a practical solution should tables and chairs that are left out attract 'out of hours' gatherings, as this could have a negative impact on quality of life issues as a result of late night noise and nuisance and the potential for this to increase the fear of crime. Also if the items are left out and accessible they could be vulnerable to theft or used as climbing aids or to cause damage.*

*5. All new external doors, roller shutters/louvered doors and easily accessible windows should be sourced as tested and certificated products to ensure a consistent level of security for the building. I would be happy to assist with regard to this if required.*

*6. External doors should be fitted flush to the building line as possible to prevent creating recessed or concealed areas which could impede surveillance opportunities and provide cover for criminal activity or ASB.*

7. *All easily reachable aspects of the building elevations should be treated with an anti-graffiti finish.*

8. *A management plan should be agreed prior to approval to ensure that the use of the external areas are well managed and regularly supervised by staff.*

*To assist please find attached a copy of the Secured by Design Commercial Guidance which amongst other things provides details of the police preferred standards and specifications for physical security features such as external doors and easily accessible windows, which are set at a minimum standard of security as such anything less would not be desirable.*

*I hope the above proves useful but please do not hesitate to contact me if I can assist further as I would be happy to oblige.*

**Torquay Neighbourhood Forum:** *No comment received.*

**Torbay Council Waste:** *Pier Point use 3 x general waste bins. I have concerns as there will only be 1 access point, there will need to be a rotation system to enable the customer to use the bins supplied and knowing how busy they are I would suggest the bags would be thrown in loose onto the floor. Please see picture attached of a solution used in a separate location.*

*We only had issues due to the fact there was a mixture of recycling, glass and general bins and the crews found it difficult to access the bins there needed to collect.*

*1 x 1100ltr width 1.36 metres. 1 x 1100ltr depth 1.03 metres.*

**Torbay Council Drainage Engineer:**

**18/05/2020:**

*Further to your letter dated 11th May 2020 regarding the above planning application I would like to make the following comments:*

*1.The proposed development lies within Flood Zone 3 and the developer has submitted a site specific flood risk assessment.*

*2.Within the site specific flood risk assessment the developer has identified the sources of flooding together with proposed flood mitigation measures. However there is no details relating to safe access and egress during a flood event or details about what to do in an emergency including safe refuges. In addition the flood risk assessment should identify that the owner/manager of the building will be signed up to the Environment Agency's coastal flood warning system.*

*Before planning permission is granted the developer must include the additional details within the site specific flood risk assessment.*

*Before planning permission is granted the developer must include the additional details within the site specific flood risk assessment.*

*Should you have any questions regarding the above please do not hesitate to contact me.*

**26/05/2020:**

*Further to your email dated 18th May 2020 attaching the revised flood risk assessment for the above planning application, I can confirm that providing the proposed flood mitigation measures included within the revised flood risk assessment are complied with, I have no objections on drainage grounds to planning permission being granted.*

**Torbay Council Tree and Landscape Officer:**

**05/06/2020:** *I have no objection to the proposal. The submitted tree information is accurate and makes allowance for the construction of the proposal. My only concern is the potential for ongoing maintenance of the tree to ensure that a satisfactory relationship between the tree and restaurant is maintained – are we able to require funding from the owner of the site to carry out these ongoing maintenance works on the tree. Also a compliance condition that the tree works are carried out as per report 05435a AIA Pier Point.*

**21/08/2020:** *The proposed foot print extends into an area where no trees are located hence the submitted information stating that the footprint will be the same is incorrect but there will not be any further arboricultural implications.*

**21/08/2020:** *The submitted Tree Protection Plan is acceptable.*

**Torbay Council Environmental Health:** *Having reviewed this application from an environmental protection perspective I would confirm that I have no objections. Should you have any further queries please let me know.*

**Devon Gardens Trust:** *Thank you for consulting The Gardens Trust on the above application which affects Princess Gardens and Royal Terrace Gardens. We do not wish to comment on the proposals.*

**South West Water:** *No comment received.*

**Natural England:** *Natural England has no comments to make on this application.*

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

1. Principle of development
2. Impact on visual amenity
3. Impact on heritage assets
4. Impact on residential amenity



5. Impact on highways
6. Trees and ecology
7. Flooding and drainage
8. Waste
9. Low Carbon Development
10. Sustainability

## **Planning Officer Assessment**

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

Policy TO1 (Tourism) 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. The application site is also located within Core Tourism Investment Area (CTIA) as designated in Policy TO1. As such, given the site's location within a CTIA, and as the proposed extension will result in an improvement to the existing building and allow for increased capacity which will support the local business and provide enhanced facilities, the proposal would comply with Policy TO1.

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 enables expansion and diversification of the economy of the Bay. The Plan seeks to promote growth in sectors that are particularly important in Torbay, namely tourism, hotel and catering. The addition of the extension would create 16 new full time and 6 new part time employees in line with this policy.

The application is for the extension of an A3 use, meaning that a sequential test should be applied in accordance with paragraph 86 of the NPPF, however, this test should be balanced against other benefits of the proposal. The site, which is well located within walking distance of Torquay Town Centre, is already in use as a café and the proposal involves the enlargement of the restaurant. The proposal would help contribute to the area and would add vitality to Torquay Seafront.

Policy TO1 (Tourism) of the Torbay Local Plan states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Policy TO1 details further that Torbay Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

- Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions.

- The retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with particular focus on Core Tourism Investment Areas (CTIAs)

Given that the application site is located within a CTIA as designated in Policy TO1, and the proposed extension would improve the provision of tourist attractions, it is considered that the principle of the proposed development is acceptable and a sequential test is not required.

A small part of the site lies within the Promenade; Princess Gardens & the Sunken Gardens which is designated as a Local Green Space (LGS) within Torquay Neighbourhood Plan Policy TE2. The vast majority of the proposed development is on the exiting footprint, however part of the proposal would extend into a small part of the LGS which is a hard landscaped area already in use as an enclosed external seating area for Pier Point Café. Policy TE2 states that development in these areas is ruled out, other than in very special circumstances. This Policy considers that a new railway station at Edginswell or tourist facilities at Hollicombe are examples where very special circumstances apply. Paragraph 101 of the NPPF indicates policies for managing development in LGSs should be consistent with green belts. Paragraph 145 of the NPPF indicates that certain types of development may be acceptable in green belts including recreation, provided that the openness of the green belt is preserved and development does not conflict with the purpose of designation. As the proposal improves and enhances the current use, does not conflict with the reasons for designating the LGS and provides economic/tourism benefits, any conflict with the LGS policy is outweighed.

Neighbourhood plan Policy TS4 (Support for Brownfield and Greenfield Development) supports development proposals for brownfield sites providing there are no significant adverse impacts. The proposal is considered to make effective use of what is brownfield land, in accordance with Policy TS4.

The site is within the coastal change management area, as defined by Local Plan Policy C3. The proposal is for the extension a cafe which is already in place within this area, and proposed alterations are not considered to adversely affect the natural or historic environment of the area. The proposal is considered an appropriate addition within this location which would contribute to local economy, in accordance with Policy C3.

Policy SS11 of the Local Plan explains that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle. Policy TC5 (Evening and night time economy) of the Local Plan states that the Council supports, in principle, development that helps create a vibrant, diverse evening and night-time economy within the town centres, seafront and harbour areas of the Bay. There are likely to be wider economic benefits through additional visitors being attracted to the area as a result of the extended capacity. Additionally it would add to the existing tourism offer in the seafront area attracting people of all ages, accordingly the proposal complies with Policy TC5.

Overall, the proposal is considered to be consistent with the objectives of the above policies.

## **2. Impact on Visual Amenity**

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, it 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 Design 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 TH8 of the Torquay Neighbourhood Plan states that development must be of good quality design, respect the local character and reflect the identity of its surroundings.

Policy DE4 (Building Heights) states that the height of new buildings should be appropriate to the location, historic character and the setting of the development.

Policy SS11 of the Torbay Local Plan states that development must help to create cohesive communities within a high-quality built and natural environment where people want to live and work and that development proposals will be assessed according to whether they achieve certain criteria as far as they are relevant and proportionate to the development.

This building is an important feature on Torquay sea front in a prominent public realm location which is viewed from all sides, therefore it is important that it should positively address the street from every elevation. The submitted plans were amended to overcome officer concerns over the relationship of the proposed building with the main “showfront” western entrance of the adjacent Princess Theatre. The fascia of the main entrance to the eastern elevation has been raised to allow this to read as a prominent entrance point to the building, and the fascia has been continued to wrap around the external stairway to improve the appearance of this elevation.

A square angular element to the elevation facing Torbay Road was amended to include a curved design, which is considered to bring this element into context with the rest of the building.

The proposed contemporary design is reminiscent of the canopied and over-sailing roof lines of the existing building and creates good levels of interaction between the building and pedestrians using the promenade, through fully opening screens and large amounts of glazing.

The proposal is considered to be in keeping, in terms of its height, scale and architectural style with other buildings located along the sea front, including the nearby Princess Theatre and Abbey Sands development, all of which are located off Torbay Road. The proposed building would be approximately 3m higher than the existing structure, and would remain lower in height than the adjacent Princess Theatre.

Policy SS11 of the Local Plan states that part of the criteria development proposals will be assessed against includes whether the proposal helps to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion. Consultation from police officer has raised a number of points regarding designing the scheme to prevent opportunities for crime and anti-social behaviour. These recommendations have been taken into account where possible and a planning condition should be employed to secure a scheme of crime prevention measures. The proposal is considered to accord with Policy SS11 of the Local Plan, and TH2 of the Neighbourhood Plan.

It is considered that the form and layout of the scheme would make effective use of what is brownfield land. The proposal is considered to result in a significant enhancement of what is a visually prominent site within the CTIA, replacing a dated structure. Given the proposal's siting, layout, scale, and overall design, it is considered that it would not result in any unacceptable harm to the character of the area. Subject to the use of conditions to secure the use of high quality materials, it is considered that the proposal is in accordance with Policies DE1, SS11 and DE4 of the Local Plan, Policies TH2 and TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

### **3. Impact on Heritage Assets**

Policy SS10 states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas. Paragraph 193 of the NPPF explains that great weight should be given to the conservation of 'heritage assets' such as Conservation Areas and Listed Historic Park and Garden.

The site lies within the Belgravia Conservation Area (BCA). Part of the site lies within the adjacent Princess Gardens and Royal Terrace Gardens. They are a Registered Park and Garden (RPG) grade II, and date to 1892-94. The gardens were extended to create the sunken gardens and promenade 1928-30. The Promenade; Princess Gardens & the Sunken Gardens is also designated as a Local Green Space within the Torquay Neighbourhood Plan Policy TE2. This policy states that development in these areas is rules out, other than in very special circumstances.

The Gardens Trust have confirmed they have no comment on the scheme and Historic England have commented confirming that they have no objection to the application on heritage grounds.

Although part of the proposal would extend into small part of land designated as falling within the RPG and Local Green Space, this has raised no concerns given that the small, hard landscaped area is already in use as an external seating area for Pier Point Café.

The proposed design creates good levels of interaction between the building and pedestrians using the promenade and is likely to encourage users to move westward into the sunken gardens and better appreciate the further reaches of the RPG, and promenade.

The Royal Terrace Gardens to the north will look straight down onto, and over the top of the roof of the development. Therefore, details of the servicing units will be secured through the use of a planning condition to ensure that these elements do not cause harm to important views from within the RPG and surrounding Conservation Area.

The proposed new building is considered to be appropriate to the seafront location and the modernist architecture preserves the character and quality of the Conservation Area and listed park and garden. Subject to the imposition of conditions, the proposal is considered to have an acceptable impact on the heritage assets. As such the proposal is considered to be acceptable with regard to Policy SS10 of the Local Plan and the guidance contained within the NPPF.

#### **4. Impact on amenity**

Consultation from the Council's Senior Environmental Health Officer has noted that there is no objection to the proposal. Details of the proposed extraction and cooling equipment, including noise levels and odour abatement, shall be secured through the use of a planning condition. This will ensure that the extension of the business does not result in any negative impacts on the surrounding users and residential properties.

A construction method statement (CMS) to ensure public areas on the footway and promenade are not unduly obstructed and the works are carried out in an appropriate manner shall be secured through the use of a planning condition.

Given the distance of the proposal to the nearest residential properties which are above Rock Walk, which at its closest point is approximately 93.5m in distance, it is considered unlikely that there will be a material loss of amenity to the occupiers of these properties.

Subject to the imposition of conditions, the proposal is considered to retain suitable levels of amenity for adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

#### **5. Impact on Highways.**

Policies TA2 and TA3 of the Local Plan establish criteria for the assessment of development proposals in relation to access arrangements and vehicle parking. Policy TH9 of the Torquay Neighbourhood Plan states that all new housing development must meet the guideline parking requirements contained within the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or, the development is within the town centre and an easy walk of a public car park which will be available to residents for the foreseeable future. Policy DE3 of the Local Plan states that all development should include satisfactory provision for off-road motor vehicle parking and bicycles. Policy THW5 of the Torquay Neighbourhood Plan supports new development proposals where they are located on or near to public transport routes wherever possible and appropriate.

In this case the site is considered to be in a commercial area which is already well served by public car parks and therefore would not create significant additional demand. The existing restaurant does not include any parking provision, furthermore the constraints of the site means that it would be unsuitable to accommodate off street car parking.

A small bike storage area is included within the building to serve some employees, and planning condition will also be used to seek to secure details of the provision of cycle storage in accordance with Policy DE3 of the Local Plan and policy THW5 of the TNP, if it is possible to do so. The application site has very limited potential for the provision of cycle parking and provision may require the cooperation of third party landowners; for this reason the planning condition requires that the applicant should make best endeavours to provide cycle parking but it is recognised that there is a possibility that this may not be achievable.

The applicant would need to apply for a pavement licence for the seating on the highway.

Subject to the conditions being met, the proposal is considered to be acceptable with regard to Policies DE3, TA2 and TA3 of the Local Plan and Policies TH9 and THW5 of the TNP.

## **6. Trees and Ecology.**

Policy NC1 of the Local Plan confirms the Local Plan seeks that development in all areas should conserve or enhance Torbay's biodiversity and geodiversity. Policy TE5 (Protected species habitats and biodiversity) states that the development of new homes, or a new commercial property or business premises of any class, on an unallocated site that could have an impact on a protected species or habitat must provide, as appropriate, an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Policy C4 of the Local Plan does not permit development when it would seriously harm, either directly or indirectly, protected or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value.

The application has been accompanied by a written wildlife assessment by a licenced Ecologist (NE licence number 2015-11658-CLS-CLS, CL29/00179) carried out on 20.04.2020. This report confirmed that no evidence of bats were found and the proposal will not impact on nesting birds.

A London plane tree is located immediately adjacent to the buildings north eastern elevation. An arboricultural impact assessment and tree protection plan have been submitted to accompany the application and the Council's Senior Tree and Landscape Officer is satisfied that the proposed development is acceptable in terms of its impact upon the trees adjacent to the site.

The site is adjacent to the Lyme Bay and Torbay Special Area of Conservation (SAC) and Marine Conservation Zone (MCZ). Natural England been consulted and have advised that they have no comment, which implies that they consider that there would be no 'likely significant effect' of the proposed development on any European protected sites.

Separate legislation relating to appropriate pollution control measures (for both water and air) would apply, in accordance with Defra guidelines, which would prevent harmful substances entering the air, ground or water.

The proposed development is considered acceptable with regard to Policies NC1 and C4 of the Local Plan and Policy TE5 and of the TNP.

## **7. 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.

As the site is located within Flood Zones 2 and 3, the application is required to be accompanied by a site specific flood risk assessment.

The Drainage Engineer has no objections providing the development is carried out in accordance with the details of the submitted site specific flood risk assessment. A planning condition will be employed to secure this.

Subject to the conditions being met, the proposal is considered to be acceptable with regards to Policies ER1 and ER2 of the Local Plan.

## **8. Waste**

Policy W1 of the Local Plan states that all development proposals should provide a scheme of sustainable waste management proportionate to the scale of the proposal. Policy W2 requires that Development proposals which are likely to generate significant volumes of waste must include a Waste Audit and Five Year Waste Management Plan

setting out how waste generation will be reduced during the construction and operation of the development. This will include provision of appropriate on-site facilities for re-use, recycling (composting where appropriate) and collection of waste. Schemes should include measures to:

1. Prevent and minimise, re-use and recycle waste (including composting where appropriate);
2. Minimise the use of raw materials;
3. Minimise the pollution potential of unavoidable waste;
4. Seek alternative modes of transport (to the use of roads) to move waste;
5. Make provision for the storage and collection of waste. Planning contributions for off-site waste management facilities may also be required; and
6. Dispose of unavoidable waste in an environmentally acceptable manner;

The proposal includes a bin storage area which would allow three commercial waste bins to be stored. The storage area has been amended to allow easier access to the refuse and recycling bins. The proposal includes two takeaway counters, therefore planning condition will be used to require the submission of a Waste Management Plan to ensure that the use plastic containers are minimized, local litter bins are not subject to undue pressure and seagulls are managed. Following the use of this condition, the proposal is considered to comply with Local Plan Policies W1 and W2.

## **9. Low Carbon Development**

Policy SS14, Low carbon development and adaptation to climate change, requires that development should minimise carbon emissions and the use of natural resources expected to arise during the lifetime of development.

The submitted design and access statement indicates that the development proposes to use less energy through passive design such as high insulation levels to improve U-values; high efficiency glazing and reduced air permeability. Additionally, energy efficient plant and equipment such as LED lighting; high efficiency heating and cooling, heat recovery ventilation and efficient fan motors would be utilised.

The proposal is therefore considered to be in accordance with Local Plan Policy SS14.

## **10. Sustainability of Location**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Policy TS1 of the TNP provides a framework which contributes to the achievement of sustainable development in Torquay. Development proposals should accord with the policies contained in the Torquay Neighbourhood Plan, where relevant, unless material planning considerations indicate otherwise.

The proposal is considered to make sustainable use of land by re-using an existing structure. This reduces the pressure to develop greenfield sites, and promotes urban



regeneration. The site's central location in itself promotes sustainable forms of transport as locally available services are within easy walking distance, removing the need for additional car journeys. The proposed development is considered to represent sustainable 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:** Not applicable.

**CIL:** The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; 2.2.1 CIL is liable on out-of-town centre food and drink development of more than 300 sq m, at £120 per sq m. This means that all new floorspace over the first 300sqm will be charged at a rate of £120/sqm.

An informative can be imposed, should consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

### **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:**

There is no requirement for a HRA in this instance.

### **Planning Balance**

The proposal is considered to represent an appropriate and beneficial use which will enhance the Conservation Area and benefit the local economy. The design and heritage impact are considered to be acceptable. Subject to the planning conditions detailed below, no unacceptable material planning harm has been identified and the proposal is in accordance with Development Plan policies.

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

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, heritage assets, 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 Torquay Neighbourhood Plan, and all other material considerations.

### **Officer Recommendation**

Delegate authority to the Assistant Director of Planning, Housing and Climate Change to grant Planning Permission, 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, Housing and Climate Change.

### **Conditions**

#### **Cycle storage**

Prior to any new development continuing above damp proof course level, details of a scheme to demonstrate that best endeavours have been made to provide cycle parking within the vicinity of the site shall be submitted to and approved in writing by Local Planning Authority. This scheme shall be implemented prior to the occupation of the development and retained for the lifetime of development.

Reason: To provide for and encourage sustainable forms of travel to and from the site, in accordance with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030.

#### **Waste Management**

The development hereby permitted shall not be brought into use until a detailed Waste Audit and Waste Management Plan, has been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed scheme shall be adhered to for the lifetime of the development.

The scheme shall include full details of the following:

- 1) How waste will be minimized as far as possible.
- 2) The storage of refuse and recycling awaiting collection.

- 3) Where customer bins will be provided on site.
- 4) How the development will prevent and minimise, re-use and recycle waste and promote the use of recyclable containers.
- 5) How the development will dispose of unavoidable waste in an environmentally acceptable manner.
- 6) How the development will address additional pressure on nearby public litter bins.

Reason: In interests of managing waste in an appropriate manner and in accordance with Policies W1 and W2 of the Torbay Local Plan 2012-2030.

### **Tree Protection Measures**

The development hereby approved shall be carried out in strict accordance with the Arboricultural Impact Assessment (Tree Protection Measures) (Plan reference: 05435a TPP, received: 27.08.2020).

Reason: To ensure that the construction works are carried out in an appropriate manner to prevent any impact on trees in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

### **Arboricultural Impact Assessment**

The development hereby approved shall be carried out in strict accordance with the Arboricultural Impact Assessment (Plan reference: 05435a pier Point AIA, received: 21.04.2020).

Reason: To ensure that the construction works are carried out in an appropriate manner to prevent any impact on trees in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

### **Materials**

Prior to the instillation of any external building materials, including cladding, render, windows and doors, the proposed materials (including samples) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030.

### **Details of rainwater goods**

Prior to the instillation of any rainwater goods, details of the proposed rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. The

development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030.

### **Hours of opening**

The development hereby approved shall not be open to customers outside of the following times: 0800 to 2330 Monday to Sunday.

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

### **Construction Methods Statement**

No development (including demolition and ground works) shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction. The CMS shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials.
- d) Measures to limit dirt / materials on the highway
- e) Measures to control dust and dirt during construction.
- f) Measures to minimise noise nuisance to neighbours from plant and machinery as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used.
- g) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
- h) Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- i) Procedures for maintaining good neighbour relations including complaint management.
- j) Measures to ensure that noise and nuisance to the neighbouring Princess Theatre is minimised during their matinee performances.
- k) Measures to ensure that there is no damage to the roots of the plane trees adjoining the site

The approved CMS shall be adhered to throughout the construction phase.

Reason: To ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses, in the interests of the convenience of highway users and in the interest of nearby trees, in accordance with Policies C4 and DE3 of the Torbay Local Plan. These details are required pre-commencement to ensure appropriate mitigation at all stages of development.

### **Flood Risk Assessment**

The development hereby approved shall be undertaken in full accordance with the mitigation measures contained in the flood risk assessment (plan reference: 2386 FRA Rev A, received: 21.04.2020) and shall be retained as such thereafter.

Reason: In the interests of flood safety and in accordance with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

### **Details of Extract/Ventilation System**

Prior to any new development continuing above damp proof course level, 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 maintained and retained.

Notwithstanding the details shown on the approved plans no external plant or equipment shall be installed or provided unless it has previously been agreed in writing by the Local Planning Authority.

Reason: These details need careful consideration and formal approval to safeguard the amenity of adjoining properties, to protect the general environment and in order to protect the visual amenity of the area. In the interests of residential and visual amenity, and to ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE3, DE1 and SS10 of the Torbay Local Plan 2012-2030.

### **Crime Prevention Measures**

Prior to the first use of the development hereby approved, details of a scheme of crime prevention measures shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of providing a safe, crime free environment and in accordance with Policy SS11 of the Torbay Local Plan, and Policy TH2 of the Neighbourhood Plan.

### **Informatives**

01. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
02. Notwithstanding submitted plans, any signage would be subject to a separate application for signage consent.
03. The applicant is reminded of their obligations in relation to pollution prevention and control, which is covered by separate legislation. Appropriate pollution control measures (for both water and air) should be applied in accordance with

04. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

05. 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.

06. Community Infrastructure Levy (CIL)

This development is liable for contributions under the CIL regulations to provide essential infrastructure to support development in the Borough.

CIL next steps required under the CIL Regulations 2010 (as amended):

Where planning permission has been granted for development, the Council (as the collecting authority) requires the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form. The Council, as the collecting authority, will then as soon as reasonably practicable, issue a Liability Notice to the applicant, the developer, and/or whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.

Any claims for exemption or relief can only be considered from parties who have already assumed liability, prior to commencement of development.

The relevant liable person(s) must then submit a notice to the Council setting out when development is going to start - a Commencement Notice. The Commencement Notice must be submitted to the Council for their written acknowledgement at least 48 hours prior to the start of any development on the site. No development must commence without written acknowledgement of receipt of a Commencement Notice.

The Council will then issue a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. On receipt of the demand notice and commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure.

Failure to inform the Council of Commencement or to follow the CIL process and payment procedure correctly may result in the addition of surcharges and/or late payment interest. It must be noted that it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (Regulation 110 as amended by the 2011 Regulations).

Further CIL information and Forms can be found at <https://www.gov.uk/guidance/community-infrastructure-levy#forms-and-template-notices>

### **Relevant Policies**

TO1 – Tourism, Events and Culture  
SS4 – The Economy and Employment  
SS11 – Sustainable Communities  
TC5 – Evening and Night time Economy  
DE1 – Design  
DE3 – Development Amenity  
DE4 – Building Heights  
TA2 – Development Access  
TA3 – Parking Requirements  
ER1 – Flood Risk  
ER2 – Water Management  
NC1 – Biodiversity and Geodiversity  
HE1 – Listed Buildings  
SS10 – Conservation and the Historic Environment

SS3 – Presumption in favour of Sustainable Development  
C4 – Trees, hedgerows and natural landscape features  
C3 – Coastal change management  
W1 – Waste Hierarchy  
W2 – Waste Audit for major and significant waste generating developments  
SS14 – Low carbon development and adaptation to climate change

TH8 – Established Architecture.  
TH9 – Parking Facilities.  
THW5 – Access to sustainable Transport.  
TE5 – Protected species habitats and biodiversity.  
TS1 – Sustainable Development.  
TS4 – Support for Brownfield and Greenfield development.  
TE2 - Local Green Spaces  
TE5 - Protected species habitats and biodiversity  
TH2 – Designing out crime