



Monday, 1 February 2016

DEVELOPMENT MANAGEMENT COMMITTEE

A meeting of **Development Management Committee** will be held on

Tuesday, 9 February 2016

commencing at **2.00 pm**

The meeting will be held in the Grace Murrell Suite, Riviera International Conference Centre, Chestnut Drive, Torquay

Members of the Committee

Councillor Kingscote (Chairman)

Councillor Barnby
Councillor Cunningham
Councillor Darling (S)
Councillor Manning

Councillor Morey
Councillor Robson
Councillor Stringer
Councillor Winfield

A prosperous and healthy Torbay

For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207087

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www.torbay.gov.uk

DEVELOPMENT MANAGEMENT COMMITTEE AGENDA

1. **Apologies for absence**
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
2. **Minutes** (Pages 4 - 5)
To confirm as a correct record the Minutes of the meeting of this Committee held on 11 January 2016.
3. **Declarations of Interests**
 - (a) To receive declarations of non pecuniary interests in respect of items on this agenda
For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
 - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda
For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(**Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
4. **Urgent Items**
To consider any other items that the Chairman decides are urgent.
5. **Land Off Berry Head Road, Berry Head, Brixham** (Pages 6 - 29)
P/2015/1092/MPA
Formation of 8 holiday chalets and a reception/pool building. This application is accompanied by an Environmental Statement. This is a departure from the Torbay Local Plan.

6. **Oldway Mansion Site, Torquay Road, Paignton CN/2015/0081/CON (inc. CN/2015/0100/CON)** (Pages 30 - 45)
Discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 for P/2011/1020 (Change of use of Oldway Mansion and Rotunda from Council Offices to hotel with ancillary conference and spa facilities. External alterations, entrance foyer and refurbishment/reinstatement of glass conservatory. Demolition of squash courts. Improvements to existing car parking area and new car parking to rear service area).
7. **1 Southfield Road, Paignton P/2015/0840/MPA** (Pages 46 - 63)
Erection of 4 storey block of flats comprising 12 no. 2-bed flats, with associated pedestrian/vehicular access and parking.
8. **9 Sandringham Drive, Paignton P/2015/1050/HA** (Pages 64 - 68)
Replacement garage and side extension, loft conversion, alterations and extension to terrace (as revised by plans received 15.12.2015).
9. **Wheatridge Lodge, Wheatridge Lane, Torquay P/2015/0939/HA** (Pages 69 - 76)
Detached double garage with workshop and storage above to rear of property (as revised by plans received 16.12.2015).
10. **17 Morgan Avenue, Torquay P/2015/1144/PA** (Pages 77 - 82)
Change of use from offices (class A2) to holiday hostel (Sui Generis).
11. **North Quay Slipway, Vaughan Parade, Torquay P/2015/1230/PA** (Pages 83 - 87)
Erection of Coffee Kiosk for temporary 2 year period: April to October in summer location adjacent to the existing seafood kiosk and November to March in winter location adjacent to top of slipway.
12. **Public speaking**
If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email governance.support@torbay.gov.uk before 11 am on the day of the meeting.
13. **Site visits**
If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 3 February 2016. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Note

An audio recording of this meeting will normally be available at www.torbay.gov.uk within 48 hours.



Minutes of the Development Management Committee

11 January 2016

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Cunningham, Darling (S), Ellery, Lewis, Robson, Stringer, Winfield

63. Apologies for absence

It was reported that, in accordance with the wishes of the Conservative Group and the Independent Group, the membership of the Committee had been amended for this meeting by including Councillors Lewis and Ellery instead of Councillors Manning and Morey respectively.

64. Minutes

The Minutes of the meeting of the Development Management Committee held on 14 December 2015 were confirmed as a correct record and signed by the Chairman.

65. Victoria Park, Torquay Road, Paignton P/2014/0571/VC

The Committee considered an application for the retention and change of use of the existing youth service building with a childcare facility (Class D1) (variation of condition 1 of original planning permission P/2012/0183).

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members.

Resolved:

Approved subject to the final drafting and determination of appropriate conditions being delegated to the Executive Director of Operations and Finance which relate to:

- (a) the further temporary permission only being granted for a period of 12 months and the applicant being advised to find alternative accommodation after the permission expires;
- (b) to ensure the building is not painted; and
- (c) the informative set out in the submitted report.

66. Marine Park Holiday Centre, Grange Road, Paignton P/2015/0888/MVC

The Committee considered an application to vary condition P1 of reserved matters permission P/2012/1078 in order to carry out minor material amendments to the rears of plots 83-100.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members.

Resolved:

The application was approved.

67. Land West Of Brixham Road, Paignton P/2015/0918/MVC

The Committee considered an application to vary condition P1 of reserved matters permission P/2013/1229 in order to carry minor material amendments to the design of Plots 37, 94 and 237.

Prior to the meeting written representations were circulated to members.

Resolved:

Approved, subject to satisfactory further negotiations with the Building Inspector and the conditions set out in the submitted report.

68. Land West Of Brixham Road P/2015/1061/MVC

The Committee considered an application for to vary condition P1 of reserved matters permission P/2014/0071 in order to carry minor material amendments to the design of plot 352. The Team Leader for Development Management advised that the application also sought members' approval to re-site plot 352 4 meters closer to Brixham Road.

Prior to the meeting written representations were circulated to members of the Committee.

Resolved:

The application was deferred to allow for further negotiations to achieve a better re-siting of the development and further consultation with the Building Inspector.

69. Snooty Fox, 89-91 Fore Street, St Marychurch, Torquay P/2015/1043/MVC

The Committee considered an application to vary condition 9 of planning permission ref. P/2015/0289 in order to lower the heights of the privacy screens on the second floor to the rear of the block of flats.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were circulated to members.

Resolved:

The application was approved.

Agenda Item 5

Application Number

P/2015/1092

Site Address

Land Off
Berry Head Road
Berry Head
Brixham
Torbay

Case Officer

Carly Perkins

Ward

Berry Head With Furzeham

Description

Formation of 8 holiday chalets and a reception/pool building. This application is accompanied by an Environmental Statement. This is a departure from the Torbay Local Plan.

Executive Summary/Key Outcomes:

The proposal is for the provision of seven one and a half storey holiday chalets, a two storey manager's chalet together with ancillary accommodation and a reception and leisure chalet building, resulting in a total of nine chalets on the site. The holiday chalets and reception and leisure chalet are to be located around a circular cinder track with a recreational communal area to the centre. The manager's accommodation is located south of the holiday accommodation circle to the south of a band of trees. The remainder of the site would become a managed wildlife area.

The application site is in a very environmentally sensitive location. It is within the Area of Outstanding Natural Beauty and Countryside Zone, and adjacent to the Berry Head to Sharkham Point component of the South Hams Special Area of Conservation (SAC). The site is within the Greater Horseshoe Bat Sustenance Zone with the majority of the site also falling within the Greater Horseshoe Bat Strategic Flyaway. The site is also designated as an Other Site of Wildlife Interest within the Torbay Local Plan 2012-2030.

A footpath is located to the north of the site that connects Wall Park Road and Victoria Road to the South West Coast Path.

The application site is a former ministry of defence site, which was cleared in the 1970s, is now heavily vegetated. There are a number of trees subject to tree preservation orders within the site. At the time of the officer site visit an existing hardstanding close to the entrance to the north west of the site was noted. The site has two access points, one from the junction of Wall Park Road and Victoria Road and one from Berry Head Road.

A considerable amount of the information submitted in support of the application is largely out of date or incomplete. This means there is a lack of clarity about the potential effect of the development. In these instances it is reasonable for the Council to assume that there will be an adverse affect from the proposed development.

Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty, and great weight should be given to their conservation. Advice in para. 116 of the NPPF is that planning permission should be refused for major developments in these areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. The proposal as submitted fails to demonstrate that the development can be implemented without harm to the character of the open countryside and the Area of Outstanding Natural Beauty. There is no evidence of overriding public interest resulting from the proposal to outweigh the effect of the development.

The presence of Greater Horseshoe Bats at Berry Head is of European nature conservation importance. The Council (as the competent authority) is required to meet the statutory obligations associated with the greater horseshoe bat conservation interest. A Habitat Regulation Assessment is required to assess the affect of the proposed development on the South Hams SAC. If it is concluded that there is likely to be a significant effect the Council will then have to make an appropriate assessment of the implications of the proposal for the site in view of the site's conservation objectives. These assessments are needed before a decision can be taken on the application. European case law (Wadenzee) has ruled that a plan or project may be authorised only if the competent authority (the Council in this case) has made certain that the plan or project will not adversely affect the integrity of the site.

In addition to the above points insufficient information has been submitted to confirm that the site is suitable for the proposed use in terms of contamination, that the mitigation measures required ensuring pedestrian safety can be implemented, that there will be no harm from the loss of trees on the site or that sustainable urban drainage measures can be implemented in light of the Critical Drainage designation. It is also likely that the proposal will be unacceptable on the basis of its impact on the landscape character of the area.

On the basis of the submitted application the applicant has failed to demonstrate that the proposed development will meet the objectives of the policies in the Torbay Local Plan 2012-2030 and the NPPF and as such planning permission should be refused.

Recommendation:

Refusal (reasons at end of report).

Statutory Determination Period:

16 weeks, the determination date is the 22nd March 2016.

Site Details:

The application site is located within the Countryside Zone and Area of Outstanding Natural Beauty and adjacent to the Berry Head to Sharkham Point component of the South Hams Special Area of Conservation (Sites of Special Scientific Interest and National Nature Reserve designations also cover the Berry Head area). The site is within the Greater Horseshoe Bat Sustenance Zone with the majority of the site also falling within the Greater Horseshoe Bat Strategic Flyaway. The site is designated as an Other Site of Wildlife Interest within the Torbay Local Plan 2012-2030. A footpath is located to the north of the site that connects Wall Park Road and Victoria Road to the South West Coast Path.

The application site is a former ministry of defence site and is a total of 3.5 hectares in size. The MOD site was used as a Second World War Refuelling Base then later as a commercial marine refuelling depot until decommissioning which is estimated as being in the 1970s. At this time the pipes and fuel tanks on the site were removed. The site is noted as being within private ownership since the 1980s.

The site is now heavily vegetated; the submitted Updated Phase 1 Habitat Survey Report notes this as being made up of scrub, horse-grazed semi-improved grassland and mature trees. There are a number of trees subject to tree preservation orders within the site. At the time of the officer site visit an existing hardstanding close to the entrance to the north west of the site was noted, there was a caravan and portable toilet together with a number of vehicles positioned on this area of hardstanding. There were no other obvious signs of development noted during the officer site visit.

The application submission indicates that the site is brownfield land and so previously developed however this view is not shared and for the purposes of this recommendation the application site has been considered as greenfield land. This is considered further within the key considerations section at the end of this report.

The site has two access points, one from the junction of Wall Park Road and Victoria Road and one from Berry Head Road.

Detailed Proposals:

The proposal is for the provision of seven single storey holiday chalets, a single manager's chalet together with ancillary accommodation and a reception and leisure chalet building, resulting in a total of nine chalets on the site. The holiday chalets and reception and leisure chalet are to be located around a circular cinder track with a recreational communal area to the centre. The manager's

accommodation is located south of the holiday accommodation circle to the south of a band of trees. The remainder of the site is noted within the submitted information as becoming a managed wildlife area.

The chalets are one and a half storey and feature pine logs to the walls and living turf roofs. The application submission includes details of features to be included within the lodges including passive solar heating using argon filled double glazed windows and doors, ground core heat pumps for heating and hot water, grey rainwater harvesting and solar photovoltaic panels.

Summary Of Consultation Responses:

Arboricultural Officer: Vegetation within the proposed development area is primarily self set native trees and mature shrubs that are colonising the site following the cessation of the previous use, indicating scope may exist for sensitive management and change of land use. Extant Tree Preservation Orders are present either directly within or closely adjacent to the proposed development area. If approved without due consideration of these TPO's as constraints, potential would be created for loss of protected trees, contrary to the visual amenities of the area. The supporting tree report is now 7 years old and is not likely to now accurately describe the trees in terms of height, diameter, canopy spread. Applications of this scope, where constraining arboricultural features are encountered must be supported by a full tree survey in accordance with B.S.5837:2012 Trees in relation to design, demolition and construction - Recommendations. It is not possible to comment on the arboricultural implications of the site until the above points are addressed, this would allow consideration of efficacy of management plans, level of mitigation required, access pruning constraints, installation of root protective fencing and so on if approval were to follow on planning merit.

Torbay Coast and Countryside Trust: TCCT raise significant concerns about the development proposed in this application due to the potential for adverse impacts on a highly protected wildlife site arising from the close proximity of the development, potential for adverse impact on the Greater Horseshoe Bat colony at Berry Head and potential for adverse impact on other protected species (Cirl Buntings, Reptiles and Hazel Dormouse). The development forms part of a vital dark corridor that facilitates movement by the Greater Horseshoe Bats from their roost at Berry Head to feeding areas. As the access to foraging habitat for this roost is already highly restricted due to its coastal nature, any reduction in the habitat facilitating such movement has the potential to jeopardise its future viability. TCCT consider the ecological information provided in support of this application to be insufficient. Some of the data used in the ecological report is at least 5 years old and should not be relied upon to accurately represent the current situation, given changes to habitat both on the site and locally. The site is considered to offer additional habitat for other protected species including Cirl Bunting, reptiles (slow worm, common lizard) and potentially, the Hazel Dormouse. The significance of the site for these species requires further

investigation. TCCT are concerned that the proposed development would give rise to additional recreational pressure and consequently adverse impacts on the limestone grasslands at Berry Head. All proposed developments within Torbay should deliver an overall net gain for biodiversity and not just compensate for loss. Based upon the potential adverse impacts on biodiversity arising from this development, TCCT object to this application.

Devon Wildlife Trust: DWT raise concerns about the potential effect of the proposed development on the Greater Horseshoe Bat population, a European Protected Species. The application site is directly adjacent to the Berry Head National Nature Reserve which has national status as a Site of Special Scientific Interest, and European status as part of the South Hams Special Area of Conservation.. The application site lies within the Greater Horseshoe Bat sustenance zone and strategic flyway. The applicant's Environmental Statement (page 68) states that the potential significant negative effect of the development on the greater horseshoe bat, caused by the removal of vegetation and lighting disturbance, can be mitigated to produce a slight negative effect. DWT however do not have confidence that a significant effect can be avoided. DWT believe that the proposed development will certainly not help to restore the greater horseshoe bat population and, given the 'slight negative' effects, will not help to maintain it. There is a great deal of uncertainty as to whether the proposed development will satisfy Regulation 61 of The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) and whether the proposed mitigation will prevent an adverse effect on the integrity of the European site. In these circumstances DWT believe that an Appropriate Assessment under Regulation 61(1) and 61(5) should be carried out.

South Devon AONB Manager/Office: The AONB Office objects to the planning application. A defining feature of the South Devon AONB is its nationally important extent of fine undeveloped coastal scenery. That quality has been significantly diminished in the AONB area surrounding Brixham since the date of AONB designation in 1960 as a result of successive encroachment by built development. The remaining extent of undeveloped countryside and coast around Brixham is declining and confined to increasingly narrow corridors and margins. This planning application needs to be considered against that context, and against the cumulative impact of recent and current built development at nearby sites such as Riviera Bay holiday park, Landscope holiday park, Wall Park holiday camp and Dolphin village. The current application, although not large in extent, nevertheless represents a further unacceptable incursion into the undeveloped AONB landscape in a particularly sensitive locality, and is objectionable for that reason. The AONB office also considers that the strategic justification for the provision of additional chalet accommodation at this location is questionable, given the recent and current expansion in capacity at the Landscope and Riviera holiday parks nearby. In considering this planning application, the Planning Authority is reminded of its overriding statutory duty of regard for the purpose of conserving and enhancing the natural beauty of the

AONB (Countryside and Rights of Way Act 2000, s 85) and of the policies in the Council's adopted statutory management plan for the South Devon AONB which is a material consideration (including policy Mar/P1 The tranquil and undeveloped character of the coast will be protected and Lan/P1 The special qualities distinctive character and key features of the South Devon AONB landscape will be conserved and enhanced.)

Landscape Consultant: Comments awaited.

Natural England: The consultation documents provided do not include information to demonstrate that the requirements of Regulations 61 and 62 of the Habitats Regulations have been considered by the authority, i.e. the consultation does not include a Habitats Regulations Assessment. Natural England therefore advises that your authority should not grant planning permission at this stage. An Appropriate Assessment should now be undertaken, in order to assess the implications of the proposal for the European site(s), in view of the site conservation objectives.

Greater horseshoe bats are among the rarest and most threatened bats in Europe. During the last 100 years, numbers have declined significantly throughout northern Europe. South Devon represents an international stronghold for the species supporting the largest recorded roost in northern Europe. The proposed development site is adjacent to the designated site boundary for the Berry Head South Hams Special Area of Conservation (SAC), and falls within a greater horseshoe bat sustenance zone and strategic flyway associated with the Berry Head SAC roost. Further, the proposed development is approximately 400 metres from the Berry Head SAC roost. Radio-tracking (English Nature Research Reports No.344) evidence has shown that the proposed development site is used by greater horseshoe bats for commuting, roosting, and foraging. Due to the sensitivity associated with this species, the proposed development site is considered a high risk location. Sustenance zones are key feeding and foraging areas for greater horseshoe bats associated with the South Hams SAC. In addition, research has shown that juvenile greater horseshoe bats (ENNR publications - NE) tend to forage within a 1km radius of the maternity roost. The 1km radius surrounding the Berry Head roost is subject to very limited foraging opportunities and it is likely that juveniles will be forced to seek safe foraging opportunities beyond this radius. The permanent loss of existing or potential habitat within the sustenance zone and in proximity to Berry Head has the scope to adversely affect the favourable conservation status of the Berry Head maternity colony. Strategic flyways are a key network of flight path zones connecting the component roosts of the South Hams SAC. The strategic flyways have been made 500 metres wide to provide a combination of alternative suitable routes. In addition, commuting routes provide a critical network allowing access to suitable foraging habitats. NE note that the greater horseshoe bat survey effort that has been undertaken falls short of the survey specification associated with local best practice guidance. The proposed development site was excluded from

the sites that were allocated for development in the adopted Torbay Local Plan (December 2015). The greater horseshoe bat habitats associated with Berry Head are subject to a number of physical, climatic, and manmade constraints, and consistent with the adopted Torbay Local Plan NE consider that the site is located in a highly sensitive location for greater horseshoe bats and that it is unlikely that development at this location would be possible due to limited opportunities to provide adequate mitigation. In addition, the calcareous grassland associated with Berry Head is a notified SAC feature and supports many rare and local plants. In the Berry Head Conservation Management Plan 2007-2017 (TCCT), the impact of trampling and dog fouling has been highlighted as an important management issue. In addition, NE note that Footprint Ecology have recently completed a report that identifies similar impacts upon the Berry Head calcareous grassland.

The proposed development is within proximity to Lyme Bay and Torbay cSAC, with potential for water pollution and recreational impacts upon by the notified features: reef habitats and submerged or partially submerged sea caves. NE advise that the applicant provides further information in order to understand potential impacts upon Lyme Bay and Torbay cSAC.

The proposed development site falls within the South Devon Area of Outstanding Natural Beauty (AONB), and consequently, has the potential to adversely impact on the natural beauty of the South Devon AONB. NE consider that the Landscape and Visual Appraisal has not been adequately undertaken and there is a potential for a significant impact on the purposes of designation of South Devon AONB. NE therefore object to this development. NE suggest that the authority seek comments from the AONB Unit/Partnership with respect to landscape matters. NE concerns regarding the proposals and impacts upon the South Devon AONB are outlined below:-

- 1) The applicant has resubmitted the Landscape and Visual Appraisal (2008, Swan Paul) that supported the previous application relating to 12 timber cabins and is based on 2nd edition of the Landscape and Visual Impact Assessment (LVIA) guidelines published by the Landscape Institute. Not only does the Landscape and Visual Appraisal relate to a different development, it is not based upon current best practice (3rd edition of the LVIA guidance - 2013).
- 2) The proposals would extend the built area of Brixham onto the finite area of undeveloped grassland associated with Berry Head, and are not consistent with the recommendations of the Brixham Urban Fringe Landscape Study (Enderby Associated 2011).
- 3) The NPPF affords these places (e.g. AONBs) the highest protection. Reference has been made to paragraphs 109, 115 and 116 of the NPPF. (

This application may provide opportunities to incorporate features into the design

which are beneficial to wildlife. The authority should consider securing measures to enhance the biodiversity of the site from the applicant, if it is minded to grant permission for this application. This is in accordance with Paragraph 118 of the NPPF. Additionally, NE draw the authority's attention to Section 40 of the Natural Environment and Rural Communities Act (2006) which states that 'Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity'. Section 40(3) of the same Act also states that 'conserving biodiversity includes, in relation to a living organism or type of habitat, restoring or enhancing a population or habitat'.

Green Infrastructure Co-ordinator: The site is in a very sensitive location adjacent to the Berry Head to Sharkham Point component of the South Hams SAC. Both the greater horseshoe bat colony and limestone grassland associated with the SAC, as well as other protected species, have the potential to be impacted by the development. Further information is required as follows prior to determination:

- Confirmation from Natural England that the bat survey effort is sufficient. If not, the level of further survey should be agreed and surveys undertaken prior to determination.
- Confirmation from Natural England and Mike Oxford that sufficient information has been provided to allow a HRA Screening to be undertaken. If not, further information should be agreed and provided prior to determination.
- Implications of correct greater horseshoe bat strategic flyway (as shown on attached map versus that shown on Figure 4, Appendix A of the Bat Activity Survey) to be assessed.
- Confirmation from RSPB that the cirl bunting survey effort is sufficient; cirl buntings are known to be present in adjacent fields.
- Further justification regarding the lack of full survey for hazel dormouse.
- Clarification regarding the intention for chalet 8 to be a permanent residence.

The bat survey effort is not in accordance with the Natural England guidance 'South Hams SAC - greater horseshoe bat consultation zone planning guidance'. The justification for not undertaking the surveys in accordance with the Natural England guidance is that "the surveys in combination with the previous data would be considered sufficient". Given the location adjacent to the Greater Horseshoe Bat roost at Berry Head and within the Sustenance Zone and a Strategic Flyway it is considered that further surveys, in accordance with the guidance, are required.

Natural England and Mike Oxford should also be consulted with regard to whether there is sufficient information to be able to undertake HRA Screening. It is considered that further information with regard to lighting will be required to ensure that dark corridors with light levels of less than 0.5lux can be achieved. In

addition it is considered that both an Outline Construction Environmental Management (providing details of mitigation during construction) and an Outline Landscape and Ecological Management Plan (providing further details, including on-going management, of new and retained habitats) are likely to be required prior to determination with final versions secured by condition.

It should be noted that the Strategic Flyway is not shown correctly on Figure 4, Appendix A of the Bat Activity Survey Report. The Strategic Flyway covers a significantly larger area of the site than is shown on Figure 4 (see attached map) and the implications of this should be assessed.

The findings and recommendations of the Badger report are agreed with and conditions should be included to require a re-survey of the site prior to commencement and the submission of a copy of the badger licence issued by Natural England or a statement from Natural England or a qualified ecologist stating that a licence isn't required. The locations of the badger sett entrances must be shown on the map prior to determination.

Ecological Consultant: Comments awaited.

RSPB: The RSPB objects to built development at this site because of its proximity to statutorily designated sites at Berry Head and its being functionally linked habitat for one of the designated features (greater horseshoe bats) of those sites. RSPB also object because in their view the ecological information is inadequate, with no complete and up to date surveys to enable comprehensive assessment of protected species using the site (including bats, reptiles and possibly dormice) or with potential to be using the site (cirl buntings). There needs to be a Habitats Regulation Assessment in relation to greater horseshoe bats and the South Hams SAC. Potential mitigation is presented as several recommendations in the various ecological reports but there is no coherent set of firm proposals (such as a draft Construction and Ecological Management Plan and Landscape and Ecological Management Plan) that would give confidence that the measures proposed for construction and operation will be effective. While RSPB note the stated intention (Former MOD site, Berry Head Section 106 Agreement - Heads of Terms (WYG, undated)) to provide an Ecological Management Plan, it seems unlikely that mitigation measures could avoid adverse impacts of development at this site, particularly in relation to greater horseshoe bats. There are also aspects of the proposal that are not clear (e.g., much stress is laid upon development being confined to the northern part of the site but various maps clearly show one chalet/house in the southern part), adding to the difficulty of assessing the impact of the proposed development. In the RSPB's view, it would be most appropriate to safeguard all of this site from built development so it continues to be an undeveloped, unlit buffer adjacent to the designated sites and furthermore for Torbay Council to facilitate its sympathetic management and enhancement for a range of protected and priority species, including greater horseshoe and other bats.

The RSPB objects to the proposed development and recommend that this site should be protected from development for the long term and managed to retain and enhance its value for bats and other protected species and complement and buffer the adjacent protected - but sub-optimal - sites. Torbay Council will not be in a position to determine this application until it has received a completed Habitats Regulations Assessment in relation to impacts on greater horseshoe bats and the limestone grasslands that are both designated features of the SAC. In RSPB's view, refusal of the application will accord with European and national legislation and national and Torbay planning policy.

Highways Engineer: Highways comments remain the same as the previous application. The access lane is private (not adopted) but is a public right of way and therefore any development must ensure that pedestrian enjoyment of the lane is not affected. It was agreed with the developer and a previous Highway officer that if the development goes ahead the developer would cut back vegetation on the access drive to allow sufficient width for two vehicles to pass, white line the access drive junction where it meets Victoria Road/Wall Park Road to provide adequate visibility and include the provision of a pavement along the access road to link to the existing footway network

Principal Environmental Health Officer: The submitted TSL Chemical Analysis report requires updating in line with current guidance. The four samples were sufficient at the time of the analysis but this was more of a screening exercise at that stage. Clarification around the in-house general assessment criteria (GACs) is required together with more detailed information with regard to how they have considered the source/pathway/receptor linkage to be broken as mentioned in TSL conclusion.

Environment Agency: The EA have reviewed the letter report by TSL dated 7/02/2011 and entitled Berry Head, Brixham Soil Sample Chemical Analysis. The report vaguely identifies the presence of hydrocarbon contamination in made ground. The location is situated upon a Principal Aquifer that may be regionally important for groundwater supplies, though there does not appear to be any local sources. Given that made ground and contamination is present and that the report does not include a risk assessment for controlled waters the following condition is necessary. The EA consider that planning permission could be granted to the proposed development as submitted subject to the inclusion of a condition relating to contamination of controlled waters. Without this condition, the proposed development on this site poses an unacceptable risk to the environment and the EA would object to the application.

South West Water: The applicant is advised to contact South West Water if they are unable to comply with South West Water's requirements. These requirements have been forwarded to agent.

Drainage Engineer: The applicant has indicated within his flood risk assessment that he intends to use green roofs, rainwater harvesting and soakaways to drain surface water from this development however no details of these have been submitted. There is no indication of where the soakaways are to be located and no details of any infiltration testing or soakaway design have been submitted. Before planning permission is approved for this development, the applicant must submit the detailed design for the soakaways in accordance with the details identified below. The developer must carry out trial holes and infiltration tests in accordance with BRE 365 at the locations and invert levels of the proposed soakaways. The design for these soakaways must be submitted showing that the proposed soakaways have been designed to cater for the critical 1 in 100 year storm event plus an allowance of 30% for climate change. Only if the results of the infiltration test indicate that the use of soakaways is not possible would the developer be allowed to discharge to the combined sewer system at a controlled rate. As Torbay is a Critical Drainage Area any surface water discharge rate from the site to the combined sewer must be limited to Greenfield run off rate for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 30% for climate change. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec we would accept a discharge rate of 1.5l/sec. The applicant must demonstrate that surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to his development for the critical 1 in 100 year storm event plus 30% for climate change. Before planning permission can be granted the applicant must supply details to address all the points identified above.

Building Control Officer: Ground investigation report will be required to support a structural design, B5 access and facilities for the fire service need to be considered to ensure sufficient minimum widths, clearance and turning circles exist, full radon measures need to be provided, solid waste storage should be provided to comply with approved document H6, none shown upon the plans to comment on compliance, no suitable drainage design submitted to make a meaningful assessment of foul and storm proposals, full compliance with access and use for approved document M will be required, the application will require Building Regulations approval.

Brixham Town Council: Brixham Town Council have deferred making a recommendation and requested further information. A recommendation will be made from the next planning meeting on 01.02.2016.

Summary Of Representations:

277 representations have been received (124 objections, 151 support, 2 neutral representations). Issues raised:

- Impact on AONB
- Impact on countryside

- Impact on biodiversity
- Impact on visual amenity
- Impact on bats and other protected species
- Impact on highway and pedestrian safety
- Contribution to tourism
- Contribution to the economy and job creation
- Comments regarding the future use of the site
- Comments regarding site ownership
- Impact on drainage
- Impact on local area
- Provision of dwellings
- Impact on residential amenity
- Overdevelopment
- Sets a precedent for further development
- Impact on trees.

Relevant Planning History:

P/2009/0336 12 holiday chalets WITHDRAWN

Key Issues/Material Considerations:

The relevant considerations are the principle of development within the area of outstanding natural beauty and countryside area, the impact of the development on the landscape character of the area, whether the site is classified as brownfield or greenfield land, the impact of the development of European, national and local biodiversity designations, the impact of the development on protected and unprotected trees within the site, the impact of the proposals on highway and pedestrian safety, the contribution of the development to the tourism industry and the economy generally and the impact of the development on residential amenity.

The Principle of Development within Area of Outstanding Natural Beauty and Countryside Zone:

The presumption in favour of sustainable development as described in paragraph 14 of the National Planning Policy Framework is noted. This however does not apply in cases where policies in the Framework indicate development should be restricted. This includes development which is within the AONB or development which requires appropriate assessment under the Habitats Directive. Paragraph 115 states that great weight should be given to conserving landscape and scenic beauty in Area of Outstanding Natural Beauty which have the highest status of protection. Paragraph 116 then goes on to state that planning permission should be refused for major developments in such areas except in exceptional circumstances and where it can be demonstrated that they are in the public interest. When considering such applications this should include an assessment of the need for the development, the cost of and scope for developing elsewhere outside of the designated area or meeting the need for it in some other way and any detrimental effect on the environment, landscape and recreational

opportunities and the extent to which that could be moderated. Paragraph 115 is applicable in all instances of development with an AONB with paragraph 116 being applicable in the case of 'major' developments. The identification of development that is 'major' in terms of its impact on the AONB is a matter of judgement for the decision taker taking into account the proposal in question and the local context. Similar aims and considerations are reflected in the Torbay Local Plan 2012-2030 policies SS8, Natural Environment and SDB3 Brixham Urban Fringe and AONB. However policy SS8 does not differentiate between 'major' and 'non-major' developments stating that development will only be permitted within the AONB in exceptional circumstances where it can be demonstrated to be in the public interest. Such applications should be submitted together with an assessment of need, economic impact, alternative locations and means, environmental, landscape and recreational impacts and the extent to which these impacts can be moderated. These policies also refer to the importance of considering applications in view of the Torbay Landscape Character Area Assessment, other relevant management plans including the Brixham Urban Fringe Study. The application is not supported by an assessment as required by policy SS8 and has not demonstrated that it would represent an exceptional circumstance nor that it is in the public interest and as such the principle of development would be contrary to policy.

There would be some benefits to the local economy from construction of the development and a tourism use on the site. However the applicant has provided very little detail of what these benefits would be. There is no evidence that has been submitted, that demonstrates that any benefits from the proposal would outweigh the harm resulting from the development. The adverse environmental impacts would not be offset by the economic and social gains from the development.

Effect on the Landscape Character of the Area

The submitted Landscape and Visual Appraisal is dated 2008 and supported a previous scheme for twelve chalets that was submitted in 2009 and concludes that the proposal does not constitute major development and is supported by policy. However the appraisal is based on an outdated best practice document and does not take into account or refer to the relevant paragraphs of the NPPF, the South Devon AONB Management Plan, the Torbay Landscape Character Assessment, Devon Landscape Character Assessment, the Brixham Urban Fringe Landscape Study or the relevant policies of the Torbay Local Plan 2012-2030. This was brought to the agent's attention at validation stage and revised and updated information has not been forthcoming.

The application site is noted in the Torbay Landscape Character Area Assessment as being of Type 5, Open Coastal Plateau (Area 5D) as specified on Figure 1. The Assessment states that any significant development would be highly visible and inappropriate and that mitigation would be extremely difficult. The Assessment refers specifically to Louville Camp but notes that any proposals

for holiday chalet development in this area will need to be carefully designed to ensure they respect the special qualities, and sensitive character and setting of the area and that any such proposals are beneficial overall. The area is noted as highly sensitive and the management strategy for this area is to enhance. This management strategy is also reflected within the Brixham Urban Fringe Landscape Study (Landscape Compartment 1). This study notes that this area forms an important buffer between the edge of Brixham, National Nature Reserve and Open Coastline and as such is very sensitive to change and its function would be seriously compromised by any new built development.

Both Natural England and the South Devon AONB Manager have raised objections to the application based on the potential for landscape impact and the insufficient information submitted to demonstrate otherwise. The South Devon AONB Manager recognises the defining feature of the South Devon AONB is its nationally important extent of fine undeveloped coastal scenery and notes that this quality has been significantly diminished in the area surrounding Brixham since its designation. The extent of undeveloped countryside and coast around Brixham is declining and whilst this application is not large in scale it should be considered against the cumulative impact of recent developments at nearby sites at Riviera Bay, Landscope, Wall Park and Dolphin Holiday Village. Whilst Natural England has not explicitly noted the proposal as constituting a 'major' development, reference is made to paragraph 116 with emphasis on the need to refuse developments within AONB's except in exceptional circumstances and where it can be demonstrated that such developments are in the public interest.

In line with comments from Natural England and the South Devon AONB Manager, it is noted that the development represents a further incursion into the undeveloped countryside and AONB, a finite area of undeveloped grassland associated with Berry Head. Despite the intention to include green roofs and timber, the proposal represents a sporadic form of development that would, irrespective of its design and form, have an adverse urbanising effect on the rural character of the area. Whilst relatively small in scale, the proposal represents a form of piecemeal development which is considered to further erode the rural character of the Berry Head.

The submitted Design and Access Statement and Planning Statement suggests that the development is acceptable in principle within the countryside and AONB as it will support the local economy and support the conservation and enhancement of the natural beauty of the site. Paragraph 28 of the National Planning Policy Framework states that planning policies should support economic growth in rural areas in order to create jobs and prosperity by taking a positive approach to sustainable new development specifically noting support for sustainable rural tourism and leisure developments where they respect the character of the countryside. As above, the application submission suggests that the development will support economic growth and sustainable tourism however no evidence of this has been submitted to support this statement. Whilst

undoubtedly there will be some wider economic benefits resulting from the additional visitors to the Brixham site, no projected visitor numbers or figures have been submitted to support such a justification and nevertheless it is not considered that, given the small scale nature of the site and level of job creation (1 full time job) the benefits would outweigh the harm already identified. As above, the level of information within the application submission is not sufficient to demonstrate that the development will respect the character of the countryside. Further advice has been sought from a Landscape Consultant and the findings of their report will be reported to the Committee, this will include an assessment as to whether the development constitutes a 'major' development in terms of its impact on the AONB. Should the development be considered 'major' paragraph 116 of the NPPF is applicable; the application submission does not include an assessment as required by this paragraph to suggest that the proposal represents an exceptional circumstance to justify the approval of the scheme.

In addition whilst restricted in nature, the development represents a form of residential accommodation in the open countryside which is discouraged by local and national policy except in exceptional circumstances. The proposal would not fall within any of the circumstances detailed and as such would be contrary to policy.

Brownfield or Greenfield Land:

The submitted Design and Access Statement states that as the site was previously developed with a number of MOD buildings and as there have been no intervening uses since the use of the site as an MOD site, the current status of the site is that of previously developed or 'brownfield' land.

The National Planning Policy Framework defines previously developed land as:

"Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure. This excludes: land that is or has been occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill purposes where provision for restoration has been made through development control procedures; land in built-up areas such as private residential gardens, parks, recreation grounds and allotments; and land that was previously-developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape in the process of time."

As noted within the submitted TSL Soil Sample Chemical Analysis, all the underground pipes and fuel tanks that were on site during the use of the site by the MOD were removed in the 1970s when the site was decommissioned. During the officer site visit there was no evidence to suggest that any of the buildings or infrastructure associated with this previous use remains. A

hardstanding with temporary and moveable structures was evident to the north west of the site however this is contained to a very small area with the remainder of the site being vegetated with scrub, grassland and trees and as such the wider site blends in to the landscape, countryside and area of outstanding natural beauty. The land is considered to fall within the description of 'land that was previously-developed but where the remains of a permanent structure or fixed surface structure have blended into the landscape in the process of time' and as such is excluded from the National Planning Policy Framework definition of 'previously developed land'. The application has been considered on this basis.

Biodiversity:

Paragraph 118 of the National Planning Policy Framework states that in terms of biodiversity, if significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. In addition if a proposed development is likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) it should not normally be permitted and an exception should only be made where the benefits of the development clearly outweigh the impacts on the designated site. It is also clear within the National Planning Policy Framework that the presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Habitats Directive is being considered, planned or determined which is the case with this application. Similar objectives are detailed within policy SS8, Natural Environment, SDB3 'Brixham Urban Fringe and Area of Outstanding Natural Beauty' and NC1, Nature Conservation.

The submitted surveys recorded ten species of Bats including Greater Horseshoe Bats. These species were recorded using most of the linear features as commuting routes, commuting around boundary edges and foraging around many of the trees. Mature trees within the site were noted as having moderate-high potential for roosting bats and all trees within the site with bat roost potential are noted for retention. The proposal includes some mitigation and enhancement measures including the retention of mature trees and those with bat roost potential, sensitively managed lighting during construction and operation, provision of native planting, maintenance of dark buffer, removal of woody vegetation outside of bird nesting season, provision of horseshoe bat roosting to loft spaces of at least three chalets, provision of bat boxes, species rich meadow and pond and seeding the retained semi-improved grassland with wildflower/grass rich mix.

The proposed development site is adjacent to the designated site boundary for the Berry Head South Hams Special Area of Conservation and falls within the Greater Horseshoe Bat Sustenance Zone and Strategic Flyaway associated with the Berry Head SAC roost and therefore has the potential to affect its interest features. Natural England has confirmed that radio tracking evidence has shown that the proposed development site is used by Greater Horseshoe Bats for

commuting, roosting and foraging. The Greater Horseshoe Bat survey effort falls short of the survey specification associated with the South Hams SAC - Greater Horseshoe Bat Consultation Zone Planning Guidance (Natural England 2010). This requires manual surveys to be carried out on ten separate evenings (with at least one survey undertaken in each month from April to October and automatic detectors should be deployed for a minimum of fifty days from April to October (including one week within the months of April-October). The reduced survey effort has not been agreed with Natural England and they have stated that the site is located within a highly sensitive location for Greater Horseshoe Bats and that it is unlikely that development at this location would be possible due to limited opportunities to provide adequate mitigation. The calcareous grassland associated with Berry Head is a notified SAC feature and within the Berry Head Conservation Management Plan 2007-17 (TCCT), the impact of trampling and dog fouling has been highlighted as an important management issue. The proposed development has the potential to generate an increase in footfall on Berry Head which could be detrimental to this calcareous grassland. It is not considered that such operational impacts of the development have been properly considered, the submitted information is not considered sufficient to demonstrate that such impacts will not be detrimental to the calcareous grassland.

In line with consultee advice, insufficient information has been submitted in relation to the proposed mitigation measures. This is specifically in relation to how the retention of commuting corridors along the external and internal boundaries of the site can be achieved in light of proposals to reduce vegetation growth along the access lane for road safety reasons. Similarly the proposals include lighting but no details, such as a lighting plan, have been provided. Were the proposals to be considered acceptable, a draft Construction and Ecological Management Plan and Landscape and Ecological Management Plan would be required prior to determination.

Further advice has been sought from the Council's Ecological Consultant who is also carrying out a Habitats Regulation Assessment Screening and an Appropriate Assessment. The results of this will be reported to the Committee. Based on the level of information submitted in relation to protected species, it is considered likely that the results of this assessment will detail that the development is likely to result in a significant adverse effect and therefore should be refused. Paragraph 62 of the Habitats Regulations sets out the steps required should the appropriate assessment conclude the proposed development will adversely affect the integrity of the European site. This sets out that there must be consideration of alternatives to the proposal and if there are no alternatives, permission can only be granted if there are exceptional circumstances and the development is in the public interest. This is similarly set out within paragraph 118 of the NPPF. No details of alternative sites have been put forward within the application submission and whilst undoubtedly there will be some wider economic benefits resulting from the additional visitors to the Brixham site, no projected visitor numbers or figures have been submitted to support such a

justification and nevertheless it is not considered that, given the small scale nature of the site and level of job creation (1 full time job) the benefits would outweigh the any harm.

In addition the proposed development is within proximity to Lyme Bay and Torbay Candidate Special Area of Conservation with potential for water pollution and recreational impacts upon the notified features specifically reef habitats and submerged or partially submerged sea caves. Natural England has confirmed that the level of information submitted is not sufficient to demonstrate that the development will not have a detrimental impact on the European Site or its interest features.

In line with comments from RSPB, the level of survey effort for Cirl buntings is not sufficient. Based on the information submitted, it is considered that there is potential for suitable habitat within the application site. In addition RSPB recorded a breeding territory on the site in the 1998 national survey and confirmed breeding within 100m east of the site in 2009. The submitted 2008 survey reported singing male Cirl buntings at the east and south east of the site on two visits and Cirl buntings were recorded within 100m of the site on all four visits. RSPB have confirmed that this proximity indicates that Cirl buntings could use any suitable habitat on site for foraging, even if they are not nesting on site. In line with comments from RSPB, in light of the history of local presence of Cirl buntings and the existence of some potentially suitable habitat, further surveys are required.

No survey work has been carried out for dormice, a European protected species as it was concluded that the majority of scrub on the site was in isolated islands and therefore unlikely to support viable populations of this species. In line with RSPB comments and the quote from the Devon Mammal Society which states 'in Devon, any woodland, species-rich hedge or area of woody scrub should be considered as possible dormouse habitat' the site had the potential to support dormice and therefore the site should be re-assessed.

During the 2008 reptile survey it is noted 20 of the 50 reptile surveying mats were removed by the land owner before the first check and not replaced and therefore the results may therefore under record the reptile interest of the site. In addition the southern part of the site was not included within the survey.

Trees:

Policy C4 of the Torbay Local Plan 2012-2030 states that development will not be permitted when it would seriously harm protected or veteran trees, hedgerows, ancient woodland or other natural features of significant landscape or nature conservation value. The Council's Arboricultural Officer notes that the vegetation within the proposed development area is primarily self set native trees and mature shrubs suggesting that scope exists for sensitive management and change of land use. Extant Tree Preservation Orders are present either directly

within or closely adjacent to the proposed development area. The submitted tree appraisal report is dated 2009 and is not likely to accurately describe the trees in terms of height, diameter and canopy spread. Sufficient information has not been submitted to demonstrate that development can be implemented without harm to or loss of protected trees and therefore without detriment to the visual amenities of the wider area. The loss of any trees onsite would also be likely to have implications for the landscape character of the site and biodiversity, implications that cannot be properly considered without the submission of an up to date tree appraisal in accordance with current guidance.

Contaminated Land:

Paragraph 120 states that to prevent unacceptable risks from pollution, planning decisions should ensure that new development is appropriate for its location and that where a site is affected by contamination, the responsibility for securing a safe development rests with the development and/or landowner. The application site is a former ministry of defence site and was used as a Second World War Refuelling Base then later as a commercial marine refuelling depot until decommissioning which is estimated as being in the 1970s. At this time the pipes and fuel tanks on the site were removed.

In light of the potential for contaminated land a chemical analysis report has been submitted with the application. The submitted TSL Soil Sample Chemical Analysis states that four samples were recovered by the client (the applicant) and provided for chemical analysis. The report identifies the presence of contamination in made ground. The assessment concludes that the site is suitable for the proposed development use of holiday chalet accommodation and associated maintained gardens and a swimming pool. The Council's Principle Environmental Health Officer has noted that the analysis report is dated 7th February 2011 and requires updating in line with current guidance. In line with the Officer's comments further clarification is required to explain the in-house general assessment criteria (GACs) with further detailed information with regard to how they have considered the source, pathway, and receptor linkage to be broken as noted in the analysis report conclusion. Paragraph 121 of the NPPF states that planning policies and decisions should ensure that the site is suitable for its new uses and that adequate site investigation information, prepared by a competent person is presented. Similarly policy ER3 of the Torbay Local Plan states that where suspected contamination presents a risk to public health and safety, appropriate investigations and remedial or precautionary measures will need to be agreed with the Council.

In line with the comments from the Principle Environmental Health Officer, the submitted information is not sufficient to conclude that the site is suitable for the proposed use and therefore is contrary to paragraph 121 of the NPPF and policy ER3 of the Torbay Local Plan 2012-2030. This was brought to the agent's attention at validation stage and revised and updated information has not been forthcoming. In addition to the above, were the application to be recommended

for approval, in line with the comments from the Environment Agency's comments a condition requiring the submission of a risk assessment for controlled waters would be required in light of the contamination present on site.

Highway and Pedestrian Safety:

Paragraph 32 of the NPPF states decisions should take account of whether safe and suitable access to the site can be achieved for all people. The Environmental Statement under paragraph 5.3.1 states that the proposed development is likely to generate only eight two-way traffic movements per day. The agent suggests that the nature of holiday chalets is such that the occupiers tend to make one journey in one car per day on excursions. Consideration is given to the impact of 1 additional trip per day and the agent concludes that given the access via the Victoria Road/Wall Park junction, the impact of sixteen two way traffic movements is not significant. The Council's Highways Engineer has noted that in order to ensure the development is acceptable in terms of vehicular and pedestrian safety the vegetation on the access drive should be cut back to allow two vehicles to pass, white lines should be added to the junction with Wall Park Road and Victoria Road and a pavement should be provided along the access road to link the existing footpath network. Such works are detailed within the submitted Environmental Statement and Design and Access Statement however no scaled drawings have been provided that detail the extent of the works.

Public representations from nearby neighbours also suggest that the works recommended by the Highways Engineer cannot be implemented due to land ownership issues. The submitted information is not sufficient to conclude that the development can achieve a safe and suitable access for all in accordance with paragraph 32 of the NPPF and the comments from the Council's Highways Engineer. In addition to the above it is not clear that the implications of cutting back the vegetation along the access drive have been considered in terms of its impact upon the AONB and protected species, particularly Greater Horseshoe Bats.

Drainage:

Policy ER2 of the Torbay Local Plan 2012-2030 states that development proposals must provide adequate sewerage disposal systems (both foul and surface water) and reduce water being discharged into shared sewers through the use of sustainable drainage measures. Policy W5 of the Torbay Local Plan 2012-2030 also requires appropriate measures to reduce the impact of development on the sewerage system such as natural or sustainable drainage and water conservation measures proportionate to the scale and nature of development to be provided. The Environment Agency recognises that the catchments within Torbay are typically small, steep and in the most part highly developed in nature. They also note that there is a legacy of culverting of the watercourse channels which add to the risk of flooding and recognise that many properties, businesses and highways are at risk from rapid flooding often without

much warning posing a credible risk to human life. In light of this, Torbay has been designated as a Critical Drainage Area and surface water runoff from future development within this area must be managed to ensure that an overall reduction in flood risk can be achieved. Where new development is to be permitted within the Critical Drainage Area, it should be served by a sustainable drainage system. The application submission suggests that the green roofs, rainwater harvesting and soakaways will be adopted to drain surface water from the development however no details of these have been submitted. The Council's Drainage Engineer has confirmed that trial holes and infiltration tests in accordance with BRE 365 at the locations and invert levels of the proposed soakaways are required in order to confirm the ground conditions are suitable for soakaways. The infiltration rate is also required in order to design the soakaways. The design for these soakaways must be submitted showing that the proposed soakaways have been designed to cater for the critical 1 in 100 year storm event plus an allowance of 30% for climate change. Only if the results of the infiltration test indicate that the use of soakaways is not possible would the developer be allowed to discharge to the combined sewer system at a controlled rate. As Torbay is a Critical Drainage Area any surface water discharge rate from the site to the combined sewer must be limited to Greenfield run off rate for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 30% for climate change. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec we would accept a discharge rate of 1.5l/sec. The applicant must demonstrate that his surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to the development for the critical 1 in 100 year storm event plus 30% for climate change. In line with the above comments insufficient information has been submitted to demonstrate that the requirements as set out within the Critical Drainage Area designation can be complied with.

Other Issues:

The submitted Environmental Statement does not meet the requirements stipulated in Schedule 4 of the Environmental Impact Assessment Regulations. Part 2, Schedule 4 of the EIA Regulations details the information that must be required as a minimum within the Environmental Statement. Part 2 requires that an outline of the main alternatives considered and the main reasons for the final choice taking in to account the environmental effects is included within the statement. No such information has been provided within the Statement. Part 1, Schedule 4 of the EIA Regulations details the information that should be provided within the Environmental Statement as is reasonably required to assess the environmental effects of the development. Of the requirements detailed by this part, a description of the likely cumulative significant effects of the development is necessary. Whilst reference has been made to the cumulative impacts of the development, this requires updating to take in to account the nearby developments at Wall Park Road, Riviera Bay, Landscope and Sharkham. This was brought to the agent's attention at validation stage and

revised and updated information has not been forthcoming.

The application was validated on the 1st December 2015 following the submission of additional information as requested by the Case Officer and specified on the Council's Local Validation List. The request for further information also included the need for updated information in relation to the Landscape and Visual Impact Assessment, Flood Risk Assessment, Contaminated Land Assessment and update to the submitted Environmental Statement. It was noted that these were not validation requirements and would be required promptly following the validation of the application. Such information has not been forthcoming to date and the need for such information has also been highlighted within the consultation responses received. An additional requirement in relation to protected species surveys, updated tree survey and an assessment in relation to the AONB has been noted in consultation responses. Paragraph 060 of the National Planning Practice Guidance states that information can be requested after the application has been validated although normal time periods for determination continue to apply unless a longer period is agreed. However in this instance it is considered very unlikely that additional information will result in different determination. It is considered unreasonable to request that the applicant submit additional information (when the level of additional information required is substantial) in this instance as there are overriding policy objections to the principle of development which are unlikely to be overcome through the submission of additional information.

S106/CIL –

The Adopted SPD 'Planning Contributions and Affordable Housing' would have required a financial contribution to mitigate the impact of the development on local infrastructure (waste management, sustainable transport and green space and recreation). This contribution would also require a contribution towards monitoring.

From April 6th 2015, revised government guidance limits the pooling of contributions and as a consequence, contributions can only be requested when there are specific schemes in close proximity to the site and which would be directly affected by the scheme in question. Consultees have requested contributions to mitigate the impact of the development on local infrastructure including the recreational impact on Berry Head. The amount of contribution required would need to be agreed with the Torbay Coast and Countryside Trust and Torbay Council Natural Environment Services. It is being investigated whether there are local sustainable transport schemes that could be eligible for funding by this means. It is noted that were the application to be approved, a mechanism would be required to secure the provision of the footpath. A verbal update on this matter will given at the meeting.

The absence of a section 106 agreement should be cited as a reason for refusal for matters of protocol.

Conclusions

Subject to the responses from the Landscape and Ecological Consultant confirming the findings as set out in this report, it is considered that insufficient information has been submitted to demonstrate that the development can be implemented without harm to the character of the open countryside, area of outstanding natural beauty, South Hams Special Area of Conservation or other biodiversity designations including protected species and habitats. In any event the application submission has not demonstrated that it would represent an exceptional circumstance or that the harm identified would be outweighed by benefits in the public interest with respect to the AONB and European biodiversity designations. In addition insufficient information has been submitted to confirm that the site is suitable for the proposed use in terms of contamination, that the mitigation measures required ensuring pedestrian safety can be implemented or that sustainable urban drainage measures can be implemented in light of the Critical Drainage designation.

Condition(s)/Reason(s)

1. Insufficient information to demonstrate that there will be no likely significant effect on the Berry Head South Hams Special Area of Conservation and contrary to paragraph 118 of the National Planning Policy Framework and policies SS8, SDB3 and NC1 of the Torbay Local Plan 2012-2030.
2. Insufficient information has been submitted to demonstrate no loss or harm to protected species including reptile, curl buntings and dormice and contrary to paragraph 118 of the National Planning Policy Framework and policies SS8 and NC1 of the Torbay Local Plan 2012-2030.
3. Insufficient information to demonstrate that there will be no detrimental impact on the Lyme Bay and Torbay Candidate Special Area of Conservation and contrary to paragraph 118 of the National Planning Policy Framework and policies SS8 and NC1 of the Torbay Local Plan 2012-2030.
4. Insufficient information to demonstrate that there will be no detrimental impact on the South Devon Area of Outstanding Natural Beauty or countryside zone and contrary paragraph 109, 115 and 116 of the National Planning Policy Framework and policies SS8, SDB3 and C1 of the Torbay Local Plan 2012-2030.
5. In the absence of evidence of trial holes and infiltration testing being carried out, the proposal fails to demonstrate that a sustainable drainage option has been investigated contrary to policy W5 and ER2 of the Torbay Local Plan 2012-2030.

6. Insufficient information to demonstrate that there will be no detrimental impact to unprotected trees and trees subject to tree preservation orders within and adjacent to the site contrary to policies SS8 and C4 of the Torbay Local Plan 2012-2030.
7. Insufficient information to demonstrate that there will be no detrimental impact on health and safety of future users and nearby occupiers as a result of contamination on site contrary to paragraph 121 of the National Planning Policy Framework and policy ER3 of the Torbay Local Plan 2012-2030.
8. Insufficient information to demonstrate that the provision of a pavement as required in the interests of pedestrian safety can be implemented contrary to paragraph 32 of the National Planning Policy Framework and policies TA1 and TA3 of the Torbay Local Plan 2012-2030.
9. Absence of section 106 agreement to secure financial contributions to mitigate impact of development on infrastructure contrary to policy SS9, C1 and NC1 of the Torbay Local Plan 2012-2030 and the Council's SPD "Planning Contributions and Affordable Housing: Priorities and Delivery" and the associated "Update 3 Paper" and guidance outlined within paragraphs 203 and 204 of the National Planning Policy Framework.
10. If applicable adverse effect on the landscape character of the area contrary to policies SS8, SDB3 and C1 of the Torbay Local Plan 2012-2030.

Relevant Policies

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Agenda Item 6

Application Number

CN/2015/0081 & CN/2015/0100

Site Address

Oldway Mansion
Torquay Road
Paignton
Devon
TQ3 2TY

Case Officer

Mrs Ruth Robinson

Ward

Preston

Description

Discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 for P/2011/1020 (Change of use of Oldway Mansion and Rotunda from Council Offices to hotel with ancillary conference and spa facilities. External alterations, entrance foyer and refurbishment/reinstatement of glass conservatory. Demolition of squash courts. Improvements to existing car parking area and new car parking to rear service area)

Executive Summary/Key Outcomes

Oldway Mansion is a Grade II* listed building formerly used as Council offices. The Rotunda and Stables are Grade II listed and in an extremely poor state of repair, according to a conditions survey undertaken in 2014. All are currently vacant. They are set within a Grade II entry in the Register of Parks and Gardens.

The greater Oldway site has the benefit of a series of related planning and listed building consents designed to achieve restoration of the buildings for hotel purposes and restoration of the gardens.

These restoration works were to be largely funded from the construction of residential enabling development within and adjacent to the Registered Park and Garden.

The enabling development comprises 55 sheltered flats on Fernham (now complete) and 46 dwellings within less sensitive parts of the Registered Park and Garden which have not yet commenced.

The applications for consideration by Development Management Committee (DMC) relate to the discharge of a range of pre-commencement and other conditions in relation to the planning and listed building applications to change the use of Oldway Mansion, the Rotunda and Stables to provide a Hotel and Spa.

The critical condition relates to phasing and in effect links the implementation of the enabling development (the 101 dwellings) to the restoration works to the

listed buildings and grounds and secure an enforceable timeframe for delivery of these restoration works.

These are Nos. 3 and 4 related to P/2011/1020/PA and No. 4 related to P/2011/1021/LB.

Condition 3 requires the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (ODP dated 6th August 2012) unless otherwise agreed in writing with the LPA'.

Condition 4 required (inter alia) the submission and approval of a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

The condition was imposed to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

The detailed delivery programme for the change of use of Oldway Mansion and Rotunda to hotel that is the subject of this application proposes that certain 'priority works' are carried out over an extended period of time to take account of the fact that the applicants intend to develop the remaining 46 dwellings themselves, rather than disposing of those parts of the site to third-party developer/s.

The amended delivery programme is at variance with an Outline Development Agreement agreed between the Applicant and the Council in its capacity as Local Planning Authority prior to the grant of planning permission.

Members are now asked to determine whether the amended proposals should be agreed by the Council in its capacity as LPA.

There are a number of issues that are elaborated in the body of the report. In summary these are:

- The residential development in the grounds of Oldway Mansion is only acceptable in policy terms if it secures restoration of the listed buildings on the site.
- Restoration was to be achieved via the Development Agreement between the Council as owner of the site and the Applicant as developer.
- The Development Agreement included an Outline Development Programme (ODP). This formed part of the scheme approved for planning purposes and conditions were imposed on the planning permissions to ensure compliance

with it.

- The ODP involved a timeframe for delivery of the renovation and change of use scheme and which was to be partially funded by an upfront capital receipt of an estimated £5 million pounds raised from the early disposal of the 'enabling residential development'.
- This capital receipt would have acted as a 'bond' ensuring a link between the implementation of the enabling development and the delivery of the restoration of the heritage asset. It would also have facilitated a speedy implementation of repair/restoration works.
- An Independent Viability Assessment was carried out to ensure that the scheme met Historic England guidance in relation to enabling development-most importantly that the scale of enabling development and the sums to be raised were sufficient to meet the restoration costs, thus ensuring that the LPA would not receive further requests for additional development on the site to meet any funding shortfall.
- The timetable in the approved ODP indicated in summary that the leases for the 'enabling development' would be drawn down in January 2013 to derive funds for the restoration works. Restoration of the Mansion would begin in July 2013 and the Rotunda in October 2013 with completion of all works by October 2014.
- This timetable cannot be adhered to as these dates have long passed, written approval is now required for the revised ODP and its associated amended timeframe for delivery.
- This is now proposed to be extended anticipating a completion of all the works to the listed buildings by December 2019. Crucially, the development strategy envisaged in the approved ODP is also amended.
- This proposed amendment effectively deletes the 'bond' as the applicants are to carry out the residential development themselves rather than dispose of it up front. This introduces considerable delay, significantly weakens the link between the implementation of the enabling development and the restoration of the heritage asset.
- The costs of restoration have increased by 26%, due to the delay in restoration and consequent increase in defects. Further delay will exacerbate this.
- The current proposals only guarantee the completion of the 'priority works' to the Mansion prior to first occupation of the first tranche (22 dwellings) of enabling development along with the implementation of some protective

works to the Rotunda and the letting of a contract for weatherproofing the Stables.

- Whilst this is an improvement on the original submission, which only offered these works being in place prior to all the enabling development being constructed and available for sale, there are no tangible guarantees regarding the restoration of the Rotunda, the Stables or achievement of the hotel use.
- This, along with the changes in the financial position, comprising significantly increased costs and the fact that less than half of the capital receipt from the sale of Fernham for the construction of 55 sheltered flats is available for the restoration works fundamentally changes the basis on which the planning permission was granted.
- The applicants have been advised of the need for the revised ODP to achieve greater interleaving and certainty of delivery between the restoration of the listed buildings and gardens and implementation of the enabling development. A comparable level of security about delivery to that secured through the approved ODP is needed. Agreement is also required to revisit the IVA to ensure that the revised costs will not lead to the need for yet further development.
- Whilst deferring a decision on the applications is an option for DMC, it is important to note that discussions have been ongoing for some months, have now stalled and there doesn't seem to be any realistic chance of securing greater certainty of delivery. So there is a need to reach a determination on the matter.
- The current applications to discharge the conditions were submitted days before the applications became time expired and works were carried out on site to enable a claim for a lawful start to be made should the conditions be discharged. If they are not both planning permissions (P/2011/1020 & P/2011/1021) will lapse unless the current applications are subsequently approved on appeal.

Recommendation

Officers advise that the information submitted to discharge Conditions 3 and 4 pursuant to P/2011/1020 and condition 4 pursuant to P/2011/1021 in the form of a revised ODP should be refused because it fails to ensure that the scheme is delivered in its entirety in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site and it fails to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in line with policies HE1 and SS10 of the Adopted Torbay Local Plan.

Statutory Determination Period

These applications were submitted on the 18th August should have been determined by the 14th October. The delay is due to ongoing negotiations.

Site Details

Oldway Mansion is a Grade II* listed building formerly used as Council offices. The Rotunda and Stables are Grade II listed and in an extremely poor state of repair. All are currently vacant. They are set within a Grade II entry in the Register of Parks and Gardens. The site has the benefit of a series of related planning and listed building consents designed to achieve restoration of the buildings and grounds for hotel purposes.

Detailed Proposals

These are applications to discharge various conditions in relation to the planning and listed building consents for the change of use of Oldway Mansion and the Rotunda from Council Offices to a Hotel with ancillary conference and spa facilities.

CN/2015/0081 relates to the discharge of conditions 3, 4, 8, 10, 11, 12, 13 and 14 pursuant to P/2011/1020/PA

CN/2015/0100 relates to the discharge of conditions 4 5 7 8 and 9 pursuant to P/2011/1021/LB.

Conditions 3 and 4 in relation to P/2011/1020 and condition 4 in relation to P/2011/1021 are of particular significance in terms of delivery of the project.

The remaining conditions are of a more technical nature and information sufficient to satisfy these has been submitted. These could be discharged under delegated powers as they do not go to the heart of the permission. The development could not however proceed unless all relevant pre commencement conditions are formally discharged.

Summary Of Consultation Responses

Historic England has been consulted and a response is awaited.

Summary Of Representations

None.

Relevant Planning History

A scheme to deliver a Hotel and Spa in the Mansion, Rotunda and Stables funded by residential development within the grounds was approved by DMC in April 2012. The planning permissions were issued on the 24th August 2012.

Planning and Listed building applications to achieve this are:

P/2011/1020: Change of use of Oldway Mansion and Rotunda to hotel with ancillary conference and spa facilities. Approved: 24.08.12.

P/2011/1021: Listed building consent in relation to the above. Approved by Secretary of State: 10.10.12.

P/2012/1011: Change of use and restoration of Stables to hotel use: Approved 24.10.12

P/2012/1012: Listed building consent in relation to the above. Approved by Secretary of State: 11.12.12.

P/2011/0925: Development within the grounds of Oldway Mansion to provide 46 3 and 4 bed houses, new 4 rink bowling centre, reconfiguration of 6 tennis courts, new public car parking, restoration of historic gardens and landscape, construction of 55 sheltered units. Approved 12.09.12

Key Issues/Material Considerations

The key issue is whether the information submitted to discharge conditions 3 and 4 of permission P/2011/1020/PA and condition 4 of permission P/2011/1021/LB which relates to the submission of a revised outline delivery programme (ODP) for the project as a whole delivers adequate confidence about delivery of the restoration package for the Mansion, Rotunda and Stables.

These conditions were of significance in Members reaching a determination on the parent applications. They tied implementation of the scheme to the timetable and delivery strategy embodied in Development Agreement between the Council as landowner and the applicant.

For this reason it is considered appropriate that any changes to the ODP and the implications this has in relation to delivery are considered and determined by Development Management Committee.

Background:

In 2007 an informal brief was published to provide guidance about the options for securing investment in the site. This suggested hotel development in the key listed buildings with limited residential development within the Registered Park and Garden to fund restoration of the declining heritage asset.

Separate planning and listed building applications were submitted in August 2011 in relation to the change of use of the main buildings to a hotel complex and the inclusion of residential development in the wider grounds. The applications were agreed in principle by DMC in April 2012.

The residential development within the Registered Park and Garden comprised 'enabling development' and was only approved on the basis that it was necessary to secure the restoration of the Mansion, Rotunda, Stables and

grounds.

The enabling development comprised the development of Fernham to provide 55 sheltered units, which is now complete, and within the grounds, the provision of 46 dwellings in the less sensitive parts of the Registered Park and Garden. These are Zones C/D adjacent to Oldway Road and Zones A on the site of the Indoor Bowling Club.

The scheme was required to meet the key tests in Historic England's document 'Enabling Development and the Conservation of Significant Places' (2008). This requires that:

- The 'achievement of the heritage objective is securely and enforceably linked' to the enabling development so that delivery is guaranteed and the LPA is not left in a position where the enabling development is built out but the benefits it was approved to pay for are not secured. This can be done through a S106 agreement, use of a bond or through the use of conditions related to phasing agreements or triggers on occupation.
- The enabling development also has to be shown to be the minimum needed to secure the restoration of the heritage asset. This requires a detailed financial assessment of the costs of restoration balanced against the value of the project to ensure that whilst it is indeed the minimum required to secure the heritage asset there is sufficient value to ensure that the project in its entirety can be delivered and the LPA won't be faced with demands for additional development to fund increased costs. This was confirmed through an Independent Viability Assessment (IVA) and Members were briefed accordingly.

When the decision was made to approve the development on the site, there was an Outline Development Programme (ODP) which was embedded in the Development Agreement between the Council as landowner and the applicant. This was considered to meet these key tests and to provide adequate security about delivery of the project.

In summary, it secured the timely restoration of the buildings against a defined timetable and crucially secured an upfront capital receipt of £5m from disposals of the residential plots to be placed in a jointly managed account. It was sufficient to cover about 2/3rds of the estimated costs of restoring all the listed buildings and about half of the cost of the overall project. This acted like a bond and provided security about delivery of the scheme. It meant that the construction of enabling development could not commence until the money to fund restoration was delivered to the joint account and that necessary restoration works to the listed buildings could commence quickly.

1. The use of conditions to secure delivery of the wider project.

Historic England's guidance in relation to enabling development recommends that assets should be repaired before the enabling development commences or the funds necessary to do so deposited as a bond. In this case, the bond was to be secured via the Development Agreement.

Phasing conditions were therefore applied to all the permissions in relation to the site to tie them together and to ensure that the scheme was delivered in accordance with the approved site-wide ODP and that any changes to it would have to be agreed with the LPA in writing.

A pre commencement phasing condition applied to the residential development (P/2011/0925) was not discharged in advance of works commencing in respect of the sheltered flats on Fernham. It was not considered that enforcement action should be taken as commencement was broadly in line with the ODP. The funding derived from the sale of the site was secured and it did not appear that there was any demonstrable harm arising.

However, no further development on the site can proceed without this condition being discharged in view of the changes now proposed to the ODP. A condition was also imposed on all relevant consents to secure weatherproofing of the Stables within a defined time frame as this was the most at risk of the buildings. These weatherproofing works have not been commenced.

The applicants have not sought to challenge the conditions attached to the last planning permissions and listed building consent. The opportunity for challenge of those conditions has long since passed. It can be concluded that the applicants considered the conditions to be reasonable and acceptable.

2. Phasing Conditions in relation to the applications for change of use of the Mansion, Rotunda and Stables to hotel use.

The relevant 'phasing' conditions in relation to the applications for conversion of the Mansion, Rotunda and Stables to Hotel use are numbers 3 and 4 pursuant to P/2011/1020/PA and number 4 in relation to P/2011/1021/LB.

For information, the specific wording of the conditions and the reasons for imposing them is provided at Appendix A.

These applications involve a revised timetable and delivery strategy for implementation of the project and additional information to satisfy the Conservation Management Plan. This proposed approach changes significantly the anticipated guarantees around delivery.

Information to discharge these conditions was submitted days before the

applications became time expired despite many requests to the applicants to address the matter, since it became apparent that timetables were not capable of being met.

Immediately following submission, works were carried out on site with the intention of preserving the permissions in relation to the future use of the Mansion, Rotunda and Stables in perpetuity.

If the pre commencement conditions are discharged, this could retrospectively legitimise the alleged start. This would need to be established via a Certificate Of Lawful Development.

If the LPA is unable to discharge the conditions, the applications to change the use of the Mansion to a hotel will become time expired, if the acceptability of these applications is not subsequently secured through a planning appeal.

3. Why changes to the Phasing Conditions require careful consideration.

The phasing conditions are important as they tie restoration of the heritage asset to the ODP. It is necessary to critically assess whether the revised phasing strategy delivers similar guarantees about securing restoration.

Condition 3 required the applicant to 'adhere to the timetable for restoration of the buildings as set out in the outline development programme (6th August 2012) unless otherwise agreed in writing with the LPA'.

Condition 4 required (inter alia) a detailed delivery programme (based on the ODP) for this phase of the scheme which identified key stages in the restoration of the buildings and grounds and provided a timetable for delivery of the whole project.

This information is required, as explained in the reason accompanying the condition, to ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site.

4. How does the Revised ODP compare to that referred to in the relevant conditions?

The revised ODP is of concern because it does not deliver the restoration of the Mansion, Rotunda, Stables and grounds in the time frame originally set out when permission was granted and there have been fundamental changes to the delivery strategy and financial position the decisions were predicated upon.

These matters have to be taken into account in dealing with conditions that seek approval for an alternative programme of works.

A. Changes to Timeframe

In terms of time frame, the 'approved' ODP indicated that leases would be drawn down on the residential enabling development in January 2013 so the sites could be disposed of to realise funds for the works to commence on the restoration of the listed buildings.

Contractors would be appointed in April 2013 to start work on the Mansion in July 2013 and the Rotunda in October 2013 with completion in October 2014. The position in relation to the Stables was complicated by the need for bat surveys but a condition was imposed to ensure that the hotel use could not commence in the Mansion and Rotunda until the restoration of the Stables (for purposes ancillary to the hotel) was substantially complete.

The revised ODP, leaving the future of the Stables unresolved, would be at variance with the requirements of this condition.

There has been a significant delay in the start of the works. The update to the Conditions Survey 2014 (submitted to satisfy in part the requirements of condition 4) shows that this has led to a substantial increase in the number of defects in all of the listed buildings. This has increased restoration costs by 26% and any further delay in urgent repairs will exacerbate this.

The revised ODP which originally accompanied this application, involved a significantly extended time frame for delivery and the implementation of 'priority works' to the Mansion only (the Rotunda and Stables were to be mothballed).

These 'priority works' comprise a detailed schedule of remedial works.

Further, these works were only to be completed when the 'enabling development' in Zones C/D and A within the gardens was constructed and available for sale. This introduced an unacceptable delay to necessary protective works being carried out and carried a risk that the houses could be built without any works carried out to secure the future of the listed buildings.

Following several months of discussions the revised ODP has been amended to secure the implementation of all the 'priority works' to the Mansion prior to the sales of the first tranche of enabling development in Zones C/D (providing 22 homes) along with undefined protective works to the Rotunda and a contract for weatherproofing the Stables.

Whilst this is an improvement on what was originally submitted, it is all that can be guaranteed through the revised ODP. This revision explains that the works to convert the Mansion to a hotel will rely on the sales of residential dwellings comprised within zones C/D and A along with possibly quite substantial loans.

The works to restore/convert the Rotunda and Stables will rely on mortgaging the hotel when complete. The Applicant is not able to provide guarantees regarding the availability of this additional funding. This provides considerably less certainty than before that the listed buildings and Registered Garden will be repaired and renovated and as such fails to meet both the Council's planning requirements and Historic England's enabling development requirements.

It should be noted that when the decision to approve the scheme was granted in 2012 a significant proportion of the 'priority works, were considered unnecessary, except in relation to the Stables. The listed buildings are now more 'at risk' than before and the 'priority works' are now all necessary, which is a key consideration.

Whilst the improvements negotiated to the revised ODP will ensure that the remedial works to the Mansion might at least begin more promptly, that has to be balanced against the increased uncertainties over delivery of the whole project.

B. Changes to Development Strategy.

Much of the concern regarding delivery stems from the proposed changes to the development strategy. The approved ODP involved the upfront disposal of the enabling development to third party developer which would have secured substantial capital receipts of around £5m to be held in a jointly managed bank account. This would have acted as a 'bond' to secure delivery. It meant that enabling development could not commence until the money was secured and it would have allowed works to proceed quickly on protective works and towards delivering a restored Mansion, Rotunda and Stables. Prompt delivery is an important factor in dealing with remedial works to listed buildings, especially buildings of the quality of Oldway Mansion.

Whilst additional funding would have been needed to complete the overall project, the Independent Viability Appraisal (IVA) indicated that a significant proportion of the costs of restoration of the listed buildings would have been covered by the size of this receipt and having this 'banked' makes raising additional funding if required a less risky proposition.

The approach to delivery embodied in the approved ODP was validated through the IVA.

The revised ODP effectively deletes the bond as the applicants have decided to develop the housing plots themselves rather than dispose of them 'upfront'. This results in a significant delay in achieving any capital receipt as the funding is reliant on individual sales of completed dwellings. The link that existed between the enabling development and the prompt implementation of restoration works to the historic buildings is thus seriously weakened.

C. Changes to the Financial Position.

The financial position in relation to the Oldway development is also relevant because condition 4 was imposed “To ensure the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site”.

If the proposed development programme does not contain sufficient safeguards to ensure that restoration works are delivered promptly, the LPA has no assurance that delays will not lead to further increases in costs which could lead to a failure to complete the renovation works or pressure for additional dwellings on the site.

The factors which informed the IVA in 2012 have, as a result of the matters described earlier in this report changed, these are rising costs, further deterioration in the buildings and the fact that approximately £1.3 million of the £2.1 million secured from the sale of Fernham has been spent on fees. The IVA, which thoroughly assessed all development costs indicated that only £1.2 million was needed to cover the fee requirements for the entire project.

Historic England only recommended support for the scheme on the basis that the IVA confirmed the level of enabling development was the minimum needed to achieve the stated goal of restoration and was based on realistic and achievable financial modelling. Whilst this was demonstrably the case in 2012, and substantially underpinned Members’ decision to support the scheme, confidence in its conclusions can no longer be assured given now many of the inputs to the assessment have changed.

In view of this, it is considered that the IVA should be re assessed to ensure that Historic England’s enabling development tests can still be met and particularly that no further development will be required to fund the increased scale and costs of restoration works. The applicants question the need for this and have not confirmed they will cover the cost of such work (as is necessary to meet the Council’s policy on viability assessment work).

5. Other Matters.

The timing of restoration of the grounds, as required by the phasing condition is not addressed other than being carried out in ‘pockets of relevance’ which is as described in the original applications.

The overall scheme for the conversion of Oldway to hotel use included a range of other requirements which formed part of the ODP such as replacement registry office, café, and tennis courts, restoration of the Grotto /historic gardens and new car parking. These matters are not addressed as part of this submission other than by reference to dates.

There are no particular planning reasons to insist on guarantees regarding delivery of the Registry office, tennis courts or café. However the issue of delivery around the historic garden and grotto is very much of concern.

6. Is there a way forward?

It was made clear to the applicants that for a revised ODP to be acceptable there needed to be a greater interleaving between the implementation of the enabling development and the delivery of the restored Mansion, Rotunda and Stables for hotel use and that this needed to be related to defined enforceable triggers rather than on a phasing programme that relied largely on dates.

There is no means of enforcing compliance unless key outcomes are tied to restrictions on occupation, sales, letting of contracts or there is a bond available to the LPA to effectively mitigate any default.

The applicants have been advised what key outcomes are essential and how these can be tied to defined stages in the implementation of the enabling development. Whilst some suggestions have been taken on board, such as completion of specified protective works prior to any sales of the new housing, this still provides no surety over the delivery of the hotel or the future of the Rotunda or Stables beyond a series of anticipated dates and hoped for outcomes.

The applicants do not appear to understand the Council's reservations, as expressed by officers, about securing delivery against dates as the previous ODP was partly reliant on a time frame for implementation.

They find it difficult to understand why a more robust stance should be taken now. There are three reasons for the LPA's stance.

Firstly, and most importantly, the approved ODP secured a substantial upfront capital receipt, nearly half of the necessary funding for the entire project and a significant proportion of the restoration costs of the listed buildings as confirmed by an IVA. It provides confidence that the scheme will deliver. In the absence of this comfort, it is necessary to be more vigilant over delivery and to try and secure a similar outcome by alternative means.

Secondly, the implications of relying heavily on an unenforceable timetable are now apparent from the current position on the site. The Development Agreement (through which the Council as landlord could exercise control) cannot now, for various legal reasons, be relied on.

Finally, the applicants have been advised that it would be useful to have a comparable understanding of the financial capacity of the scheme through a re

run of the IVA given the changes in circumstances. The applicant is reluctant to engage in this.

However, discussions have now stalled and there is a need to reach a determination on the matter given the lapse in time since submission of the details and lack of progress in negotiations.

Conclusion

Officers have secured improvements to the revised ODP which will ensure that all the 'Priority Works' are carried out prior to the sales of the first tranche (22 houses) of enabling development.

However against this has to be balanced the fact that it is only these works that can be guaranteed and conversion works to deliver the hotel use are not secured. The future of the Rotunda and Stables is also uncertain. As it was the rescue of these particularly at-risk buildings that underpinned the original approval this is clearly a retrograde position to be in. The delivery of restoration of the gardens is similarly unresolved.

The applicants will argue that the original ODP did not fully guarantee these matters however the availability of a substantial bond up front provided a significant degree of comfort.

This contrasts sharply with the position should the revised ODP be accepted. If this was approved the speed and certainty of delivery would be reduced; the link between the enabling development and delivery of the restored historic buildings would be eroded and the more dubious viability and uncertainty regarding funding sources could expose the Council to a risk of pressure for more enabling development to prop up the project at a later date.

These concerns could be mitigated by the applicants agreeing to a greater degree of interleaving between the restoration of the heritage asset (buildings and grounds) and the implementation of the enabling development and exposing the revised financial components of the scheme to a re-run of the IVA.

This was pivotal in informing Members views in relation to the original approval and any changes to costs, values or the development strategy to be used should be subject to a similar level of scrutiny.

The options available to Members are to:

- Defer the decision on the matter and the applicant be asked to provide more comfort regarding delivery. It is however unlikely to produce a change in the outcome.
- Refuse the application for reasons relating to uncertainty about delivery of

the project. However due to the timing of these submissions the applications for planning permission and listed building consent would become time expired unless the matter was subsequently approved on appeal. This has ramifications for the project as a whole.

Recommendation

Officers advise that the information submitted to discharge Conditions 3 and 4 pursuant to P/2011/1020 and condition 4 pursuant to P/2011/1021 in the form of a revised ODP should be refused because it fails to ensure that the scheme is delivered in its entirety in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site and it fails to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in line with policies HE1 and SS10 of the Adopted Torbay Local Plan.

Relevant Policies

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Appendix A: Conditions 3 and 4 pursuant to P/2011/1020

03. The timetable for restoration of the buildings set out in the outline development programme (Akkeron/Oldway Outline Development Programme, dated 06 August 2012), hereby approved, shall be adhered to unless otherwise agreed in writing by the Local Planning Authority. Occupation of the Mansion and Rotunda as a Hotel complex will not be permitted until planning permission and listed building consent for the restoration of the stables has been granted and the agreed works of restoration are substantially complete unless otherwise agreed in writing by the Local Planning Authority.

Reason: to ensure that the Mansion, Rotunda, Stables and Banqueting Hall are restored in line with agreed details and their future secured as part of the hotel complex in accordance with policy BE6 of the saved Torbay Plan 1995-2011.

04. A detailed delivery programme for this phase of the scheme shall be submitted to the LPA and agreed in writing prior to the commencement of development on site. It shall be based on the submitted phasing plan and development programme [Akkeron/Oldway August 2012]. It shall identify key stages in the restoration of the buildings and grounds and provide a timetable for implementation of the whole project. The delivery programme shall also include a timetable for the reintroduction of the Stables/Banqueting Hall to the development programme following the conclusion of the emergent bat survey.

A full and detailed structural and conditions survey of the Mansions, the Stables and the Rotunda shall be carried out by a competent qualified surveyor and shall be submitted to the Local Planning Authority in writing as part of the phasing/delivery programme. The survey shall confirm the detailed condition of the buildings and the works required to secure the long term future of the buildings. A full and detailed Conservation Management Plan shall be submitted concurrently with the structural and conditions survey to secure the appropriate works to restore the historic buildings.

This document will form part of the phasing/delivery programme and will be based on the approved Heritage Statement August 2011, Plan No's 1021 M PL 050-57 1021 –RS PL 050-57. The document will include a detailed schedule of works for the internal and external fabric of the buildings and will include a timetable for the implementation of these works.

This document is to include a schedule of materials to be used in all works of repair and new works and details, at a scale of 1:5 and 1:20 as appropriate, in respect of all new works to the internal fabric and external elevations of the buildings. This shall be based on the approved Heritage Statement August 2011 Plan No's 1021 M PL010-014, 1021-M PL20-21 1021-M 40-43, 1021-RS PL 010-23 [excluding the stables]

The document shall include a 25 year maintenance strategy for the buildings.

Occupation of these buildings for hotel use shall not take place until the repair and restoration works have been completed in accordance with the agreed details.

Reason: To ensure that the scheme is delivered in its entirety, in an appropriate manner and in a time frame that will secure the future of the listed buildings on the site. This is in accordance with policy BE6 of the saved Torbay Plan 1995-2011

Agenda Item 7

Application Number

P/2015/0840

Site Address

1 Southfield Road
Paignton
Devon
TQ3 2SL

Case Officer

Mr Scott Jones

Ward

Clifton With Maidenway

Description

Erection of 4 storey block of flats comprising 12 no. 2-bed flats, with associated pedestrian/vehicular access and parking

Executive Summary/Key Outcomes

The application is to develop a 4-storey block of flats (12 no. 2-bed flats) on the grassed, amenity area of an existing block of flats (11 flats) at 1 Southfield Road to the northwest of Paignton Town Centre. The site is located within and on the edge of the Old Paignton Conservation Area.

A proposal for a similar development was refused in 2007 and dismissed on appeal. However, subsequent applications were approved due to comments made by the appeal Inspector stating that the design would enhance the character and appearance of the Conservation Area.

There has been a material change in planning policy since the last grant of planning permission in 2012. Consequently this application must be assessed against the new Local Plan and determined in accordance with the Local Plan unless there are clear material reasons for departing from the Plan.

Whilst the principle of developing housing on the site is considered to be acceptable by officers, the proposed design is considered to be unacceptable due to the scale of development and the resultant residential environment, and the height and lack of distinctiveness of the building. It will harm the character and appearance of the Conservation Area accordingly and it will cramp and overdevelop the site, presenting a poor residential environment for future occupiers by reason of the arrangement of parking and buildings, and the quality of the resultant amenity space for the residents of the flats or the existing flats.

Therefore, despite the earlier decisions the application should be refused. This takes into account the Policies of the new Local Plan and a recent appeal decision made with respect to the Gleneagles Hotel site in Torquay, which are new material considerations carrying significant weight. Officers' preference is for a building of a reduced scale and lower height that is subservient to the historic host building on the site, whilst leaving adequate parking, manoeuvring and amenity space around it for landscaping and for use by residents. This will

help the development to blend into the landscape setting and help provide a good standard of residential accommodation.

In addition, insufficient information has been submitted with the application to demonstrate that the proposal will not result in downstream flooding within the Critical Drainage Area (CDA). Detailed drainage proposals must be submitted with planning applications, with priority given to sustainable drainage systems where feasible. No infiltration testing has been carried out on the site to investigate whether a SUDS system is feasible and the submitted Flood Risk Assessment lacks detail and justification why this is the case.

Taking the above issues into account, the application should be refused.

Recommendation

Refusal; for the reasons set out in this report.

Statutory Determination Period

The application was validated on 04.09.2015. The statutory determination date is 05.12.2015 (13 weeks). An extension of time until the 29.02.2016 has been agreed.

Site Details

The site is a back-land site behind properties fronting on to Colley End Road to the northwest of Paignton Town Centre. It is approximately 0.23ha in area. It comprises the sloping, grassed amenity area of an existing 4-storey block of flats (11 flats) and the existing parking court and part of the access road to Southfield Road. The existing block of flats is outside the application site boundary, but is within the same ownership as the site.

The site is bounded by the gardens of residential properties fronting onto Redburn Road to the north, Southfield Road and Colley End Road to the east, residential properties and Kitson Hall fronting onto Colley End Road to the south, and Kirkham Court to the west. The immediate area is primarily residential. To the northeast of the site entrance are a Grade II listed warehouse and church.

The site is located within and on the boundary of the Old Paignton Conservation Area. Apart from this it is undesignated in the Torbay Local Plan 2012-2030. The site lies at the margins of the Conservation Area in an area that is one of transition from the more industrial area to the south-east around Well Street to an area of Villa development around Southfield Road where the site sits, which displays a more open character and verdant feel.

Detailed Proposals

The proposed development is to develop a 4-storey block of flats (12 no. 2-bed flats) on the sloping, grassed amenity area of the existing block of flats on the site. It is a re-application of a scheme granted planning permission in 2009 and

which was granted an extended time limit to implement in 2012. The scheme remains unimplemented.

A new access drive will be constructed from Southfield Road over part of the existing access road. Unlike the existing access, the new access will go directly up the slope and will have a steep gradient of 1:7. This will lead to a rearranged parking court with a total of 26 car parking spaces. 23 of the spaces will provide 1:1 parking for the existing and proposed blocks of flats. 3 additional spaces will be provided for an adjoining site on the remaining part of the existing access road, which was granted planning permission for 3 dwellings fronting onto Colley End Road in April 2014. This development is tied to the current application by a condition that prevents occupation of the 3 dwellings until the access and car parking spaces, subject to the current application, have been provided and made available for use.

Summary Of Consultation Responses

Strategy and Project Delivery Team/Highway Department:

The Local Highway Authority object to the scheme as it stands as the access for the proposed development should be no steeper than a gradient of 1:8 and the scheme proposes a gradient of 1:7. There is also concern that commercial and waste vehicles would be unable to access the site adequately, manoeuvre and enter and exit in a forward gear, which may increase the risk of danger to highway users. In addition it is highlighted that the proposed disabled parking space does not accord with Council size standards, and that it is not clear that cycle parking can be provided on a 1:1 basis or an electric car charging point achieved.

Environment Agency:

Refer to Standing Advice, as site within CDA - follow SUDS hierarchy, by using infiltration as far as practicable.

Historic England:

Comment that they were not consulted on 2009 scheme. Question whether the design is of sufficient quality for a conservation area context. This part of the conservation area has indifferent quality. Advise Council to take into account Para 137 of the NPPF - 'local planning authorities should look for opportunities for new development within conservation areas... to enhance or better reveal their significance.' These issues should be addressed. Recommend application is determined in accordance with national and local policy guidance, and on basis of Council's specialist conservation advice.

Engineering: (on behalf of Torbay Council as Lead Local Flood Authority):

A sustainable drainage option must be investigated before a decision is made to connect to the main sewer. No details provided in the application of the proposed surface water drainage system. Details of infiltration tests and detailed

design of soakaways (if viable) must be provided before planning permission is granted. If ground conditions are not suitable, detailed design of surface water drainage system must be provided with discharge to combined sewer controlled to greenfield runoff rate.

South West Water:

Cannot support application as the proposed means of surface water drainage specified on the application is by connection to the public combined sewer which is against South West Water policy. Note that the flood risk assessment references the use of a SUDs system which needs to be fully investigated prior to SWW giving any consideration to a connection of this element to the public sewer. As the site is within Critical Drainage Area, the Council's Engineering department and Environment Agency must be consulted.

Police Architectural Liaison Officer:

Recommend the development is constructed to achieve full compliance of Secured by Design. Refuse and bike stores must have no windows and be fitted with a secure door with access only to residents. Car parking spaces should be allocated to prevent conflict over use. Other more detailed comments relating to the building provided.

Arboricultural Officer:

The only constraining arboricultural feature is a large mature Cherry tree to the west of the existing car park, which enhances the Conservation Area. Further car parking is proposed beneath the tree and to the west, accessed by a new driveway under the canopy. No supporting tree report submitted. There opportunity for tree planting and in an area where tree density is low the scheme is suitable for approval on arboricultural merit, however prior to any approval the following should be submitted:

1. Detailed methodology to create a no dig driveway solution and tree protective plan in accordance with B.S.5837:2012 should be submitted, together with Trees in relation to design, demolition and construction - recommendations to be installed prior to any commencement on site.
2. Detailed landscaping plan to including the planting of a number of specimen trees amongst other soft landscaping details.

Natural Environment Services:

General comments made regarding biodiversity and greenspace/recreation: Any planning application on, or adjacent to, a greenfield or vegetated brownfield site has potential to impact biodiversity, requiring an Extended Phase 1 Habitat Survey. This will identify whether further protected species surveys are required. Existing features should be incorporated into landscaping proposals. Bird nesting and bat roosting sites should be incorporated into the built fabric if possible. Where no, or limited, greenspace and recreation provision is proposed

onsite, a contribution should be sought in accordance with the Planning Contributions and Affordable Housing SPD.

Senior Heritage & Design Officer:

Objects - similar to previous scheme that was refused (partly on design grounds) in 2007 and dismissed at appeal in January 2008, however the Inspector considered the design to be appropriate in the context of the Conservation Area. Therefore, subsequent applications were allowed.

The policy context has changed since the scheme was last renewed in 2012 and the new Local Plan has been adopted and Policy SS10 carries significant weight.

Considers the scheme will not sustain and enhance the Conservation Area, contrary to new Local Plan Policy SS10, and it will cause less than substantial harm to the Conservation Area, as it is not subservient to the host historic building and will be highly visible in the street scene. The proposed height and massing are considered inappropriate, and fail to take the opportunities available to improve the character and quality of the area (NPPF Para 64). This principle (of taking opportunities to improve the character and quality of a Conservation Area) was supported by the Inspector in the recent Gleneagles appeal.

Conclude that a well proportioned building would make good use of this space and would have the potential to meet Policy SS10 of the new Local Plan. No Statement of Heritage Significance submitted.

Senior Historic Environment Officer:

The site has known archaeological potential. A desk based assessment is not required, however standard archaeological condition should be imposed.

Summary Of Representations

12 objections have been received; 8 of these are from residents of Kirkham Court to the west of the site. The following issues have been raised:

- Scale is overpowering and will dominate area
- Impact on drainage system
- Could increase flooding risks to properties below
- Cramped
- Will block light to neighbouring properties
- Integrity of retaining wall - rear of Redburn Road properties
- Impact on highways - increased traffic/parking
- Impact on privacy of neighbouring properties from overlooking
- Overshadowing
- Design does not take into account Conservation Area
- Insufficient parking
- No space for children to play
- Too large and high

- Will do nothing to improve the character of the neighbourhood
- No guest parking
- Nowhere to park in vicinity of site
- Not in keeping with surrounding properties
- Noise - traffic/parking
- A 50-year old tree will have to be cut down and it will also affect the wildlife in the field
- Too near old wall
- Overdevelop area

Relevant Planning History

P/2012/0984: Extend time limit - formation of 3 dwellings with altered access drive and pedestrian/vehicular access - application P/2009/0574/PA: Approved 01/04/2014 (NB. This relates to the adjoining site, which shares the proposed access of the current application)

P/2012/0516: Extend time limit - Formation of 12 - 2 bedroom flats with pedestrian/vehicular access (revised scheme) application P/2009/0281/MPA: Approved 04.09.2012

P/2009/0574: Formation of 3 dwellings with altered access drive and pedestrian/vehicular access: Approved 04/09/2009 (NB. This relates to the adjoining site, which shares the proposed access of the current application)

P/2009/0281: Formation of 12 no. 2 bedroom flats with pedestrian/vehicular access (revised scheme): Approved 12/06/2009

P/2008/0560: Formation of 12 no. 1 bedroom flats with pedestrian/vehicular access: Approved 03/07/2008

P/2007/0007: Erection Of 12 No 1 Bedroom Flats With Pedestrian/Vehicular Access; Remedial Works To Existing Building: Refused 06/03/2007. (NB. This application was subsequently dismissed at appeal; however, the Inspector stated in his decision that "the scheme would enhance the character and appearance of the conservation area" and "would provide adequate parking for residents and visitors to the site".)

P/2006/0490/PA: Erection of 12 one bedroom flats: Refused 15/01/2006

P/2004/1131: Planning application for the erection of 3 dwellings with altered access drive and pedestrian vehicular access within the grounds of 1 Southfield Road: Approved 26/08/2004

P/2004/0079: Erection of two houses on land off Colley End Road within the grounds of 1 Southfield Road: Refused 04/03/2004

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Development
2. Affordable Housing
3. Design and Impact on Conservation Area
4. Amenity Issues
5. Access and Impact on Highways
6. Car Parking
7. Impact on Trees
8. Biodiversity
9. Surface Water Drainage and Flood Risk

1. The Principle of the Development

The recently adopted Torbay Local Plan 2012-2030 is a material consideration and provides a new policy context.

The part of the site where the new building is proposed is greenfield, as it comprises the grassed, amenity area of an existing block of flats sharing the same access. The NPPF excludes land in built-up areas such as private residential gardens, parks, recreation grounds and allotments from the definition of 'previously developed land' (brownfield). Consequently, local and national policies promoting the reuse/redevelopment of brownfield land do not apply in this case. The site should be treated as a Greenfield site.

Other than being located in a Conservation Area, there are no designations affecting the site that restrict its development for new housing. It is well located, close to the shops and facilities within Paignton Town Centre, allowing ease of access by sustainable modes of travel, such as walking and cycling.

The planning history of the site is a material consideration. It has already accepted that the site can be developed for new housing.

Therefore, the principle of developing the land for new housing is considered by officers to be acceptable.

2. Affordable Housing

Affordable housing was not provided in previous applications. However the new Local Plan provides fresh context. The current application offers no affordable housing.

This is a Greenfield site and policy H2 of the new Local Plan applies. The policy provides the thresholds for affordable housing on greenfield sites and seeks the provision of 20% affordable housing on this site. Officers have not sought to negotiate affordable housing provision to meet policy requirements, as the proposal fails against other policies.

It is recommended that the absence of an acceptable level of affordable housing provision is cited as a reason for refusal in order to protect the Council's position on this. Should Members wish to support its application it is recommended that officers are asked to negotiate affordable housing provision in accordance with policy, unless informed otherwise via an independent viability assessment, to be secured via a s106 legal agreement.

3. *Design and Impact on Setting of Conservation Area*

The site is located within and on the edge of the Old Paignton Conservation Area in an area that is one of transition in terms of character, from the more industrial area to the south-east around Well Street to an area of less dense Villa development around Southfield Road where the site sits, which displays a more open character and verdant feel.

As the site is within a Conservation Area the relevant heritage policy of the new Local Plan applies.

An application by the same applicant for a slightly smaller, 4-storey block of flats (12 no. 1-bed flats) was refused by the Council in 2007, in part due to its:

"unsympathetic design and appearance which would make it out of keeping with the long-established layout of this part of the town, would detrimentally impact upon the Old Paignton Conservation Area within which it sits, and the street scene in general, and would have a poor relationship with the historic church next door."

Whilst the subsequent appeal was dismissed, the Inspector stated that the scheme 'would enhance the character and appearance of the conservation area'. The Inspector considered that the sloping, grassland area on which the building would be sited 'provides limited visual benefit to the locality and, due to its topography, limited recreational value to the existing block of flats.' The Inspector went on to state that the building would:

"positively relate, in terms of height and scale, to the existing building to the east and would be orientated to take reasonable advantage of the southern aspect and to respect the arc of the lower highway and the immediately adjacent buildings. The proposed design would represent a reasonable development density and a contemporary interpretation of a substantial 'villa' with sufficient articulation within its front elevation to alleviate the overall mass of the structure in a manner that would enhance the immediate mediocrity of its current surroundings."

As this appeal decision was a material consideration carrying a high degree of weight at the time, the subsequent planning applications made for the same/similar buildings in 2008/2009 were approved.

The appeal decision was made in January 2008 at which time the relevant planning policy context comprised: the current Adopted Local Plan; the Urban Design Guide SPD (May 2007); chapters 13-19 of the Environmental Guide SPG (Sept 2004); and national advice contained within various PPGs/PPSs. This national advice has now been abolished and replaced by the NPPF. The Inspector did not reference the Urban Design Guide SPD in his decision and instead referenced the Environmental Guide SPG, which appears to have been an oversight.

The current planning policy context comprises: the new Local Plan (2012-2030) and national policies and advice contained within the NPPF and online Planning Practice Guidance (PPG) respectively. A recent appeal decision (APP/X1165/W/15/3006520) received on 12 November 2015 to dismiss a block of flats on the Gleneagles Hotel site affecting the setting of an adjacent conservation area is a material consideration and that] there is evidently now a greater focus on taking opportunities to improve the character and quality of an area.'

An application to extend the time limits to implement planning permission P/2009/0281 was approved in September 2012. This took into account the policies in the NPPF. It also took into account national guidance within 'Greater flexibility for planning permissions' (CLG, Oct 2010) stating that 'local planning authorities should take a positive and constructive approach towards applications which improve the prospect of sustainable development being taken forward quickly.' This guidance was cancelled in 2014 and replaced by the online PPG.

The Senior Heritage and Design Officer has objected to the application highlighting the significance of Policy SS10 of the new Local Plan as a new material consideration. This policy requires development to sustain and enhance heritage assets, including conservation areas, which make an important contribution to Torbay's built and natural setting and heritage, for their own merits and their wider role in the character and setting of the Bay. It goes on to state that proposals that may affect heritage assets will be assessed on a range of criteria, including 'The need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, while allowing sympathetic development within them' and 'Whether new development contributes to the local character and distinctiveness of the area, particularly through a high quality of design, use of appropriate materials, or removal of deleterious features'.

The Old Paignton Conservation Area Appraisal notes that there are good quality buildings and settings on the periphery and identifies Villa development on or just off Southfield Road. Villa development generally offers principle buildings within good sized plots which, when grouped, presents an open and spacious character and verdant feel to an area. The character of such areas are as much about the space around buildings as the buildings themselves.

The Senior Heritage and Design Officer considers that the scheme, which lacks subservience to the principle building and affects the open spacious character of the plot, will not sustain or enhance the Conservation Area, but considers that the harm that will be caused is 'less than substantial'. In these cases, paragraph 134 of the NPPF states that 'this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The Senior Heritage and Design Officer notes that Historic England has raised similar concerns with the proposal. In their response, Historic England encourages the Council to consider the advice within paragraph 137 of the NPPF, which states that 'Local planning authorities should look for opportunities for new development within Conservation Areas... to enhance or better reveal their significance.'

Policies DE1 and DE4 of the new Local Plan are also considered to be material considerations. Policy DE1 emphasises the importance of local distinctiveness in design, and Policy DE4 states that new development should be constructed to the prevailing height (the most commonly occurring height) within the character area in which it is located, unless there are sound urban design or socio-economic benefits to deviate from this approach. It is considered that there is nothing in the design that acknowledges the distinctive features of the Villa plot, for example the primacy of the Villa building and its spacious setting, that contribute to this area of the Conservation Area. The Urban Design Guide SPD is an important material consideration and states that 'Designers should use local materials, building methods and details where appropriate to help to enhance local distinctiveness' (Para A6). In terms of the height, whilst the proposed building is the same height as the existing building on the site, this is not the prevailing height of the locality which is 2-3 storeys. Officers consider that there are no sound urban design or socio-economic benefits that justify the height of the proposal. It is considered that the new building should be subservient in height to the existing 'host historic' building adjoining the site. The Urban Design Guide SPD states that 'Designers should consider the scale, massing and height of proposed development in relation to that of adjoining buildings; the topography; the general pattern of heights in the area; and views, vistas and landmarks' (Para A7).

As can be seen, this issue is finely balanced when taking into account all the material considerations above, including the new policies and previous decisions. It is clear that the Inspector for the 2007 appeal had a different view to the Council's conservation specialist of the effect of the scheme on the character and appearance of the Conservation Area. Whilst the appeal decision was made in January 2008, and the Inspector considered that the scheme would enhance the character and appearance of the Conservation Area, the planning policy context has changed since this time, including publication of the NPPF and emergence of the new Local Plan.

The main change to the policy context since this time with regards to design and heritage issues is the greater emphasis on enhancement and taking the

opportunities available to improve the character and quality of an area. It is clear that the Inspector believed this will be the case in 2007. However, officers are mindful that the scheme has not gone before Torbay's independent Design Review Panel, as endorsed by the NPPF (Para 62), and Historic England has raised concerns; in addition Historic England state that they were not consulted on the original 2009 application. Therefore, officers consider the application should be refused, as it is considered that it will not sustain or enhance the character of the Conservation Area, contrary to Policy SS10 of the new Local Plan. It is also considered that it has failed to take the opportunities available for improving the character and quality of the area (NPPF Para 64), and the proposed design does not contribute to the distinctiveness of the area (new Local Plan Policies SS10 and DE1). It also does not follow the lower prevailing building height of the locality (new Local Plan Policy DE4).

Officers consider the scheme will cause 'less than substantial harm' to the Conservation Area. Paragraph 134 of the NPPF requires this to be weighed against the public benefits of the proposal, including securing its optimum viable use. In this case, officers consider that there are few public benefits of the scheme that would not outweigh this harm. Whilst the delivery of new dwellings is a positive impact, there is no reason why an alternative, lower density scheme which does not cause harm to the character and appearance of the Conservation Area could not be developed on the site with similar benefits.

Officers took a different view when the application to extend the time limits to implement planning permission P/2009/0281 was approved in September 2012. At this time, officers considered that the scheme would not have a significant impact on the Conservation Area, taking into account Section 12 of the NPPF. However, this pre-dated the appeal decision for the Gleneagles Hotel, which is a material consideration, and the policies of the new Local Plan. It also took into account guidance at the time, encouraging local planning authorities to take a positive approach towards 'extend the time limit' applications which improve the prospect of sustainable development being taken forward quickly. This has not happened in this case, as the scheme remains unimplemented.

4. Amenity Issues

The issues of overlooking and overshadowing have been raised as concerns by a number of local residents, particularly those living at Kirkham Court to the west. There are a number of windows on the west elevation of the proposed building, including 'habitable rooms', such as bedrooms and living rooms.

Officers are mindful that this issue was assessed for the previous applications and has not been raised as an issue by the Council before. The proposal has been re-assessed against Policy DE3 of the new Local Plan. Therefore,

Policy DE3 of the new Local Plan deals with development amenity. It states that 'All development should be designed to provide a good level of amenity for future

residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses'. Relevant criteria when assessing amenity issues include: 'Satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling' and 'Provision for useable amenity space, including gardens and outdoor amenity areas'.

A refuse bin area is proposed adjacent to the new building and, when considering the access and turning opportunities on the site, it is unlikely that commercial waste vehicles will be able to safely enter and exit the site. The expectation of providing individual domestic bins that are taken to curb-side presents its own problem in terms of the safety of wheeling bins down a relatively steep drive, the impact on highway users of bins left on the pavement and the temporary parking of the collection vehicles. The impact on the conservation area of street clutter of household bins is also a concern, as there is the potential for 23 households to be provided with inadequate collection potential on site.

In terms of the provision of useable amenity space, whilst the existing grassed area is sloping, it provides a relatively large area for the occupiers of the existing flats to use for recreation purposes or to dry clothes etc. Whilst some space will be left over behind the proposed new building the amenity area is greatly reduced whilst the number of units to which it will serve greater increased. Considering the topography of the site, the proximity of the space to the proposed building and potential shading from the building, officers do not consider that the residential amenity space is of sufficient quality to serve the amenity needs of both buildings. This issue should form part of the rationale for a revised design on the site.

In regard to other matters the quantum of development that is sought appears to, in-part, compromise the quality of certain residential units. To the front of the building the proximity of bedroom windows to the parking area is immediate with no defensible space to provide relief in terms of noise or light disturbance. Certain units will also be provided with car parking spaces with inadequate manoeuvring space behind them, notably spaces 10, 11 and 12 as referenced on plan.

5. Access and Impact on Highways

Comments received from the Council's Strategy and Project Delivery Team / Highway Department raise a number of highway issues.

Concern has been raised over the gradient of the proposed access the proposed driveway access would present a gradient of 1:7. The Council's Highway Design Guidance (2015) details that maximum allowable gradient is 1:8 and consideration on how to meet this should be explored.

In addition there is concern that commercial vehicles might not be able to access

the site and turn through 180 degrees and exit the site in a forward gear. The applicant should submit tracking diagrams to show this, in order to establish the likelihood of commercial delivery vehicles and/or waste collection vehicles could enter and service the site.

At present the gradient of the access does not meet Council highway standards and it has not been proven that large commercial vehicles could safely access and exit the site in a forward gear,

There is note that the previous permissions were agreed subject to s278 highway works to the junction of Southfield Road and Colley End Road, to slow the traffic in the interests of safety on a bend where vehicle movements in and out of a residential access would be increased. There is no apparent condition to enter in to a s278 highway agreement to achieve these works in the 2012 permission and therefore it is considered unsuitable to seek such works.

Until the above matters have been resolved the proposal is considered unacceptable on highway and movement grounds.

6. Car and Cycle Parking

The proposed level of car parking provision is considered by officers to be acceptable. 1:1 parking is proposed for the existing and new flats, and three spaces will be provided for the adjoining development site of three dwellings fronting Colley End Road. This level of provision accords with Policy TA3 of the new Local Plan, except provision is not made for commercial vehicles.

The Council's Strategic Project Delivery Team and Highway Department advises that one disabled parking space, is acceptable in the circumstances. The size of the space identified does not however meet the Council guidelines and is hence considered unacceptable.

In regard to parking although highway comments support the level of provision it is considered that the proposed disabled parking space is inadequate in terms of its size and also the manoeuvring space behind spaces 10, 11 and 12 is inadequate and does not accord with the 6m that is detailed in highway guidance. The parking layout and arrangement is considered unsatisfactory in terms of the space afforded the disabled space and the manoeuvring space to get in and out of certain spaces.

One safe covered and secure cycle parking should be provided for each unit and, although there is an identified space, it is unclear that the provision is sufficient

The proposal does include the provision of one electronic charging point, which is advised as necessary to accord with policy.

The current proposals are considered contrary to policy guidance and until these

matters are resolved the proposal is not considered acceptable on parking grounds.

7. Impact on Trees

There is a mature Cherry tree on the site to the west of the existing car park. Officers consider this to be an attractive feature of the site that should be retained and protected.

The Council's Arboricultural Officer considers the scheme is suitable for approval on arboricultural merit provided this tree is protected during construction and additional tree planting is provided as part of detailed landscaping proposals.

In terms of tree cover the site is largely absent of specimens and hence there is considered to be scope to increase the number of trees on the site. Scope is likely to be limited to the rear of the proposed building however, which will limit the wider prominence and visual amenity value of these.

These matters can be dealt with by condition if the application is approved.

8. Biodiversity

Whilst the Green Infrastructure Coordinator has questioned whether an Extended Phase 1 Habitat Survey should be submitted, as the site comprises an area of short amenity grassland and parking court, officers did not consider that this was a requirement when the application was submitted due to the absence of habitat value beyond grassed amenity lawn.

No information has been provided to show how biodiversity will be enhanced on the site in accordance with the NPPF and Policy NC1 of the new Local Plan.

Given the planning history of the site, officers consider this could be dealt with by condition if the application is approved, such as the incorporation of bird nesting and bat roosting sites into the built fabric of the building, and additional planting as part of detailed landscaping proposals.

9. Surface Water Drainage and Flood Risk

Since the previous applications were determined, the majority of land in Torbay has been designated a Critical Drainage Area (CDA) by the Environment Agency. New Local Plan Policies align with the CDA designation and the sensitivity of surface water management within Torbay and detail that development must maintain or enhance the prevailing water flow on-site. Policy ER2 iterates that all development should minimise the generation of increased run-off and outlines a drainage hierarchy.

Detailed drainage proposals must now form part of planning application submissions accordingly. These should investigate the practicality of sustainable drainage systems as a first priority, by undertaking infiltration testing of ground

conditions on the site.

In this case a Flood Risk Assessment (FRA) has been submitted. It states that 'The potential for adding to flood potential elsewhere in the town is significant and must be addressed prior to work starting on site. Sustainable drainage systems must be incorporated which will include the use of soakaways, self draining paving and soft landscaping to eliminate the potential for surface water to leave the site'. No further details are provided, including details of any infiltration testing of the site.

The FRA states that 'percolation tests will need to be undertaken in the areas likely to take any such soakaways and this is presently not possible due to existing use of the land...'. It goes on to say this should be covered by planning condition. No further information or justification is provided why infiltration testing cannot be carried out before planning permission is granted. Having visited the site, officers do not see any practical reason why infiltration testing cannot be carried out.

Therefore, officers consider that insufficient information has been provided to demonstrate that the proposal will not result in downstream flooding within the CDA. The application should therefore be refused in accordance with Policy ER1 and ER2 of the new Local Plan, and paragraphs 102 and 103 of the NPPF.

S106/CIL -

The contributions for the application are set out below, in accordance with new Local Plan Policies SS7 and the adopted Planning Contributions and Affordable Housing SPD and its Update 3.

Waste Management (Site Acceptability) =	£600
Sustainable Transport (Sustainable Development) =	£20,640
Education (Sustainable Development) =	£4,920
Lifelong Learning (Sustainable Development) =	£2,640
Greenspace and Recreation (Sustainable Development) =	£13,440
 TOTAL =	 £42,240

Justifications:

The waste management contribution is justified in paragraph 2.18 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policy W1. It will pay the costs of providing waste and recycling bins to the dwellings.

The sustainable transport contribution is justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and TA2. It will be used to pay for sustainable transport network enhancements in the local area for use

by future occupiers/visitors of the proposed development.

The education contribution is justified in paragraphs 4.40-4.46 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards funding projects at schools in Paignton as part of Children's Services Capital Programme. The dwellings will place additional demand on local schools and the contribution will ensure local schools are provided with funding to mitigate the proposed development.

The lifelong learning contribution is justified in paragraphs 4.47-4.51 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS10. It will be used towards the cost of improving provision at Paignton Library, including IT equipment. The dwellings will place additional demand on the services provided by Paignton Library and the contribution will ensure these services are provided with funding to mitigate the proposed development.

The greenspace and recreation contribution is justified in paragraphs 4.52-4.58 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6), and accords with new Local Plan Policies SS7 and SS9. It will be used towards improving maintenance, management and equipment at existing facilities within easy walking distance of the site. The dwellings will place additional demand on these facilities and the contribution will ensure these facilities are provided with funding to mitigate the proposed development.

Status

As officers are recommending refusal of the application, Legal Services has not been instructed to prepare a s106 agreement.

Conclusions

The principle of developing the site for housing is considered to be acceptable. However, notwithstanding the planning history of the site where applications for the same or similar development have been approved, officers consider the design of the proposed development to be unacceptable and would harm the character and appearance of the Conservation Area. The design lacks distinctiveness and the height does not fit in with the prevailing height of buildings in the area. It is considered that the benefit of providing new housing on the site does not outweigh the harm to the Conservation Area, as a result of the poor design. A lower density development could provide similar benefits without harming the character of the Conservation Area. Furthermore, it is considered that there is limited useable amenity space in the proposal to serve residents of the proposed flats and the existing flats adjoining the site. Therefore, the application should be refused in accordance with Policies SS10, DE1, DE3 and DE4 of the new Local Plan.

Insufficient information has been provided with the application to demonstrate that the proposal will not result in downstream flooding within the Critical Drainage Area. Furthermore, there is a lack of detail and justification within the submitted Flood Risk Assessment why infiltration testing of the site cannot be carried out before the application is determined in order to investigate whether a sustainable drainage system is feasible in accordance with local and national guidance. Therefore, the application should be refused in accordance with Policy ER1 and ER2 of the new Local Plan and paragraphs 102 and 103 of the NPPF.

In addition, the gradient of the driveway exceeds the maximum allowable specified in the Council's Highway Design Guidance (2015), insufficient information has been submitted to demonstrate commercial vehicles can access the site and the level of disabled parking, cycle parking, manoeuvring space and lack of provision of an electronic charging point, is contrary to policy guidance.

If Members consider that the application should be approved, officers should be instructed to secure affordable housing provision from the development, in accordance with policy, as well as other contributions to mitigate development impacts - as detailed in this report. In addition, the drafting of appropriate planning conditions should be delegated to officers.

Condition(s)/Reason(s)

01. The proposed development will not preserve or enhance the character of the Conservation Area contrary to Policy SS10 of the Torbay Local Plan 2012-2030. It fails to take the opportunities available for improving the character and quality of the area in accordance with paragraph 64 of the NPPF. The proposed design is not distinctive to the character of the area contrary to Policies SS10 and DE1 of the Torbay Local Plan 2012-2030. The proposal does not fit in with the prevailing building height of the locality contrary to Policy DE4 of the Torbay Local Plan 2012-2030. The benefits of the proposal do not outweigh the impacts of the scheme on the character of the Conservation Area. Furthermore, the level of useable amenity space is considered inadequate for the occupiers of the proposed flats and the existing flats adjoining the site contrary to Policy DE3 of the Torbay Local Plan 2012-2030.
02. There is a risk the proposal will result in downstream flooding from an increase of impermeable area on the site. The site is within the Critical Drainage Area and no details have been provided with the application to demonstrate that this will not be the case. The Flood Risk Assessment lacks adequate detail and justification why infiltration testing cannot be carried out to investigate whether a sustainable surface water drainage system is feasible on the site. Therefore, the proposal does not accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030, or paragraphs 102 and 103 of the NPPF.

03. The proposal fails to provide confirmation that the site can be safely serviced by large vehicles entering and exiting the site in a forward gear, and also fails to provide an access gradient in-line with Council standards and also fails to provide adequate disabled parking, cycle parking, manoeuvring space and electric car charging. The proposal is considered to conflict with Policies TA1, TA2 and TA3 of the Torbay Local Plan 2012-2030
04. No s106 agreement has been prepared to secure the necessary affordable housing provision or the necessary planning contributions, in accordance with the Council's Planning Contributions and Affordable Housing SPD, Policy H2 AND Policy SS7 of the Torbay Local Plan 2012-2030. The Local Planning Authority considers that it would be inappropriate to secure the required affordable housing and contributions by any method other than a legal agreement and therefore the proposal is contrary to Policies SS7 and H2 of the Torbay Local Plan 2012-2030.

Relevant Policies

- SS1 - Growth Strategy for a prosperous Torbay
- SS3 - Presumption in favour of sustainable dev
- SS7 - Infrastructure, phasing and employment
- SS8 - Natural Environment
- SS9 - Green Infrastructure
- SS10 - Conservation and Historic Environment
- SS11 - Sustainable Communities Strategy
- SS12 - Housing
- SS13 - Five Year Housing Land Supply
- SS14 - Low Carbon and Climate Change
- TA1 - Transport and accessibility
- TA2 - Development access
- TA3 - Parking requirements
- C4 - Trees, hedgerows and natural landscape
- NC1 - Protected sites - internationally import
- H1 - New housing on identified sites
- H2 - New housing on unidentified sites
- DE1 - Design
- DE2 - Building for life
- DE3 - Development Amenity
- DE4 - Building heights
- SC1 - Healthy Bay
- ES1 - Energy
- ER1 - Flood Risk
- ER2 - Water Management

Agenda Item 8

Application Number

P/2015/1050

Site Address

9 Sandringham Drive
Paignton
TQ3 1HU

Case Officer

Gary Crawford

Ward

Preston

Description

Replacement garage and side extension, loft conversion, alterations and extension to terrace (as revised by plans received 15.12.2015)

Executive Summary/Key Outcomes

The proposal is for a replacement garage and side extension, loft conversion, alterations and extension to the terraced area to the rear of the house.

The proposal is considered to be acceptable in this location and without any overriding detriment to residential amenity of neighbouring occupiers or the character or appearance of the locality. Consequently the proposal meets Local Plan policy requirements.

Recommendation

Approval

Statutory Determination Period

8 weeks, the determination date was 12th January 2016. However, this has been extended until 12th February 2016 to allow the proposal to be determined by the Development Management Committee.

Site Details

The application site is a detached and predominantly single storey dwelling located on the southern side of Sandringham Drive. The property has an existing attached side garage and terrace to the rear. The property is situated within a relatively spacious plot which has a splayed form. Ground levels on the site slope downwards from road level. This results in some underbuild at the rear of the property, which means that the ground floor terrace is elevated above ground level.

Detailed Proposals

The proposal is for the demolition of the existing garage and the erection of a side extension to include an integral garage with a hipped roof above and rear gable. The proposal also includes a loft conversion with three roof windows in the

front elevation, three roof windows in the rear elevation and two roof windows in each flank elevation. Further works include a 1.8m deep extension to the existing rear terrace and a 3.6m wide extension to the existing front porch to form a flat roof verandah. Revised drawings were received on 15th December 2015 to reduce the width of the front section of the garage by 0.3m.

Summary Of Consultation Responses

None

Summary Of Representations

14 representations of objection have been received. Issues raised:

- The form, scale, siting and design of the proposal are overbearing, oppressive and unneighbourly.
- Loss of privacy to neighbouring properties.
- Loss of daylight to neighbouring properties.
- The layout and siting of the proposal is inappropriate and unsympathetic to the appearance and character of the local environment and will dominate the nearby buildings.
- The proposal bears a poor relationship with the adjoining development and is out of keeping with the character of the neighbourhood.
- Overdevelopment of the site.
- The proposal would breach the conditions of a covenant relating to the properties in Sandringham Drive. Officer comment: These representations have been noted but the conditions of the covenant are not a planning matter.
- Loss of views. Officer comment: Representations regarding the loss of views have been noted but this does not constitute a planning consideration.

These representations have been sent electronically for Members consideration.

Relevant Planning History

None

Key Issues/Material Considerations

The key issues to consider in relation to this application are the impact the proposal would have on the character and appearance of the existing property and streetscene, the impact on the amenity of neighbouring properties and, the impact of the proposal on bats and nesting birds.

Impact on the character and appearance of the existing property and streetscene

The host property is a 1950s detached bungalow with an attached flat roof garage to the side and front driveway. The property has a hipped roof with a

single storey forward projecting gable. The property features an existing rear terrace which is 1.8m deep and 6.5m in width, and, a flat roof front porch which is 1.3m deep and 1.6m in width. The neighbouring properties consist of detached bungalows on the southern side of Sandringham Drive and, two storey semi-detached and detached properties on the opposite side of Sandringham Drive. Many of the neighbouring bungalows on the southern side of Sandringham Drive have existing alterations to their roofs including the addition of rooflights, hip to gable extensions and front dormer windows. In many cases the insertion of rooflights and hip to gable roof alterations are permitted development and do not require planning permission.

Representations have been received with regards to overdevelopment of the site and, the impact of the proposal on the character and appearance of neighbouring properties and the streetscene. The host property has an existing attached garage which is 3.1m wide and is set 4.8m back from the main front elevation of the dwelling. The proposal involves the erection of a side extension which would be 3.6m in width and, flush with both the front and rear elevations of the main property with a hipped roof above. Policy DE1 (Design) of the Torbay Local Plan 2012 - 2030 states that development proposals should acknowledge local character. Whilst flat roof side garages are a characteristic of the bungalows on the southern side of Sandringham Drive, the proposed hipped roof would respect the character and appearance of the existing dwelling and neighbouring properties by matching their hipped roof form. Furthermore, the proposed hipped roof above the new garage would maintain a visual gap at first floor level between the application site and No.11 Sandringham Drive. In addition, the proposed new garage would provide the occupiers of the host building with a more useable garage which complies with the minimum internal garage dimensions as specified in Appendix G of the Torbay Local Plan 2012 - 2030.

Although the proposed side extension would be located only 0.3m off the side boundary with No.11 at its closest point, given the size of the plot, the splayed layout of the plot and the relatively small increase in footprint, it is considered that the proposal would not be an over-development of the site.

It is acknowledged that the proposal would alter the character of the existing property and streetscene. However, given that the proposed hipped roof would match existing roof form of the host building and neighbouring properties, a visual gap at first floor level would be maintained and the existing alterations to neighbouring dwellings, it is considered that the proposal would not result in a significantly harmful impact upon the existing property and streetscene.

The proposal includes a rear projecting gable which would be 5.7m in depth and 7.2m in depth. Whilst the proposed rear gable is considerably bulky in terms of its width, the roof form would match the existing roof and it does result in a coherent roof form. In addition, a similar rear gable extension has recently been approved at No.5 Sandringham Drive (P/2015/0316) and No.11 has an existing rear gable

dormer window. It is therefore deemed that the proposal would not result in a significantly detrimental impact on the character and appearance of the existing property and wider locality.

It is considered that, on balance, the design of the proposal is acceptable in terms of its impact on the character and appearance of the existing property and wider locality, and is consistent with DE5 (Domestic extensions) of the Torbay Local Plan.

Impact on the amenity of neighbouring properties

Whilst the proposed side extension would be located 0.3m off the side boundary with No.11 at its closest point, No.11 has an attached side garage adjacent to the boundary with No.9. Furthermore, the plots of both Nos.9 and 11 are splayed. The nearest ground floor window in the south east elevation of No.11 would be over 6m from the side boundary with No.9. Therefore, given the position of the garage at No.11, the splayed layout of the plots, and, the distance of over 8m between the nearest ground floor window at No.11 and the proposed side extension at No.9, it is considered that the proposal would not result in an unacceptable overbearing impact upon the ground floor windows at No.11. There would be a minimum distance of over 5m between the first floor side facing roof light at No.11 and the proposed hipped roof at No.9. Due to this distance and the slope of the proposed hipped roof away from the boundary with No.11, it is deemed that the proposal would not result in an unacceptable overbearing impact upon the side facing roof light at No.11. Given the relatively large rear garden at No.11 and the distance of the proposed side extension from the side boundary with No.11, it is considered that the proposal would not be significantly overbearing upon the rear amenity area of No.11. The proposal would not result in any harmful overbearing impacts upon No.7 Sandringham Drive.

In terms of loss of privacy, there are views to the rear gardens of both Nos. 7 and 11 Sandringham Drive from the existing rear terrace. It is considered that the proposed extension to the rear terrace at No.9 would not result in any worse overlooking or loss of privacy impacts to the neighbouring rear gardens than the existing situation. Whilst there are two roof lights proposed in both flank elevations of No.9, the roof lights would be positioned approximately 1.8m above the finished floor level, above eye level and therefore they are not considered to have a detrimental impact to residential amenity by loss of privacy.

With regards to loss of light, given the distance of over 6m from the nearest ground floor window in the south east elevation of No.11 and the side boundary with No.9, it is considered unlikely that the proposal would result in any harmful loss of light or overshadowing impacts to No.11. The proposal would not result in any harmful loss of light impacts upon No.7.

The proposal is therefore deemed to have an acceptable impact upon the amenity of neighbouring properties.

Impact on bats and nesting birds

The application has been accompanied by a written Assessment for bats and nesting birds by a licenced Ecological Consultancy (Licence Numbers 2015-11658-CLS-CLS, 2015-6672). The site was inspected internally and externally and the written assessment concluded that:

1) No evidence of use by bats was found within the roof or around the outside of the building.

2) No evidence of use of the property by nesting birds.

3) No signs of use by any other protected species.

In terms of its impact on bats and nesting birds, the proposal is therefore acceptable.

Conclusions

In conclusion, the proposed development would not harm the appearance and character of the area or have an adverse effect on the amenity of nearby occupiers, therefore the proposed development is considered to be appropriate for planning approval, having regard to all national and local planning policies and all other relevant material considerations.

Recommended condition:

Surface water drainage shall be provided by means of soakaways within the site.

Relevant Policies

DE1 - Design

DE3 - Development Amenity

DE5 - Domestic extensions

NC1LFS - Biodiversity and Geodiversity

ER1 - Flood Risk

TA3 - Parking requirements

Application Number

P/2015/0939

Site Address

Wheatridge Lodge
Wheatridge Lane
Torquay
Devon
TQ2 6RA

Case Officer

Mr Scott Jones

Ward

Cockington With Chelston

Description

Detached double garage with workshop and storage above to rear of property (as revised by plans received 16.12.2015).

Executive Summary / Key Outcomes

The proposal seeks to provide a double garage with workshop/storage space above to the rear of a large dwelling off Wheatridge Lane, with an access created on to the residential development from Woodleys Meadow.

The proposal is considered a suitably scaled and designed building in the context of the plot and wider area, with limited visual harm.

The impact upon neighbour amenity from the provision of an ancillary domestic outbuilding to the rear of the plot is considered limited and the retained trees will limit loss of privacy and overlooking from the roof void windows and any occasional use of this area.

The access and highway matters are considered acceptable subject to detail on an improved visibility splay.

Impact upon surface water, trees and ecology are considered acceptable subject to conditions to secure appropriate development.

Recommendation

Conditional Approval.

Determination period

Extension agreed until 12.02.16 to permit revised plans to be submitted, advertised and considered.

Site Details

The site holds a large two-storey detached dwelling set off the east side of Wheatridge Lane, Torquay, where the building is currently accessed via a short level drive and steps down to the main entrance.

The dwelling is contained within the front half of the plot and to the rear there is generous private garden space that are largely laid to lawn interspersed with a handful of mature trees. Borders are defined by a mixture of fencing and hedging. There is a gentle slope in the garden level away from the property from west to east.

The rear border of the plot abuts a public right of way that links Wheatridge Lane with Woodleys Meadow. This links further east to Torbay Road where it emerges between South Sands and Corbyn Lodge.

There are no built or landscape designations over the land or land immediately adjacent.

Detailed Proposals

Detached double garage with workshop/storage space set to the rear of the dwelling with a proposed new access on to Woodleys Meadow.

Following revised plans received 16.12.2015 the proposal is for a simple gabled building with rendered walls under a red concrete tiled roof inset with roof lights.

The principal outward elevation will hold two garage doors with a side window and there are further window or door openings within both the side elevations and the rear elevation.

The building is 8.5m wide by 7.2m deep with a height of 2.3m to the eaves and 6.3m to the top of the central ridge. The roof is pitched at 45 degrees.

There will be a degree of excavation to provide a level finish which will require a retaining wall circa 1m high to the rear of the building to contain the garden. A mature fir tree will be removed as it sits within the footprint of the proposed building.

The connecting drive and entrance is approximately 5m wide

The proposal is a simplified design to that originally submitted and the application has been re-advertised to permit public comment on the revised drawings.

Summary Of Consultation Responses

Highways Department Recommend that the applicant make allowance for a 2m visibility splay exiting the new access, on the south-west side, for the safety of pedestrian movement.

Drainage The submitted Flood Risk Assessment outlines that soakaways have been discounted due to site constraints. The alternative surface water management proposal incorrectly states that the Critical Drainage Area

designation relates only to watercourses and incorrectly assumes a discharge rate of 5 l/s. Controlled discharge is acceptable however the stated discharge rate is unacceptable. The applicant should demonstrate that the surface water drainage system should not result in any increased risk of flooding for the 1 in 100 year storm event plus a 30% allowance for climate change.

Arboricultural Officer The vegetation on site is not protected by a Tree Preservation Order or Conservation Area designation. Mature and visually prominent the trees on the site do not qualify for protection, which informs that the trees are not a constraint to the development.

Green Infrastructure Officer Removal of vegetation suitable for bird nesting should be undertaken outside of the bird breeding season or immediately following due assessment by a suitably qualified ecologist. Enhancements for ecology should be achieved through bird and bat boxes, details of which could be achieved by condition.

Summary Of Representations

A number of representations received following both periods of public consultation. The key issues raised include:

- Impact of additional highway movement through Woodleys Meadow
- Impact/conflict with pedestrians using the footpath
- Overdevelopment
- Visual impact
- Impact of additional parking in Woodleys Meadow
- Noise impact from the workshop
- Appears a building designed for residential use
- Impact of vehicles across the land adjacent
- Impact from business use of the building
- Loss of privacy from inter-looking

These representation have been sent electronically for Members consideration.

Relevant Planning History

None.

Key Issues/Material Considerations

With consideration of the proposal and the context the key issues and material considerations are;

1. Use of the outbuilding and principle
2. Visual impact
3. Impact upon adjacent occupiers / amenity
4. Highway / movement impact
5. Drainage / flood risk

6. Trees

7. Biodiversity and protected species

1. Use of the outbuilding and principle

The proposal is for a double garage with workshop and storage space in the curtilage of a dwelling.

A number of public representations raise concern in regard to potential business use of the workshop or potential use of the building as habitable space and the impact of these uses. The proposal is however one for garage parking with workshop / storage space above, which are considered incidental to the dwelling house and should be considered as such.

The provision of domestic garaging and ancillary workshop and storage space, for the purposes that are incidental to the occupation of the dwelling house, is considered to be appropriate form of development in the residential context. Incidental uses are those considered of minor, casual or subordinate nature to the occupation of the main dwelling house and hence by their very nature are likely to sit comfortably in the residential context with little impact.

In order to provide clarity on the use and ensure an appropriate form of development it is recommended that a condition of use be attached to a grant of permission to ensure the building is used for the purposes that are incidental to the occupation of the main dwelling house and is at no time used for business or independent habitable purposes.

In-line with the points above the principle of the proposed building and its use is considered to comply with relevant criteria of Policy DE1 and DE3 of the Torbay Local Plan 2012-2030.

2. Visual impact

The proposal is considered acceptable in regard to the likely visual impact.

In terms of scale, the building will clearly sit as a subordinate garage outbuilding set in the relatively spacious grounds of a large dwelling. The building will not cramp or overdevelop the plot as substantial garden space will be retained and the overriding open and spacious character protected.

In terms of the design, the simple gabled form reflects the local character, as well as the palette of materials which is a simple mix of render under concrete tiles. There are a number of detached double garages within the Woodleys Meadow development and a number of these are gabled detached buildings. The predominant scale of the garages within Woodleys Meadow is slightly smaller than the scale of the proposal, as they are generally around 6m by 6m, however the plots in which they sit are themselves smaller. The larger scale of the proposed garage to those found within Woodleys Meadow is considered

appropriate considering the scale of the plot in which it will sit and also its slight detachment from the modern development due to its location. The steep 45 degree pitch is similar to the garage structures that are present in and around the approach through Woodleys Meadow.

The alteration to the boundary to permit access to the garage is unlikely to alter the character or appearance of the area. It is noted that there appears a vehicular access already established to the south of the head of the public right of way off the rear of the plot of St Regulus which also fronts Wheatridge Lane. It is recommended that the detail of the boundary access is achieved by condition to ensure an appropriate form of development that protects visual amenity.

Having considered matters of scale, design and setting the proposal is appropriate within the context and retains the domestic open character and appearance of the area. The proposal is considered to comply with the aims and objectives of Policy DE1 of the Torbay Local Plan 2012-2030.

3. Amenity impact

The proposal is considered acceptable on amenity grounds.

The provision of domestic garaging with secondary workshop/storage space above, which is incidental to the occupation of the associated dwelling, is unlikely to demonstrably affect neighbour amenity in terms of noise and general activity. By their very nature the uses proposed are in character with a residential context.

The scale and height of building would not result in an overbearing structure that would result in undue loss of outlook or light.

In terms of overlooking and loss of privacy the upper floor void space is to be served by four roof lights and with windows within each side gable. The impact of these will be discussed in turn below, within the context that occasional incidental use of the roof space is likely to limit the degree of potential impact.

The north-east gable window is in close proximity to the boundary and should be obscured to protect amenity. The south-west gable window is not considered to introduce undue harm on amenity due to the distance to other plots and buildings. The south-east roof lights that face towards Woodleys Meadow are considered to retain suitable levels of privacy subject to the retention of tree screening. The north-west elevation is slightly orientated towards the boundary with an adjacent property however again there is retained screening that will limit over-looking.

Subject to a condition on obscure glazing within the north-east gable, and the retention of the trees indicated or the provision of obscure glazing within the relative roof lights, the building and its use would not result in undue harm on neighbour amenity.

The development is considered to retain suitable levels of amenity subject to condition and complies with Policy DE3 of the Torbay Local Plan 2012-2030.

4. Highway and movement impact

The proposal is considered acceptable on highway and movement grounds.

The proposal provides ancillary parking to the dwelling and a new access across a public right of way on to the highway network within Woodleys Meadow.

The proposed garage parking accords with policy guidance in terms of the minimum depth and width of the enclosed spaces provided. In combination it will provide parking on site above the standard expected requirement for dwellings (2 spaces), however the dwelling and plot is relatively large and the resultant provision is not considered uncharacteristic for a large dwelling.

The proposal will result in a vehicular access across a public right of way. Subject to detail on an access solution that includes the provision of a visibility splay it is unlikely to increase the danger to pedestrians and other highway users. This is aligned with advice from the Highway Department. It is noted that there is a rear vehicular access off a nearby property on the other side of the head of the pedestrian route.

The level of parking and the proposed access is considered acceptable (subject to further information about the visibility splay) and the proposal is considered compliant with Policies TA2 and TA3 Torbay Local Plan 2012-2030.

5. Drainage

The proposal is considered acceptable on drainage grounds subject to a condition.

The proposal suggests surface water connection to the public sewer. This is considered acceptable where soakaways are shown to be unachievable, and then it should be at a controlled rate of discharge in-line with appropriate Greenfield run-off rates.

The response of the Authority's Drainage Department supports the conclusion above and greater detail is required on the attenuated and controlled discharge of surface waters.

Subject to condition aligned with the above the proposal is considered aligned with the aims and objectives of Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

6. Trees

The proposal is considered acceptable on arboricultural merit.

There are no protected trees within the site and the site does not lie within a conservation area.

The removal of the fir tree has been considered by the Council's arboricultural officer and although visually prominent it is not considered worthy of protection and is hence is not a constraint to development.

There are retained trees in close proximity to the proposed building and hence it is considered appropriate to seek further detail on proposed protection measures during the construction period. This should be achieved through condition, certainly as they afford amenity screening.

With a condition relating to the above the proposal is considered acceptable in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

7. Biodiversity and protected species

The proposal is considered acceptable in terms of biodiversity and protected species.

The removal of the fir tree or scrub that may hold nesting value should be undertaken outside of the bird nesting season (March -September inclusive), unless previously inspected and found absent of nests by a suitably qualified ecologist. This should be a condition of a grant of consent.

Mitigation in terms of bird and bat boxes should be provided to counter the loss of the large tree as a potential nest or roost location. Details of mitigation should be considered by a condition to the grant of consent.

With the matters above addressed the proposal is considered comfortably aligned with the aims and objectives of Policy NC1 of the Torbay Local Plan 2012-2030.

S106/CIL

N/A.

Conclusions

Having considered the aims and objectives of relevant planning policy guidance and other material considerations the proposal is considered acceptable on planning merit.

The application is recommended for approval subject to conditions on use, management of surface water drainage, tree protection measures and nesting/roosting mitigation, obscure glazing and retained natural screening, and boundary and visibility splay detail.

Condition(s)/Reason(s)

01. The ground floor of the building hereby approved shall be used solely for the purposes of the parking of vehicles incidental to the occupation of the main dwelling house, and the upper void space shall only be used for uses incidental to the occupation of the dwelling house. At no time shall the building be used for business or habitable purposes.

02. Prior to the commencement of development details of a proposed surface water management system for attenuation and controlled discharge in to the Public Sewer shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.

03. Details of the proposed boundary and entrance detail, which shall include a visibility splay detail to improve sightlines to the west when exiting the site, shall be submitted and approved in writing. The development shall be carried out in accordance with the approved details.

04. The removal of scrub or trees, which have a potential as habitat for nesting birds, shall be undertaken outside of the bird nesting season (March-September inclusive). The removal of such habitat within the bird nesting season shall only be considered immediately following a survey by a suitably qualified ecologist that confirms the absence of nesting birds. Prior to the first use of the building details of proposed bird and bat boxes, to include their location, shall be submitted and approved in writing in order to ensure suitable ecological mitigation / enhancement.

05. The external material finish shall match, in form and colour, those of similar elements found within the main dwelling house.

06. The gable window within the north-east elevation shall be obscure glazed. Should the screening trees north or east of the building be removed, die, or be managed in a way that alters their character and value as a screen that limits inter-visibility, obscure glazing shall be provided within the roof-lights within the corresponding roof slope.

Informative(s)

01. Prior to the commencement of development the applicant is advised to consider the right of vehicular access over the land that lies immediately adjacent to the plot and the public highway to the east.

Relevant Policies

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Application Number

P/2015/1144

Site Address

17 Morgan Avenue
Torquay
TQ2 5RP

Case Officer

Mr Scott Jones

Ward

Tormohun

Description

Change of use from offices (class A2) to holiday hostel (Sui Generis)

Executive Summary/Key Outcomes

The application site includes a substantial semi-detached Victorian property on the northern side of Morgan Avenue adjacent to the Central Church. The building has previously been used for offices and is currently vacant.

The site is within the Tormohun Conservation Area and is on the edge of the designated Town Centre (Torquay).

The Proposal is to change the use of the building from offices to a holiday hostel (Sui Generis Use).

The use of the building as a holiday hostel is considered appropriate in the context of its central location with good access to shops, services and transport links, in a street with a mixed residential character.

The impact upon local amenity is considered acceptable subject to implementation of the submitted management practices, which establishes maximum guest numbers, on-site management, neighbour notification and expected code of conduct for guests. The application site is in a busy edge-of-town location which itself brings a degree of natural activity and ambient noise, which is a consideration in the determination of the application.

There have been several representations and a split between support and objection to the scheme. Concern includes that it will be a HMO (House in Multiple occupation) by another name and would affect the amenities of the area and adjacent occupiers. Support is focused on the opinion that so long as it is a holiday use then it would enhance Torbay's holiday sector.

Subject to conditions on use, management and operation, and a register of occupancy, the proposal is considered acceptable being an appropriate tourism related use within a central location.

Recommendation

Conditional approval; Subject to a monitoring fee achieved via an upfront payment or secured via a S106 legal agreement.

Statutory Determination Period

8 weeks / Extension of time agreed until 12.02.2016 to allow the application to be considered by the Development Management Committee.

Site Details

The application site is a substantial semi-detached Victorian property set on the north side of Morgan Avenue (Torquay) opposite the Central Church. The building has a residential character but has previously been used for offices.

The site is outside but adjacent to the identified Town Centre in the Torbay Local Plan. It sits in the boundary of the Tormohun Conservation Area and is within a Community Investment Area as designated within the Torbay Local Plan.

The building is set behind a low stone frontage with a small amount of space between it and the public highway. To the rear there is parking laid over an expanse of hardstand up to the conservatory that sits off the rear, which is accessed off Higher Union Lane.

There are three floors of habitable space with rooms present in the roof

Detailed Proposals

The proposal is for the change of use of an existing building from offices to a holiday hostel.

The proposed layout details 10 rooms for occupancy, which includes a managers' room on the second floor and a staff occupancy room for live-in cleaners.

It is proposed that there would be 3 double bedrooms, 3 family rooms each containing a double bed and two sets of bunk beds, and 2 dormitories each with 3 sets of bunk beds. In addition there would be a managers bedroom and a staff bedroom that would accommodate 4 members of staff.

The application is accompanied by a management and operations plan that details ownership and management, general operations and a code of conduct for guests.

Summary Of Consultation Responses

Community Safety Officer: The general character of the use could potentially impact on the adjacent premises and immediate area through late night gatherings around the building and resultant noise and nuisance from this. Good management is likely to permit the business to co-exist with its neighbours

without undue harm to amenity.

It is recommended that a management plan be a condition to any grant of consent and that the condition should require this to be regularly reviewed in conjunction with the Local Planning Authority in order to provide a format to address any apparent impact.

Housing Officer: Suggest that if granted the permission should restrict occupation for no longer than a defined time. 90 days is often referred to as a tipping point for permanence of occupation, others leave it up to interpretation. It is noted that a person staying somewhere when they have no other address is classed as occupying residentially regardless of length of stay. It is advised that some form of evidence that a person 'lives' elsewhere such as requiring the manager to keep a record of occupants permanent address and contact details.

Summary Of Representations

There have been several representations that offer both support and objection to the scheme.

Concern includes that it is a HMO (House in Multiple occupation) by another name and the use would affect the amenities of the area and adjacent occupiers. Support is focused on the opinion that so long as it is a holiday use then it would support and enhance Torbay's holiday sector.

These representations have been sent electronically for Members consideration.

Relevant Planning History

None.

Key Issues/Material Considerations

The main issues are:

1. The Principle of the proposed use
2. Tourism policies / impact
3. Impact upon local amenity and management of the premises
4. Highway and parking impact

1. The principle of the proposed use

The proposed use is considered an appropriate use for the building.

Morgan Avenue is largely residential in character with a mix of single dwellings, sub-divided buildings offering flats, holiday flats, guesthouses, houses in multiple occupation and hostels. The proposed use of the building as a holiday hostel will sit comfortably in the locality where there is a mixed occupancy and residential character within the street.

In regard to the wider context the proposed use is also considered complimentary to the Town Centre, which it sits close to. The use will provide a degree of employment through its management and general upkeep, which supports the role of the town centre as a focal point for employment and economic uses. The use will support the viability and vitality of the Town Centre by locating holidaymakers in a sustainable central location close to shops, services and attractions.

The site lies within a Community Investment Area (CIA) and Policy SS11 (Sustainable Communities) outlines that proposals that regenerate or lead to the improvement of social, economic or environmental conditions, particularly in CIAs, will be supported. The proposed use is considered comfortably aligned with the Policy aims of SS11.

The proposed use is considered to sit comfortably in the context of the street and town centre, and Community Investment Area.

2. Tourism policies / impact

The provision of a tourist accommodation is a key factor and Local plan Policy infers that the provision of holiday accommodation (subject to other policies) is generally supported. Policy TO1 (Tourism, events and culture) identifies that the development and growth of tourism accommodation and facilities should be encouraged, and the provision of a holiday hostel is considered compliant with the broad goals to develop and expand this important sector of Torbay's economy.

Representations largely support the notion of providing holiday accommodation however objection is also raised citing that this is a House in Multiple Occupation (HMO) by the back door. The proposal is not for an HMO and proposed conditions will prevent any use as an HMO.

Subject to conditions that provide clear parameters for the holiday occupancy of the building and its appropriate management, the proposed use is considered to sit comfortably in the context of the street and town centre and is aligned with Local Plan Policy TO1 .

3. Residential Amenity

The proposal is considered acceptable in terms of its impact upon local amenity.

The proposed use is considered to be comfortably aligned with the mixed residential character in the locality where there are guest houses, dwellings, flats, HMOs and hostels present.

The impact upon adjacent occupiers is a key material consideration and Community Safety have noted that a holiday use such as this may result in late night gatherings outside of the building that may harm local amenity by way of

noise and disturbance.

The application is supported by a management and operations plan for the building that seeks to provide the controls for a neighbourly operation with limited impact. The proposals include maximum occupancy numbers and the level of staff, including a live-in manager, the closure of the kitchen and conservatory areas by 11pm, a code of conduct for guests and implications for disruption or poor behaviour. The statement also identifies that neighbours within a 50m radius will be provided with contact details of the management.

Community Safety have advised that good management is likely to permit the use to co-exist with its neighbours. Officers have recommended that any grant of permission should be subject to a condition on the operation of a management plan and importantly this should include a process of review with the Local Planning Authority in order to provide opportunity to respond and act on any apparent issues with the operation and its impact.

As the building is within a relatively central location and in an area with a mixed form of occupancy, harm to local amenity is likely to be limited. The internal use of the building is unlikely to present undue impact and there is very limited outdoor recreational area, which is likely to limit the potential for external noise and nuisance.

The proposal is not considered to result in any significant detriment to neighbouring amenity and is considered an appropriate use.

The proposal is considered to comply with Policy DE3 (Development Amenity) of the Torbay Local Plan.

4. Parking and movement

The proposal is considered acceptable in terms of the highway and parking impacts.

The proposed use is considered likely to generate less vehicular movement in and around the site due to the suggested nature of the business. Back-packers are likely to choose public transport to move from destination to destination and hence the use is likely to be largely car-free environment in terms of its guests.

With the pressure on parking likely to be reduced compared to the current office use the proposal is considered acceptable in terms of its highway and movement impact.

S106/CIL -

As the use is considered to require ongoing monitoring by the Local Planning Authority it is recommended that a monitoring contribution is secured prior to the grant of permission via an upfront payment or signed S106 legal agreement.

Monitoring Fee: £500

Conclusions

In conclusion, subject to the provision of an on-site resident manager, a 3-month limit on occupancy, the provision of a register of occupancy to be made available for inspection by the Local Planning Authority when requested, and enactment of the submitted management plan, the proposal is considered acceptable in relation to Local Plan policies, being an appropriate tourism related use and without detriment to the Town Centre, residential amenity or highway safety.

As the use is considered to require ongoing monitoring by the Local Planning Authority it is recommended that a monitoring contribution is secured prior to the grant of permission via an upfront payment or signed S106 legal agreement.

Condition(s)/Reason(s)

01. The managers bedroom within the building, as indicated within the plans hereby approved, shall at all times remain occupied by a resident manager or person/persons in charge of and responsible for the operation of the holiday hostel at all times.

02. The use of the building hereby approved shall at all times be for holiday purposes only. The building shall not be occupied for more than three months in any calendar year by any individual occupant, group of individuals or family and shall not be occupied as a main place of residence. The owner, manager or person/person's in charge of the building and responsible for the operation of the holiday hostel shall at all times maintain an up to date register of the details of all occupiers, including names and main home addresses, which shall be made available for inspection by the Local Planning Authority at all reasonable times.

03. The holiday hostel shall be run strictly in accordance with the Management and Operations Plan hereby approved, which shall be formally reviewed by the operator in conjunction with the Local Planning Authority every two years from the date of the grant of planning permission, unless otherwise submitted to and approved in writing by the Local Planning Authority.

Relevant Policies

SS11 Sustainable Communities Strategy
TO1 Tourism, events and culture
TC1 Town Centres
DE3 Development Amenity

Application Number

P/2015/1230

Site Address

North Quay Slipway
Vaughan Parade
Torquay
Devon

Case Officer

Mrs Ruth Robinson

Ward

Tormohun

Description

Erection of Coffee Kiosk for temporary 2 year period: April to October in summer location adjacent to the existing seafood kiosk and November to March in winter location adjacent to top of slipway.

Executive Summary/Key Outcomes

This application is for re-siting of the existing kiosk, currently located on The Strand within the Torquay Harbour Conservation Area. Two new locations are proposed: A 'summer time' location at the top of the slipway adjacent to the existing seafood kiosk on Vaughan Parade and a 'winter time' location on the opposite side of the slipway closer to main pedestrian areas on the Strand. The proposal is for a two year period only.

This kiosk, which was erected without planning permission in its current location, generated a significant level of objection when constructed and an application to erect a purpose designed permanent structure in its place was refused by Development Management Committee (DMC) at its meeting of the 10th August.

The reasons for refusal related to the dominance of the proposed structure which was significantly larger than the existing kiosk, its impact on important views of the harbour and the wider Conservation Area, on the key public realm on which it was sited and the fact that it would inhibit the implementation of public realm improvements along The Strand as included in the adopted Torquay Town Centre Master Plan.

It was recommended at DMC that an alternative scheme be investigated and a three month period was allowed for resolution of the matter. This period of time expired in November 2015. No action was taken to secure removal of the structure as good progress was being made to identify an alternative scheme.

The Officer report to DMC described the existing kiosk as utilitarian and unacceptable in terms of its impact on the Conservation Area. However, the new location(s) are more discrete and less central to public views across the Harbour. This helps overcome the impacts outlined above. However, whilst the kiosk is not

acceptable as a permanent feature in the townscape it is considered acceptable on a temporary basis as any harm is limited, short-lived and reversible. This will allow the business to continue pending the agreement of a more long term strategy for the disposition of catering outlets around the harbour, as part of the Council's Masterplan delivery work.

As such the proposal constitutes less than substantial harm which can be justified against the contribution made to the vibrancy of the harbour.

Recommendation

Approve, subject to conditions controlling hours of use and to ensure it complies with the summer and winter periods of occupation which comprises April to October in the summer location adjacent to the existing seafood kiosk and from November to March in the winter location on the opposite side of the slipway. A condition is also necessary to secure its removal at the end of the two year period.

An informative should be added to the decision notice to make it clear that due to the appearance of the kiosk, its retention beyond the two year temporary period is unlikely to prove acceptable.

Statutory Determination Period

The application should be determined within 8 weeks expiring on the 11th February.

Site Details

The application relates to two rectangular areas of land located at either side of the slipway from the harbour on Vaughan Parade. This comprises a summer location (March to October) adjacent to the existing sea food kiosk on Vaughan Parade and a winter location (November to March) on the opposite side of the slipway. The sites are located within the Torquay Harbour Conservation Area and the slipway and adjacent Vaughan Parade are Grade II listed.

Detailed Proposals

The application is for the relocation of the existing kiosk from The Strand to this new position. The hours of opening are 8.00-23.00 hours.

The summer/winter options arose as the best options, within the Harbour area, and are adjacent to the existing seafood kiosk. However the applicant had concerns that during the winter months this would be isolated from the main areas of footfall and so requested that a winter location closer to the bus stops be considered.

Summary Of Consultation Responses

Historic England: Do not wish to comment and prefer the assessment to be based on local policies.

Conservation Officer: Considers the revised location a better option in terms of the impact on key views of the Harbour and is acceptable due to its temporary nature.

Environmental Health Officer: Would like to see hours of operation restricted to 23.00 to avoid impact on residential amenity.

Environment Agency: Has no objection subject to the flood resilience measures outlined in the submitted flood risk assessment being implemented.

Drainage Engineer: Has no objection subject to compliance with flood resilience measures.

South West Water: Has no objection.

Summary Of Representations

5 letters of objection have been received. Concerns relate to the poor quality appearance of the kiosk, the impact on views of the Harbour, the adverse impact on the character of the Harbour, the impact on existing businesses, impact on views from adjacent premises and lack of toilet and washroom facilities.

6 letters of support cite the contribution the business makes to the level of activity and improved 'buzz' in the harbour.

Relevant Planning History

The existing kiosk on The Strand was erected without planning permission.

P/2015/0589: Replacement of kiosk with a larger permanent structure for sales of coffee and refreshments: Refused: 20.08.15 with recommendation that enforcement action be held in abeyance for 3 months to identify an alternative scheme.

Key Issues/Material Considerations

Principle and Planning Policy -

The Torquay Harbour Conservation Area is the most architecturally significant and diverse of all of the Conservation Areas. The Harbour has listed quay walls and is often described as the 'jewel in the crown' making it one of the most valuable elements within this rich and varied townscape. The need to protect the character of the harbour, key views of it and its contribution to the quality of the townscape is a key policy requirement.

Policy SDT2 of the Adopted Local Plan 'Torquay Town Centre and Harbour' explains the area will be a major focal point for tourism, shopping and leisure but that this must be carried out in a way that conserves the area's historic character

and environmental value. Policy SS10 is relevant in ensuring that schemes are designed to the highest quality and that development is sensitive to its context in terms of its position in the Conservation Area and in relation to nearby listed buildings.

Proposals for development have to be measured against these policy requirements to ensure that increased vitality of the area is encouraged whilst mindful of the need to protect the quality of the environment.

There are a number of key issues to be balanced in reaching a determination on this application. These are the contribution that the successful operation of the kiosk has had on the vitality of the area weighed against the impact of its location in terms of impact on views, listed buildings, the Conservation Area and the quality of the public space. It is clearly beneficial to try and encourage its continued presence in the locality but in a more discrete location and for this reason officers were tasked with identifying a more suitable scheme to come forward.

There is good progress on work to deliver key projects and improvements identified in the Torquay Town Centre Master Plan. As part of this opportunities for 'designed in' catering outlets will be examined and may present an opportunity for a permanent facility to be included in this area.

For this reason it is considered that a temporary two year period of occupation for the existing kiosk in the new location represents a more pragmatic way forward. The summer location adjacent to the existing seafood kiosk is more discrete in terms of views and whilst the slipway is listed, as is the adjacent terrace on Vaughan Parade, the provision of a functional structure does not look as out of place as the current position perched on former seating and planting beds. Whilst the winter location is less acceptable in terms of the impact on the historic character of the Harbour, this is only for four months of the year and the applicant contends that closer proximity to the areas of greater footfall in quieter months is important to the continued success of the business. It is considered that as any 'harm' is minimal, reversible and short-lived the benefits of economic activity and added vibrancy offer adequate mitigation.

Will this development adversely affect Local Businesses?

Objections have been received from nearby businesses concerned at the increasing competition and the 'unfair' advantage that this scheme would enjoy in terms of lower operating costs. It is not a function of the planning system to intervene in competition; this is properly a matter for the market.

Can the amenity impacts of the scheme be properly controlled?

The obvious impacts on the local environment can be controlled through conditions to ensure that litter and waste is properly managed and that hours of operation are confined to those regarded as necessary by the EHO.

S106/CIL -
N/A

Conclusions

It is considered that the revised location is acceptable in terms of impact on views and on the quality of the public realm.

The existing kiosk, whilst of a utilitarian appearance, will not look out of place in this more discrete location adjacent to another similar structure. However given its appearance, such a proposal would be more difficult to accept as a permanent proposition given its prominence in the Conservation Area and proximity to listed structures. However on a purely temporary basis, pending the resolution of a longer term strategy for providing 'designed in' catering outlets it is considered that the benefits of the proposal in terms of its contribution to the local economy and vibrancy of the harbour outweigh the limited, short-lived and reversible impacts on the townscape.

Recommendation

Approve, subject to conditions controlling hours of use and to ensure it complies with the summer and winter periods of occupation which comprises April to October in the summer location adjacent to the existing seafood kiosk and from November to March in the winter location on the opposite side of the slipway. A condition is also necessary to secure its removal at the end of the two year period.

An informative should be added to the decision notice to make it clear that due to the appearance of the kiosk, its retention beyond the two year temporary period is unlikely to prove acceptable.

Relevant Policies

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