



Friday, 3 November 2017

## **DEVELOPMENT MANAGEMENT COMMITTEE**

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

**Monday, 13 November 2017**

commencing at **2.00 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Torquay

### **Members of the Committee**

Councillor Kingscote (Chairman)

Councillor Barnby  
Councillor Doggett  
Councillor Hill  
Councillor Lewis (B)

Councillor Morey  
Councillor Pentney  
Councillor Tolchard  
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:

**Amanda Coote, Town Hall, Castle Circus, Torquay, TQ1 3DR**  
**01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

[www.torbay.gov.uk](http://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**

To confirm as a correct record the Minutes of the meeting of this Committee held on 16 October 2017.

(Pages 4 - 5)

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 Brixham Road - Former Nortel Site, Long Road, Paignton (P/2017/0571)**

(Pages 6 - 28)

(Variation of conditions on planning application P/2014/0947/MOA): Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing ,open space and landscaping. (Condition 32: Restrictive Goods Condition).

6. **The Snug, Daphne Close, Torquay (P/2017/0723)** (Pages 29 - 38)  
Alterations and extensions.
7. **Land at Barton Road, Torquay (P/2016/1047)** (Pages 39 - 55)  
Construction of new building to provide up to 75 one and two bedroom apartments.
8. **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](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.
9. **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, 8 November 2017. Site visits will then take place prior to the meeting of the Committee at a time to be notified.



## Minutes of the Development Management Committee

16 October 2017

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Doggett, Hill, Lewis (B), Morey, Pentney, Tolchard and Winfield

(Also in attendance: Councillor King)

---

### 31. Minutes

The Minutes of the meeting of the Development Management Committee held on 11 September 2017 were confirmed as a correct record and signed by the Chairman.

### 32. Urgent Items

The Committee considered the items in Minute 33, and not included on the agenda, the Chairman being of the opinion that it was urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

### 33. Devonshire Park (Former Nortel Site), Land off Brixham Road, Paignton (P/2016/1372/MVC)

The Team Leader for Development Management advised at the meeting of the Development Management Committee held on 13 March 2017, the Committee approved the application subject to the receipt of satisfactory further information which included completion of a Deed of Variation to the original Section 106 Agreement by 23 March 2017 or within three months of the date of the meeting. Members were requested to agree to an extension of time to allow for the completion of the Deed of Variation by 20 October 2017.

Resolved:

That an extension of time for the completion of the Deed of Variation to the original Section 106 Agreement be agreed by 20 October 2017.

### 34. 76 Bluewaters Drive, Paignton (P/2017/0904/HA)

The Committee considered an application for the erection of an ancillary self-contained unit in the rear garden.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available to members on the Council's Website. At the meeting Mr Roberts addressed the Committee against the application.

Resolved:

Subject to the completion of a Section 106 Agreement to prohibit severance of the self-contained unit accommodation from the main dwelling and the final drafting of conditions (including those set out in the submitted report) being delegated to the Executive Head for Business Services, conditional approval.

**35. 30 Torwood Street, Torquay (P/2017/0661/PA)**

The Committee considered an application for a change of use from a taxi rank (sui generis) to takeaway food shop (A5).

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available to members on the Council's website. At the meeting Andrew Dunn addressed the Committee in support of the application.

Resolved:

Subject to acceptable revisions to the shop front in line with Conservation requirements, conditions regarding opening hours and noise and odour mitigation and payment for the provision of a bin in the vicinity of the application site, approved.

**36. 46 Tamar Avenue, Torquay (P/2017/0882/HA)**

The Committee considered an application for a single storey flat roof extension to the side and rear of the existing dwelling.

Resolved:

Approved with the conditions set out in the submitted report.

---

Chairman

**Application Number**

P/2017/0571

**Site Address**

Land Off Brixham Road - Former Nortel Site  
Long Road  
Paignton  
TQ4 7BL

**Case Officer**

Mr Scott Jones

**Ward**

Blatchcombe

**Description**

(Variation of conditions on planning application P/2014/0947/MOA; As amended by S73 applications P/2016/1372 and P/2017/0123): Outline Application with all matters reserved except access,for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing ,open space and landscaping. (Condition 32: Restrictive Goods Condition).

**Executive Summary/Key Outcomes**

The application is to amend Condition 32 (restrictive goods condition) of the outline consent granted under reference P/2014/0947 for the demolition of buildings and mixed use development comprising up to 255 dwellings, up to 5,574sqm of business and/or warehouse uses, up to 8,501sqm of (bulky goods) retail with up to 515sqm garden centre and up to 139sqm of café/restaurant use, at the former Nortel site on the western outskirts of Paignton. Devonshire Park is part of the Brixham Road/Yalberton Future Growth Area is set out in Policies SS2 and SDP3.4 of the Adopted Local Plan.

The decision to grant outline consent was finely balanced because the provision of the retail floor space in an out of town location was considered to have an adverse impact on the Paignton and Torquay town centres. To limit the impact the outline consent was subject to four conditions controlling the total floor space, the range of goods, the minimum size of units possible, and also limit concessions within units.

The sale of goods condition, to which an amendment is now being sought, was imposed in order to limit the sale of comparison goods by limiting the sale of goods towards the "bulky" end of the market. The condition limited sales from the retail units to eleven categories of retail goods and this did not include convenience (food) retail. The application seeks to vary this condition to permit the sale of convenience (food) goods within one unit of up to 1,486sqm. This amendment

should be considered in terms of the current Local Plan, National Policy and other relevant material considerations.

Policy TC3 *Retail Development* of the Torbay Local Plan 2012-30 states that for new out-of-centre retail development to be acceptable it should pass the 'impact test' and the 'sequential test' and should improve the spatial distribution of accessible facilities throughout the Bay to help achieve greater social cohesion. The National Planning Policy Framework (NPPF) sets out similar tests requiring such development to pass the sequential test and the impact test, as detailed within Paragraphs 24, 26 and 27 of the NPPF.

Considering local and national planning policy there are two key retail policy considerations, which is whether there is a sequentially preferable site and whether there would be an unacceptable impact upon town centres. In addition to these considerations other material consideration are also relevant.

The Council's retail advisor has concluded that the proposal fails the sequential test as White Rock has a planned Local Centre and there is planning permission for a similar size store in the area of the identified Local Centre, which is deemed to be both suitable and available for food retail. As a result, the advice to the Council is that the application fails the sequential test. The retail advice on other sites of interest is more reserved and concludes that there is insufficient information available to confidently conclude that either Crossways in Paignton or Middle Street in Brixham are genuinely suitable and available alternates at this present time. This entails a planning judgement about the reasonable prospects of their delivery in the near future.

The second relevant test is one of retail impact. On the information available, the Council's retail advisor agrees with the applicant's assertion that the proposal would have a similar level of financial impact upon Paignton Town Centre as the extant scheme. There is however concern that as the town centre is vulnerable to even small changes the widening of the trading overlap may itself have a demonstrable impact. The concluding advice is that there is a balanced judgement to be made as there some concern on widening the trading overlap with Paignton town centre.

Officers have carefully considered the two issues regarding the sequential and impact tests.

In terms of the sequential test although White Rock has been identified as a preferable site there is doubt whether directing such development there and resisting it as Devonshire Park would have a demonstrable positive impact in terms of seeking to help secure successful town centres or helping to enable sustainable economic growth, as both sites would appear to provide car-based food retail adjacent to the ring road. It is therefore considered uncertain that White Rock could be robustly argued as a preferable site as it is principally a similar proposition

spatially. Officers also consider that it is relevant to consider the evidence that suggests that White Rock is advancing with an interested food retailer. Although this does not alter the concluded failure of the sequential test at this moment in time, it is relevant to consider the prospect of the site being delivered in the near future and thus the likelihood of it being no longer available.

Careful consideration has been given to Crossways and Brixham Town Centre. These are both town centre sites and are suitable for food retail. It is noted that the Torbay Development Agency and Neighbourhood Forum have objected that the current application could harm the viability of the town centre sites. However neither of these sites have live planning permission and there are no publically available extant plans for their redevelopment. On this basis it is concluded that there is less than a realistic prospect of the sites being available for the proposed use.

In regard to retail impact on balance it is considered that, as there is a number of food retail outlets already established along the Western Corridor, the proposed inclusion of food retail at Devonshire Park is unlikely to have an unacceptable impact upon Paignton town centre, as any harm on the town centre food retail sector is likely to be balanced by the reduced harm (competition) in the bulky goods sectors, and the main area of trade impact is likely to be upon diverted food retail trade from other outlets along the Western Corridor.

The NPPF (paragraph 27) indicates that as the application fails the sequential test policy guidance is that it should be refused unless other material considerations indicate otherwise. Notwithstanding this, the relatively "technical" nature of this failure and uncertainty about the availability of genuinely town centre sites are relevant considerations.

In regard to other material considerations it is relevant to consider that the site is a contaminated derelict brownfield site that is in a Future Growth Area, as designated within the Torbay Local Plan. Although the application is discordant with retail policy guidance the delivery of the mixed use scheme, which the amendment seeks to support delivery of, accords with a range of local and national policy guidance. It is a material consideration that the scheme would help secure remediation of this large contaminated site, which the applicant has confirmed he is willing to undertake. It is also a material consideration that that it will aid regeneration of a large derelict brownfield site that is prominent in the local area, and also aid with the effective use of brownfield land, which is supported in national and local policy. In addition by aiding the implementation of the mixed use scheme it will also help deliver much needed housing and employment opportunities, which is also supported in local and national policy guidance. In terms of the food store alone it is projected that 55-60 jobs (33 FTE) will be created (based on the identified food retailers Operator Statement: Lichfields: Oct 2017: Produced on behalf of M&S). The site is also within the Council's five year supply of housing sites and measures to ensure delivery of such sites should be given significant

weight.

In summary, the broader benefits outlined above in terms of remediation of land, effective use of a brownfield site, the delivery of housing and employment opportunities, and assistance with the wider Local Plan strategy (in Policies SS1, SS2 and SDP 3.4) are substantial. The retail planning policy is not clear cut, and there is a degree of conflict with policy TC3 of the Local Plan and Chapter 2 of the NPPF; in particular in terms of sequentially preferable sites, and broadening the area of impact on the town centres. However, as set out above, these issues are not clear cut, as there are factors that mitigate the extent of conflict. Officers consider that the balance, when all material considerations are weighed up, lies in favour of support for the proposal

There are three representations raising objections. The Paignton Neighbourhood Forum cites that the proposal fails the sequential test for food retail as Crossways could deliver the store, and has concern that the retail impact assessment is not robust enough. The two further representations raise concern in terms of traffic impact and the robustness of the assessment, along with certain points that appear to relate to the wider outline consent. The Torbay Development Agency also object on grounds of the likely harmful impact on town centre regeneration.

### **Recommendation**

Approval; Subject to:

1. A Condition to secure remediation of the site (including the housing area) to a suitable level for its intended use, in-line with the land uses outlined within the approved indicative Masterplan (Reference 1449-PL-001 Rev A), prior to the first occupation of the retail development,
2. All previous Conditions (as amended by previous S73 applications), and,
3. The provision of a planning obligation to secure the sum of £36,744 as mitigation for the increased impact upon the Western Corridor caused by the additional traffic which would result from the introduction of convenience retail within the development, paid upfront or secured via a S106 Legal Agreement.

### **Decision Level/Statutory Determination Period**

The application is before Members as the proposal is an amendment to a Major application.

The determination date for this application is the 31st August 2017. The target date has been exceeded as further information was requested from the applicant on sequential testing and retail impact.

## **Site Details**

The site comprises the former Nortel/Bookham site that is now known as "Devonshire Park" to the west of the Brixham Road on the outskirts of western Paignton. The site is a former industrial site that primarily manufactured electronics and closed in 2006. Following demolition of most of the buildings in recent years, the site is largely derelict.

The wider Devonshire Park site has an area of 9.76ha. The topography of the site rises by about 20 metres from south to north. The retail park section of the site (which is the subject of this application) is located in the southern part of the site, fronting Long Road and Brixham Road.

The buildings that sat on the southern part of the site have been largely demolished. The network of linked car parks still exists in the northern part of the site, which are framed by trees and hedgerows.

In terms of immediate context the site is bounded by housing, sports pitches and the Western Business Park to the north, Brixham Road to the east, Long Road to the south and South Devon College to the west.

The site is within the Brixham Road/Yalberton Future Growth Area in the Adopted Local Plan (SDP3.4). The site has permission (P/2014/0947) for a mixed use development including retail, subject to a condition limiting the nature of goods sold (see below).

The site is located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. It is within Flood Zone 1 and within the Critical Drainage Area designated by the Environment Agency.

Parts of the site are known to be contaminated from the historic uses. The parts with most risk are to the south and particularly to the west, with lower risk to the north.

## **Detailed Proposals**

The application is a Section 73 application that seeks to vary a condition on the extant mixed-use scheme in order to permit convenience (food) retail.

The extant outline consent granted permission for up to 255 dwellings, up to 5,574sqm of B1/B8 employment space, 8,501sqm of (bulky) retail, 515sqm garden centre and associated parking, servicing etc.

The proposal is to vary Condition 32 (Sale of goods within specified categories) of the outline consent to permit the sale of convenience goods within one unit of up to 1,486sqm.

Condition 32 currently permits the sale of the following goods;

- (i) Do-It-Yourself goods and materials;
- (ii) new kitchens and bathrooms;
- (iii) garden centre goods and materials, including plants;
- (iv) furniture and home furnishings
- (v) carpets and other floor coverings;
- (vi) gas and electrical goods;
- (vii) camping and associated leisure goods, no more than 10% of the net sales floor area of this category to be used for the sale or display of clothing and/or footwear;
- (viii) motor vehicle and bicycle related goods;
- (ix) pets and pet products;
- (x) office furniture; and
- (xi) ancillary products reasonably related to the categories above and restricted to a maximum floor area within each retail unit of 10% of the net sales floor area.

The proposal seeks an amendment to add the following wording to introduce the extra category, adding the wording;

*(xii) Convenience goods within one unit up to 1,486sqm.*

The applicant has stated that the amendment is necessary as following marketing of the retail park interest had been disappointing and they are currently unable to implement the extant permission as it is unviable.

The applicant has stated that they have reached agreement with three retailers and terms have been agreed with a fourth, however this is a food retailer. If they secure this fourth retailer the applicant has stated that this would make the scheme viable and thus if the amendment was granted the scheme could be delivered with the remaining retail floor space being built speculatively. It is their intention to commence in early 2018 if consent is granted.

It has been stated by the applicant that once a viable retail element is secured it will trigger the remediation of the northern part of the site where the residential elements of the extant permission will be delivered. Therefore if the amendment is secured it will aid in the regeneration of the whole of the Devonshire Park site. The applicant has indicated that they are willing to deliver the housing area of the site ready for development prior to occupying the retail element, in order to help the delivery of the housing element.

### **Summary Of Consultation Responses**

#### **The Council's Retail Advisor (GVA)**

There are two clear retail issues, the sequential test and the retail impact test. Both are engrained within Local and National planning policy. Following a review of the

additional information submitted by the applicant, the advice is as follows;

*The sequential test:*

It is considered that the information submitted has not provided sufficient information to demonstrate compliance with the sequential test following an agreed focus on three key sites.

The applicant has failed to demonstrate that White Rock Local Centre (TC 2.19) is not a sequentially preferable site. The site benefits from planning permission for a similar sized store and hence it would appear suitable. The applicant's conclusion that the site is not available as there is already a food retailer tied to the site is disputed as for the purposes of the sequential test it is whether a site is available for the use rather than any particular user. Therefore at this present time this site is, as it has been identified to sit in the retail hierarchy, considered a sequentially preferable site for food retail that is suitable and available.

In terms of other sites of focus the applicant has sought to address the suitability and availability of Crossways (Paignton) and Middle Street (Brixham). Both of these sites have long been promoted as potential retail development sites and are being treated as high priority sites in terms of the Council's regeneration programme. They are both continuing to be subject of further appraisal work by the Torbay Development Agency and the Torbay Development Agency has advised that retail floorspace remains a key focus for both sites.

It is considered that both sites, but particularly the Brixham site, have the potential to accommodate a foodstore unit and therefore may be suitable.

However in terms of availability at this present time there is insufficient information available to confidently conclude that either of these sites are genuinely suitable and available alternates. For the Council to conclude otherwise it will need to have confidence that either or both of these sites can be progressed to a sufficient stage where further certainty can be reached on the suitability and availability of either site.

*Retail impact:*

There is some concern about the quality of the applicant's data in respect to retail impact and there is a preference that a more appropriate evidence base is submitted.

However on the assumption that the applicant's analysis of the likely trade diversion is reasonable it suggests that there would be a 6% loss in terms of total turn-over on Paignton town centre, which is a similar level to the extant permission for Devonshire Park. This appears a reasonable conclusion and therefore it is not contested that the financial impact would not be to a similar level and therefore it is unlikely that there would be a material difference in the overall level of direct financial impact on the retail sector in Paignton town centre.

There are however further considerations on impact and it is relevant to consider the breadth of effect on Paignton town centre, as there will be a widening of the trading overlap as the scheme would be competing with the town centre on both comparison and convenience goods. In regard to this it is reasonable to suggest that Paignton town centre already faces significant competition from out-of-centre foodstores. However this does not mean that some additional food trade will not be diverted. This is a concern as previous advice has indicated the vulnerability of Paignton town centre is such that even small levels of trade loss could be harmful. The Council should be aware that the available data indicates that that Paignton town centre is becoming even more vulnerable as it loses market share across both convenience and comparison goods sectors. This trend, in combination with the committed floorspace, makes this situation worse. There is a balanced decision to make on the wider cumulative impact.

*Strategy and Project Officer (regarding retail and highway and transport matters):*

*Retail matters:*

*Sequential test*

There is agreement with the Council's retail advisor that in terms of the sequential test the relevant consideration should be whether there is scope to provide up to 1,486sqm of convenience retail (with reasonable flexibility over format and scale) in a sequentially preferable site and not the whole of the permitted floorspace of the extant scheme.

The sequential test is set out in NPPF 24 and Policy TC3 (D) of the Adopted Local Plan. Policy TC3(D)2 requires there to be no other town centre or edge of centre site that is suitable, available or viable.

On the information available, the retail advice received is that the proposal fails the sequential test as there are sequentially preferable sites at White Rock. The situation with Crossways (Paignton town centre) and Middle Street (Brixham town centre) is more unclear.

The retail advice appears conclusive in terms of the availability of a site at White Rock, which is designated within the Torbay Local Plan retail hierarchy and will become a Local Centre. However the purpose of the sequential test is to support the town centre first approach, help ensure successful town centres, and help enable sustainable economic growth and secure the range of economic and social benefits that are related. Although White Rock is designated for a local centre it is very close to the Devonshire Park site and spatially sits within a similar context. It is relevant that realistically the impact of delivering a foodstore at White Rock rather than at Devonshire Park is unlikely to be any more beneficial to the town centre or spatially more sustainable. It would appear uncertain that if the sequential preference of one over the other was contended at appeal whether it

would be reasonably considered a preferable site in real terms.

#### *Impact test*

The impact test is set out in Policy TC3 (D)1 of the Local Plan and paragraph 26-27 of the NPPF. The Local Plan refers to "unacceptable" impacts whereas the NPPF refers to "significant adverse impact". The intention of the two policies is similar.

The current application must consider the additional impact of convenience retail, since the principle of albeit relatively bulky comparison goods has already been approved.

The Council's retail advisor has broadly accepted the applicant's assessment that the proposal is likely to result in a 6% loss of retail turnover in Paignton Town Centre, which is similar to the overall impact of the approved retail development at Devonshire Park. This is a material consideration to take into account. There is however concern that the widening of the trading overlap will itself have an unacceptable impact on a centre that is struggling.

Crucial points are that there is no additional floor space and that there is unlikely to be any additional financial impact. It therefore falls in the impact of the change in retail offer. Whilst the reduction in bulky retail goods will reduce the trading impact on these sectors that currently trade within the town centre, the introduction of food retail will introduce competition within this market area within the town centre. As the town centre already experiences a high level of competition from out of town food retail located along the Western Corridor it would appear reasonable to conclude that the introduction of this sector of retail within the Devonshire Park scheme is unlikely to present a demonstrable impact, as the trade diversion to food appears established, and any impact is likely to be more aligned with diversionary sales from existing retailers along the Western Corridor.

#### *Spatial distribution of facilities*

It is relevant to note that Policy TC3 (D)3 seeks to improve the spatial distribution of accessible facilities throughout the Bay and to help achieve social inclusion. The Western Corridor area is well served with food stores and an additional store could reinforce the position of most food stores being relatively inaccessible to people with no access to a car. However the floorspace has been established for retail purposes within the extant outline scheme and therefore the impact is not considered demonstrable. It is also relevant to note the rise in home delivery food retailing, which itself improves access to such services.

Wider material considerations also apply and it is recognised that the proposal would unlock regeneration of a brownfield site and help deliver much needed housing and employment. Although contrary to the retail policy aims and objectives the proposal is in accordance with a number of Strategic Policies within the Local Plan relating to the Growth Strategy, development within Strategic

Growth Areas, the presumption in favour of sustainable development, housing delivery and the economy and employment. When considering the Local Plan 'in the round' and when considering the wider benefits the balance appears in favour of support for the proposal.

*Highway impact:*

The application is supported by a Transport Assessment including a TRICS assessment, to assess the impact of convenience retail upon the immediate road network. This concluded that the traffic impact can be accommodated within the existing highway network, and does not create specific capacity log jams. It also noted that a number of trips will be passing or shared trips.

Notwithstanding the Transport Assessment convenience retail has a greater impact on the road network than non-food. TRICs indicates that Retail Parks excluding food generate fewer trips per day than those retail parks that include food sales.

On this basis of a food store of 1,486sqm a contribution of £36,744 has been agreed with the applicant to mitigate the additional impact upon the highway network. This contribution should be secured to be used towards projects on the Western Corridor in accordance with Policy SS6.2.ii, and SS7 of the Adopted Local Plan.

*Torbay Development Agency Town Centres Regeneration Programme Director*

This out of centre food outlet does not accord with the Local Plan. Town centre regeneration is now one of the Council's top transformation projects to which significant resources are being committed.

The Council has adopted (April 2017) a Transformation Strategy for Torbay's Town Centres, which now forms part of the Council's Economic Strategy. The Strategy sets out a 10 year programme for successful town centre regeneration and, specifically, identifies delivery activities over the next 3 years (Phase 1 of the regeneration programme). The key purpose of Phase 1 is to build confidence - investor confidence; developer confidence; confidence by communities in delivery of town centre regeneration etc. That confidence, and the Council's efforts, will be undermined by any further significant increase in food retail out of town.

Food retail is a key element of viability for several key town centre regeneration projects, including Victoria Centre and Crossways in Paignton and Brixham Town Centre Car Park. The Council's considerable efforts and financial support for town centre regeneration is highly likely to be undermined by additional significant out of town food retail, as it will be much more difficult to achieve viable development of regeneration sites and more difficult to secure momentum in the delivery of town centre regeneration.

### **Summary Of Representations:**

There are three representations raising objections.

The Paignton Neighbourhood Forum cites that the proposal fails the sequential test for food retail as Crossways could deliver the store, and has concern that the retail impact assessment is not robust enough.

The two further representations raise concern in terms of air quality, tree removal, overlooking and traffic impacts, which appear directed towards the broader extant scheme rather than the amendment sought through this application.

### **Relevant Planning History:**

#### *P/2017/0493 and P/2014/0494:*

Two options for groundworks, including the demolition of remaining structures, grubbing out of trees, foundations and floor slabs, remediating contamination and earth works to re-profile the site. Approved 22.09.2017.

#### *P/2017/0123:*

Variation of condition P1 of P/2014/0947 (as amended) (Outline Application with all matters reserved except access) - to vary Condition (P1) detailed approved plans to vary the access arrangement off Long Road. Approved 18.10.17.

#### *P/2016/1372:*

Variation of condition P1, 34 and 35 of P/2014/0947 (Outline Application with all matters reserved except access) - to vary Condition (P1) - Approved Plans to omit reference to the Masterplan, Condition (34) to vary the minimum unit size restriction for 1 unit and Condition (35) to clarify the restriction of concessions. Approved 18.10.2017.

#### *P/2014/0947:*

Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. Approved 22.03.2016.

#### *P/2017/1041:*

Variation of conditions on application P/2014/0947: (Devonshire Park Housing/Commercial Project). Variation of condition 33 - Maximum retail floor space. Amendment sought: Increase total gross floor area of class A3 floorspace from 139sqm to 167sqm. Pending Decision.

### **Key issues/material considerations:**

The key issues are :

1. The provision of convenience retail in terms of; (a) satisfying the sequential test, and (b) the retail impact upon existing and planned centres in terms of investment, vitality and viability,
2. Highway and movements impacts, and
3. Other material considerations

#### **1. The Provision of a Convenience Retail Unit of 1,486sqm**

The two key issues are the sequential test and the retail impact test.

The sequential test is to consider whether there is a more suitable site available to deliver the development. The retail impact test is to consider the impact upon existing and planned centres. Each of these tests will be considered in detail below.

##### **1(a). The Sequential Test**

The sequential test is set out in Policy TC3 of the Local Plan and paragraph 24 et seq. of the NPPF. The interpretation of the NPPF has also been adjudicated on by the Courts. In this context suitable and availability means "suitable for the development proposed by the applicant" which is a wider meaning than suitable for retail in principle. However availability means availability for the type of retail use for which permission is sought, and not availability for a particular retailer .

The sequential test is relevant as the proposal seeks to provide a town centre use in an out-of-centre location, as Devonshire Park is not designated within the local retail hierarchy and is not within an area allocated or intended to be allocated for convenience retail use in the Torbay Local Plan. The sequential test is necessary in order to consider whether there is a more appropriate location available that could deliver the development.

In regard to local policy context Policy TC3 *Retail Development* of the Local Plan states that new out-of-centre retail development must meet three criteria, one of which is that no other town centre or edge-of-centre site is suitable, available or viable. This aligns with the sequential test guidance in the NPPF. Paragraph 27 of the NPPF states that where an application fails to satisfy the sequential test it should be refused, which is a premise supported within Local Plan Policy TC3.

The applicant has provided information that seeks to assert that the sequential test is met.

The sites identified for sequential assessment are Crossways (Paignton town centre), Victoria Square (Paignton town centre), Middle Street (Brixham town

centre), Preston District Centre, and Yannons and White Rock Local Centres. The assessment of each of these sites is covered in turn below.

*Crossways, Paignton town centre*

Crossways is genuine town centre site and has a Local Plan allocation as such (Policy TC2.1.2). The NPPF seeks to promote competitive town centre environments and recognise these as the heart of the community (Para 23). The submitted Neighbourhood Plan (Policy PNP8) envisages a retail role for the centre, but does not make a firm proposal for a supermarket.

The applicant contends that the current retail space is not suitable for retail use as the centre has been vacant for a number of years and the site is proposed for redevelopment within the Local Plan and the adopted Town Centre Masterplan SPD for Paignton. It is, for these reasons, considered reasonable to exclude the current building as a potential sequentially preferable site. Therefore the site's suitability and availability hinges upon a redevelopment scheme being suitable and available.

The applicant contends that the site is not suitable or available. Suitability is argued principally on design grounds in terms of food retail being likely to present a building form that is unlikely to be able to respond with the masterplans intentions for pedestrian permeability and active frontages in a redevelopment scheme. In terms of availability it is contended that a scheme is unlikely to come forward in a reasonable timeframe as there is no extant permission and no publically available regeneration scheme that supports a clear desire to move the site forward.

The Torbay Development Agency has indicated that Crossways is a priority site for regeneration and that an application for a mixed use retail and residential scheme is expected soon.

Crossways is not uncommon with many town centre regeneration sites in that it is a complex proposition and, as such, reaching an opinion on suitability and availability of this site is not simple. On one hand the applicant contends that as there is no extant planning permission, and where there are current occupiers on site and no public information that may suggest an open desire or any demonstrable momentum from the landowner to progress this long identified, the actuality of the site being available within a reasonable timeframe is clearly uncertain. On the other hand the Torbay Development Agency states that they are confident that the landowner wishes to progress redevelopment and that a planning application could be submitted very soon and they are seeking to support this process as the site is a corporate priority. The Council's retail advisor, notwithstanding the confidence of the Torbay Development Agency, concludes that at the present time there would appear insufficient information to conclude that the site is suitable or available.

Officers have carefully considered the various comments and in the circumstance

agrees with the Council's retail advisor that, on the information currently available, it cannot be confidently concluded that Crossways can be considered either suitable or available at this present time. There appears too much uncertainty where there is no planning permission and an apparent lack of any demonstrable information within the public domain that suggests the site could be delivered speedily enough to reasonably be considered available at the present time. It is also relevant that as the Crossways site is not in Council ownership - this creates a reliance on a third party and limits the ability of the Council through the Torbay Development Agency to progress their regeneration agenda.

On the basis of the evidence presented by the applicant, the comments of the Torbay Development Agency's Town Centres Regeneration Programme Director, and considering the advice of the Council's retail advisor, it is deemed reasonable to discount Crossways as a suitable and available sequentially preferable site at the present time. The above judgement is made on the information that is currently available.

*Victoria Square, Paignton town centre*

Like Crossways, this is a genuine town centre site for Paignton however the site is occupied by a food retailer and other units within the centre are too small to accommodate the proposed floor space. In the circumstances, this location can be dismissed as a sequentially preferable site.

*Middle Street, Brixham town centre*

This is also a genuine town centre site (TC2.1.3) located in the heart of Brixham. Previously the site was committed for mixed use retail and residential development however the permission has now expired (for context planning permission P/2012/1309 granted consent for mixed use including 2,791sqm net sales area, plus 218sqm ancillary retail). It is noted that the submitted Brixham Neighbourhood Plan wishes to see a small-medium sized supermarket as well as other units and parking on the site.

The applicant's sequential assessment seeks to assert that at this current time there is no viable development proposal for the site and no identified development partner (for this Council owned site) and that this means that there is no timescale for this development and therefore the site is unavailable for the proposed development.

Current advice from the Torbay Development Agency is that the future of this site is less certain than Crossways.

Although unlike in the case of Crossways the Council does own the land and hence there is an opportunity to achieve more certainty in terms delivery; however the site appears some way off delivering a regeneration opportunity that may include food retail.

On the information available it is not evident that the redevelopment of this site is expected within a reasonable period of time and hence this site is not considered an available sequentially preferable site for the proposed development. Similar to the situation with Crossways, Members are advised that this is a judgment on the information currently available.

#### *Preston District Centre*

The applicant's assessment is considered reasonable and the Council's retail advisor agrees with the conclusions that there are no suitable and available sites in Preston District Centre. It is noted in particular the Vauxhall Garage is identified for residential use in the Adopted Local Plan.

#### *Yannons Local Centre*

Yannons Farm Local Centre contains an Aldi food store and is unlikely to be able accommodate another food store of the scale proposed. It can be dismissed as a potential sequentially preferable site.

#### *White Rock Local Centre*

White Rock is identified to provide a Local Centre and the site appears to be suitable as it has permission (P/2011/0197/MOA and reserved matters application P/2016/0411) for a foodstore of a similar scale. There is also a current application for a revised foodstore under planning reference P/2017/1019.

The applicant contends that the site is not available as another food retailer is furthering a scheme on this site. The Council's retail advisor and the Courts have confirmed that for the purposes of the sequential test availability is for the use and not the user. Therefore at this present time the site, as it has been identified to sit in the retail hierarchy, appears to technically be a sequentially preferable site for food retail that is both suitable and available.

However notwithstanding the advice received Members are advised that the purpose of the sequential test is to help ensure successful town centres and help enable sustainable economic growth, along with the range of economic and social benefits that are related to sustainable growth. Although White Rock is designated for a local centre it is very close to the Devonshire Park site and spatially it sits within an almost identical context. Realistically the impact of delivering a foodstore at White Rock rather than at Devonshire Park is unlikely to be any more beneficial to the town centre or spatially a more sustainable form of development. In addition, while the site is currently available for retail use, there is a fair expectation that it will be built out in the near future, which will remove its availability. It is a balanced argument but it is considered relevant that there is uncertainty whether, if the sequential preference of one over the other was contended at appeal, the White Rock site would be reasonably considered a preferable site in real terms.

Having considered the advice, it is recommended that that the proposal is considered to fail the sequential test in terms of White Rock being a suitable and

available site. It therefore conflicts with Policy TC3 of the Local Plan and NPPF paragraph 27. However the degree of this conflict may be mitigated, as a judgement of planning merit, by the fact that White Rock is similarly located to Devonshire Park in terms of accessibility, ring road location and relationship to the town centre.

1(b). Impact on Town Centre Investment and Vitality and Viability

The second test is one of retail impact.

NPPF provides clear advice that proposals with the potential to generate a significant adverse impact upon town centres should be refused planning permission (Paragraph 27).

Where the impact is adverse but not significant other benefits of the development, such as regenerating a derelict brownfield site, can be weighed against the harm to town centres when determining the application.

Policy TC3 of the Local Plan again provides the relevant policy guidance and the policy cites that proposals must meet 3 criteria, these being;

1. Proposals should not cause any unacceptable impacts either individually or cumulatively on the vitality and viability of existing or planned centres,
2. No other town centre or edge of centre site is suitable, available or viable; and
3. Development would improve the spatial distribution of accessible facilities.

The local and national tests are worded slightly differently however they seek to achieve similar goals, to promote competitive town centres and support their viability and vitality.

Because of the sensitivity of Torbay's town centres to out of centre retail, the Local Plan sets a threshold of 500sqm to trigger the impact test, which is below the baseline 2,500sqm in the NPPF.

In terms of context for Members the decision to grant outline consent under planning reference P/2014/0947 was finely balanced as the provision of the retail floor space was considered to have an adverse impact on town centres, and near to a significant adverse impact, due to the poor health of the centres and their vulnerability to relatively small levels of impact.

During consideration of the outline consent the Council's retail consultant raised concern on the potential for a significant adverse impact on town centres. The parameters for the retail element were subsequently evolved and ultimately measures were identified to try and reduce the likely trading overlap between the comparison goods sectors to prevent a significant adverse impact.

Subsequently the Council's retail advice concluded that the revisions including terms of the range of goods that could be sold would reduce the trading overlap and in turn reduce the financial impact on these centres. It was however concluded that although the restriction in goods may reduce the scale of risk regarding the significant adverse nature of any impact, the scale could remain significantly adverse as both centres are susceptible to relatively small levels of impact.

Outline permission was ultimately granted which was likely to have an adverse impact, but not a significant adverse impact with, as stated, the above conditions being attached to limit the risk of a significant adverse impact on town centres, which included the range of goods to be sold.

Condition 32 was attached in order to limit the sale of comparison goods. Members are reminded that the permission permitted the sale of eleven categories of retail goods, which were;

- (i) Do-It-Yourself goods and materials;
- (ii) new kitchens and bathrooms;
- (iii) garden centre goods and materials, including plants;
- (iv) furniture and home furnishings;
- (v) carpets and other floor coverings;
- (vi) gas and electrical goods;
- (vii) camping and associated leisure goods, no more than 10% of the net sales floor area of this category to be used for the sale or display of clothing and/or footwear;
- (viii) motor vehicle and bicycle related goods;
- (ix) pets and pet products;
- (x) office furniture; and
- (xi) ancillary products reasonably related to the categories above and restricted to a maximum floor area within each retail unit of 10% of the net sales floor area.

The current application seeks to introduce a convenience retail unit of 1,486sqm, as a 12th category. The retail impact of this is discussed below.

It is clear that the outline consent was granted on balance with restrictive conditions to reduce the risk of a significant adverse impact on town centres, which included the type of goods to be sold. As there was clearly considerable concern over the level of the likely adverse impact any relaxation of the restrictive conditions should be duly considered due to the previously cited susceptibility of town centres to relatively small levels of impact.

In terms of the proposal there is concern about the reliability of the applicant's data as analysis is based upon historic shopping patterns. This leads to a situation where the survey data has had to be manually adjusted to take into account more recent foodstore openings in the area, there being no assessment of the impact of

the proposal on existing investment in nearby town centres, and there being no up-to-date assessment of the health of Paignton and Torquay town centres. However, the Council does not have any reliable data on shopping patterns other than the 2013 Retail Update (which in part used 2011 survey data), and on this basis it is accepted that all parties are using the best information currently available.

The Council's retail advisor has accepted the assertion that the likely trade diversion is similar to the extant scheme with a likely 6% loss in terms of total turnover on Paignton town centre.

However whilst the financial impact may be to a similar level there is a concern raised that the breadth of effect on Paignton town centre will be widened. This is principally as the scheme would subsequently be competing with the town centre on both comparison and convenience goods trading areas. In this case the applicant has reported that the convenience store is necessary in order to achieve a viable development to commence and bring forward in the market. The Council's retail advisor has raised a concern that the increase in the trading overlap between Devonshire Park and Paignton town centre may have a likely significant effect. Previous advice indicated the vulnerability in the health of Paignton town centre and lead to a conclusion that that even small levels of trade loss could be harmful.

The data available indicates that Paignton town centre is becoming even more vulnerable as it loses market share across both convenience and comparison goods sectors. In terms of information that is available for comparison goods total spend remained static between 2007 and 2013 in the context of significant growth expenditure within this time period. This indicates a loss of market share. In terms of convenience turnover within the town centre this fell from £30.4 m in 2007 to £17.8m in 2013. A significant loss in turnover and market share.

The concern on the impact of widening the trading overlap is noted by Officers however there is a balanced decision to be made. On one hand the reduction in the trading floor space available to 'bulky goods' will reduce the impact on this sector of town centre retail. This 'benefit' then has to be weighed against the potential harm on the food retail sector which is being introduced in to the trading equation. In the context where there is a large amount of out-of-centre food retail already competing with Paignton town centre, where there is a Morrisons, Asda, Sainsburys and Aldi along the ring road, food retail is considered to be a less sensitive introduction in to the scheme. It is still the case that there may be some trade diversion from the town centre but predominantly the impact of food retail diversion is already present and the mainstay of any impact is likely to be one of diversionary sales from within other operators along the Western Corridor (some of which are out of centre). On balance the concern on the breadth of retail is considered countered by the reduced impact upon bulky goods (and the range of less than bulky items permitted to be sold by Condition 32) and the existence of a strong presence in terms of food retail along the Western Corridor, which is likely

to limit the impact of any further introduction of food floorspace. This conclusion is consistent with Officer advice to Members for two previous food store units on the Western Corridor within the past decade (Yannons Farm and White Rock) where the main impact was considered to be one of diversionary sales within the Western Corridor rather than any demonstrable impact upon Paignton town centre.

Paragraph 27 of the NPPF notes that proposals likely to have significant adverse effects on centres should be refused. Policy TC3 of the Local Plan out of centre retails development should not cause "unacceptable impacts".

It is concluded that the proposal is unlikely to be a significant or unacceptable impact, for the reasons stated above, notwithstanding the concern of the Council's retail advisor.

The proposal is therefore considered, on balance, to pass the retail impact test in accordance with the NPPF and Policy TC3.

#### *Spatial Distribution of accessible facilities*

Closely linked to retail impact considerations, Policy TC3 (D)3 seeks to improve the spatial distribution of accessible facilities throughout the Bay and to help achieve social inclusion. The Western Corridor area is well served with food stores and there is a danger that allowing an additional store could reinforce the position of most food stores being relatively inaccessible to people with no access to a car. The Indices of Deprivation clearly show Paignton town centre as a deprived area and as previously discussed the provision of convenience food may impact town centre regeneration, which is often underpinned by a food retail presence within a scheme. However as determined within this report that proposal is considered unlikely to have a significant impact upon town centre food retail and hence the harm upon spatial distribution of such facilities is not considered unacceptable. The proposal, for this reason, is considered to accord with the aspiration of TC3(D)3.

#### 2. Impact upon the highway network and movement

Notwithstanding the Transport Assessment, convenience retail is considered to have a greater impact on the road network than non-food.

The difference in trip rates between "with food" and "without food" retail parks is 48.2 trips per 100sqm. On this basis 1,486sqm food store on a retail park would generate 716.25 more trips than the same unit selling non-food.

The Adopted Planning Contributions SPD seeks transport contributions based on £171 per trip (based on the assessed cost of delivering the LTP and highway infrastructure in Future Growth Areas).

Following discussion of the expected linked trips the Council's Strategic Transport Officer has agreed a figure to £36,744.00 in terms of required mitigation.

The monies would be used towards projects on the Western Corridor as per Policy SS6.2.ii, and SS7 of the Adopted Local Plan.

On the basis of the above, it is considered appropriate to seek a S106 Obligation as above to mitigate additional traffic generated by convenience sales should Members grant permission.

The existing Section 106 agreement would need to be tied to the new application through a deed of variation to include the transport obligation outlined above should Members wish to approve the scheme.

This should be completed prior to the formal determination of the application.

Subject to the above the proposal is considered acceptable on highway safety grounds and compliant with the aims and objectives of policies TA2, and DE1 of the Torbay Local Plan 2012-2030. A retail travel plan is required for the development under the conditions previously imposed.

### **3. Other material considerations**

As the application fails the sequential test policy guidance dictates that it should be refused unless other material considerations indicate otherwise. Other material considerations should also be considered in respect of the degree of retail impact.

In regard to other material considerations the site is a contaminated derelict brownfield site that is in a Growth Area, as designated within the Torbay Local Plan.

Although the application conflicts to some extent with retail policy guidance, the delivery of a mixed use scheme on the site, which the amendment seeks to support delivery of, accords with a range of local and national policy guidance. Hence when the aspirations of the Local Plan is considered 'in the round' it is in accordance with a number of key growth, housing and employment policies.

It is also a material consideration that that it will aid regeneration of a large derelict brownfield site, which the effective use of is supported in national and local policy. One of the core planning principles (Para 17 of the NPPF) is to encourage the effective use of land by reusing land that has been previously development, provided that it is not of high environmental value.

The applicant has confirmed he is willing to undertake this remediation. It is suggested that should Members agree with Officers and consider that the remediation is necessary as part of a package of material benefits that weigh in favour of the scheme, then the delivery could be achieved by a Planning Condition, which has been identified within the officer recommendation.

By aiding the implementation of the mixed use scheme it will also help deliver much need housing and employment opportunities, which is also supported in local and national policy guidance. In terms of the housing the aforementioned preparation of the housing area being fit for its intended use is likely to make the site more attractive to housing providers and potentially aid speed delivery. The site is within the Council's five year housing supply and therefore measures to assist delivery can be given significant weight.

In terms of employment the food store alone is projected to create 55-60 jobs (33 FTE) based on the identified food retailers Operator Statement (Lichfields: Oct 2017: Produced on behalf of M&S). This projection is above the comparison goods expected provision and would suggest that a further 17 FTE jobs could be created by the amendment, which could increase the overall projected job creation forecasts for the retail and employment from circa 157.5 FTE to 173.5 FTE jobs.

The material considerations are considered demonstrable and Officers feel that collectively they add great weight in favour of the application in this particular circumstance, where it relates to a contaminated and derelict brownfield site that sits in a prominent location, in a designated Growth Area.

#### **S106/CIL**

As stated above a S106 contribution of £36,744.00 would be required to mitigate the impact of additional vehicular movements that would be generated by the proposal.

The proposal is not CIL liable as it is an amendment to an extant planning permission and does not increase floorspace. However CIL will be liable on any future increase in retail floorspace, should this occur.

#### **Statement of Pro-active Working**

The Council has sought to work positively and proactively with the applicant through pre-application discussions and through open dialogue throughout the application process including requests for further information.

#### **Local Finance Considerations**

The applicant cites that the convenience store is necessary in order to provide the necessary quantum of interest to make commencement of the outline consent viable.

Delivery will bring a number of economic benefits to Torbay through the mixed provision of housing, retail and employment space.

The extent to which the application will secure the regeneration of the derelict site and provide housing and employment are material considerations.

The applicant refers to the need to secure a third retailer to make the Devonshire

Park development viable in order to commence in early 2018.

### **Human Rights and Equality Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

### **Environmental Impact Assessment**

The proposal has been screened in accordance with the current Environmental Impact Assessment Regulations. The proposal is not considered to be EIA development and does not need to be supported by an Environmental Statement.

### **Conclusions**

The provision of a convenience food store is supported for the following reasons.

Firstly the town centre sites identified are not considered available and the site identified as White Rock is not considered a different proposition to Devonshire Park when considering what the sequential test seeks to achieve. The sequential test is technically failed however the benefit of seeking to deliver the development within the site identified over the Devonshire Park site is questionable.

The retail impact is not unacceptable as the financial impact of the proposal is similar to the extant scheme and the impact of broadening the trading overlap is muted by the extent of food retail already established in the area, together with the lessening of the impact upon the bulky goods sector of trading in the town centre.

There are other positive material considerations that weigh in favour of the proposal. It will deliver the remediation of the entire site to a level suitable for its intended use, it will help facilitate the commencement of the mixed-use scheme and regenerate a derelict brownfield site, and will through this regeneration help deliver much needed housing and employment opportunities.

The introduction of convenience retail is indicated by trip rate analysis (TRICS) to generate an increase in vehicular traffic. The Highways Authority has requested a S106 Contribution towards mitigating the effect of this upon the Western Corridor, which should be secured.

The conclusions above have sought to acknowledge that the planning policy situation is complex, however whilst the matter is finely balanced it is considered that although the application fails the sequential test other material considerations including the delivery of wider Local Plan and NPPF objectives outweigh the retail

policy concerns, and that taken as a whole the development can be considered to represent sustainable development.

The officer recommendation is therefore one of approval in line with Policies SS1, SS2, SS3, SS4, SS12, SS13, TC1, TC2, TC3, and TA2 of the Torbay Local Plan 2012-2030 and Paragraph 27 of the NPPF.

### **Informative(s)**

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked proactively and positively with the applicant to attempt to resolve the planning concerns the Council has with the application. However, in the event the applicant was unable to satisfy the key policy tests in the submission and as such the application has been refused.

### **Relevant Policies**

- TC1 - Town Centres
- TC2 - Torbay retail hierarchy
- TC3 - Retail Development
- SS6 - Strategic transport improvements
- SS7 - Infrastructure, phasing and employment
- SS11 - Sustainable Communities Strategy
- TA2 - Development access

# Agenda Item 6

**Application Number**

P/2017/0723

**Site Address**

The Snug  
Daphne Close  
Torquay  
TQ1 1TP

**Case Officer**

Mrs Saffron Loasby

**Ward**

Wellswood

**Description**

Alterations and extensions.

**Executive Summary**

The proposed development seeks to add a side extension to enclose a stairwell and internal reconfiguration, increasing the number of bedrooms from one to two with parking for two vehicles.

The site is located in the Warberries Conservation Area and the site is party to a Tree Preservation Order.

The building was approved as a separate dwelling with a small garden room extension under an earlier planning consent and the applicants now wish to extend the property further. The previous planning permission allowed for accommodation at lower ground floor only, with parking above at ground floor (road) level. This scheme looks to utilise some of the approved parking provision for residential accommodation, moving some of the parking provision to the front of the building.

The floor area of the building meets the required standards as a two bed three person property, the outlook from the new rooms is considered to be acceptable, the parking provision meets the Councils standards and the design of the proposed work has been reviewed by the Councils Senior Historic Officer in relation to the Warberries Conservation Area.

**Recommendation**

Approval: Subject to conditions delegated to the Head of Business Services, to include those listed at the end of this report.

**Reason for Referral to Development Management Committee**

Number of objections.

**Statutory Determination Period**

8th September 2017.

### **Site Details**

The detached building is located in Daphne Close. The external appearance comprises a double garage with two up and over garage doors located on the west elevation that meet with the level of the road. Living accommodation is located at the lower ground floor and accessed via a side gate, external stairs and a door that sits lower than the street level. There is an existing pedestrian door that sits at street level albeit located on the north elevation at the top of the external stairwell and hidden by the existing timber close boarded fencing.

The garage has a pyramid style roof and there is very little evidence that the building comprises residential use when viewed from the adjacent street scene.

Date of Officer Site Visit: 28th July 2017

### **Detailed Proposals**

The scheme proposes a side extension to enclose a new replacement stairwell, a new hallway, wc and bathroom. Internally the property proposes some reconfiguration. This includes removing the internal parking spaces (which was being used as living accommodation at the time of the site visit) and creating two bedrooms, and new hallway level to Daphne Close. The lower ground floor will comprise a lounge, kitchen and dining area.

The approved parking requirements show two internal parking spaces accessible at road level. The layout at the time of the site visit permitted only one parking space. This was located across both garage doors and not in line with what was originally approved. The proposed layout for parking is partly integral. One space is sited off road in front of the building parallel with the road, the other is sited partly inside the building, perpendicular to the road.

### **Summary Of Consultation Responses**

#### *Conservation and Design*

Daphne Close is a late 20C development created out of the former spacious garden of the mid-19C villa of Dunreeth, now The Court. Pine Trees is the original gate lodge/outbuilding for Dunreeth/The Court. There are still very pleasing views SE across to the Croft and beyond because of the garage's pyramidal roof, and it reads as a garage.

As discussed this is an improvement on the previous app, and the elevations of the new proposed extensions are relatively innocuous in the context of Daphne Close (drwng 3851-02). The seamed zinc roof is all very well as a design form/material but looks distinctly odd as it so clearly rises above the eaves of the main block.

*Building Control* - No comments received.

*Arboriculture* - The scheme is suitable on arboricultural merit.

*Highways* - From the information provided (757.02 Rev C) that were approved under P.2013.0948 showing the 2nd parking space in the grounds of Pine Tree Cottage, and presuming the dimensions the applicant has stated in the design and access statement and on the drawings are correct, Highways find it difficult to object on Highway safety grounds.

It is noted that the images on google and the image the applicant provided highlighting the demarcation between the two properties both show vehicles parking transversely and blocking the footway. Even though the space is there it does not appear to be being used because it is easier to park like this.

Recommend that if permitted consideration is given to the potential to add a condition to try to stop parking across the footway.

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement.

Ten representations have been received in objection. Issues raised:

- o Drainage - concern that the current system is not adequate
- o Impact on the local area
- o Not in keeping with the local area
- o Over development
- o Sets precedent
- o Impact on traffic and access
- o Impact on trees and wildlife
- o Privacy and overlooking.

### **SRM Procedure:**

Outcome: Development Management Manager deferred application to committee for resolution given the number of concerns from local residents.

Application to be determined by Development Management Committee.

### **Relevant Planning History**

P/2016/1365 Extension and conversion of garage to form residential dwelling with separate workshop/music room - Withdrawn

P/2013/0948 Formation of new dwelling in garage/store - Approved

P/2011/0970 Alterations and conversion of existing garage to study/play area with pitched roof; remove porch to rear patio area; replace widows to bay; new French doors to new kitchen area; install window to North elevation; roof lights to utility and side porch - Approved.

P/1999/1375 - Erection Of Double Garage And Store - Approved.

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

The key issues to consider in relation to this proposal are principle of development, quality of the residential environment, impact of the design on the Warberries Conservation Area, neighbour amenity and highway safety.

### **Principle of Development**

The building is a small dwelling and hence the principle of residential use is already established. Whilst the public representations from neighbours include concern about the way in which the occupants have retrospectively obtained planning permission for the garage to be used as living accommodation. Planning permission was sought to use the property as a separate dwelling and granted under planning reference P/2013/0948 and therefore the principle for use as residential already established.

In terms of broader principles adopted Policy SS3 'Presumption in Favour of Sustainable Development' of the Local Plan advises that planning applications that accord with the policies in the Local Plan (and where relevant, with policies in Neighbourhood Plans) will be approved unless material considerations indicate otherwise. This policy follows the advice within the National Planning Policy Framework (NPPF), specifically paragraph 14 that sets out a presumption in favour of sustainable development. For decision taking, unless material planning considerations dictate otherwise, this means approving proposals that accord with the development plan without delay. The key issues and accordance with adopted policies is discussed below.

### **Quality of the residential environment**

The floor area of the existing residential space falls short of the Dwelling Space Standards for 2 people. As a two bedroom property for 3 people the standard floor area would need to equate to 70sq.m or more. The proposal would meet the requirements of a 2 bed 3 person property over two floors and would appear to provide an improved internal residential environment for occupiers when considering the current limited floorspace

In terms of the wider plot the proposal is not considered to overdevelop the site given the sizeable garden space available for the occupants of the property. The garden area is significantly larger than the standard amenity space requirement (55sq.m) that is outlined within the Adopted Local Plan (Policy DE3) and the small addition to the north of the application is not considered to have an adverse impact on its wider surroundings by being unduly overbearing or dominating.

The proposal will maintain adequate internal environments with the layout providing acceptable levels of natural lighting and outlooks to key rooms.

The proposal is considered to provide an acceptable living environment, in accordance with the requirements of planning policy DE1 of the Torbay Local Plan 2012-2030.

### **Impact of the design on the Conservation Area**

In regard to the impact of the proposal on the Warberries Conservation Area the scheme is considered acceptable subject to securing improvements to the detailed design.

There is still some concern regarding the finishing materials as Upvc is not supported in this location and a visual improvement of the building as part of this application should be sought. If the property is to take on a more residential appearance from within the street scene then high quality materials will be required. These can be agreed via condition.

The use of the standing seam zinc to the flat roof has been questioned by the Senior Historic Environment Officer as it appears from the drawings to sit higher than the existing eaves of the host building. It is recommended that a detailed section of the roof and eaves is sought in order to ensure that the arrangement where it meets the existing eaves height is acceptable. This can be secured by a planning condition.

The development is not like any other in the street scene due to the way in which it has been developed, however the dwelling exists and the potential to improve the use of the site and its visual impact on the Conservation Area can be addressed through this proposal.

Subject to resolving the detailed design elements discussed above, the proposal is considered to preserve the Warberries Conservation Area and be in accordance with Policy SS10 of the Torbay Local Plan.

### **Impact on Neighbour Amenity**

Concern has been raised by local residents in the immediate vicinity that the impact of an intensified use will result in harm on neighbour amenity and the new openings proposed in the elevations of the building, particularly at first floor will adversely impact on privacy and overlooking.

#### *Overlooking/Loss of privacy*

In regard to the new openings proposed there are several that could be omitted/revised to overcome neighbour concerns. Those in the north elevation are considered to be acceptable. The openings that form part of the northern elevation are to the landing and a ground floor WC. Both of these openings could be conditioned to be obscure glazed, the landing window could also be non-opening or on a restrictor to prevent overlooking into the rear garden of Pine Trees to the north.

The opening on the east facing elevation, shown on the elevation (but not in the plan) is to a bathroom. It is shown as high level but could also be obscure glazed. The other openings on the eastern elevation are to the new bedroom spaces proposed at first floor. At present there is an existing first floor window in the east

elevation located centrally. If the proposed window to bedroom two was hung to open with views down the garden of the application site the privacy to the occupiers of the Pine Trees would be improved to that of the existing arrangement, which is lawful under the earlier approved application P/2013/0948.

The corner window proposed for bedroom 1 allows for views primarily down the garden. The closest property being Briarfield or Pine Trees. Ensuring the openings of these windows are hung in such a way to reduce overlooking, the neighbour relations would be improved not worsened as a result of the development.

The openings facing south are to bedroom 1 and the integral parking space. The window in the garage could be omitted completely, however given the distance between the application site and the closest property to the south this is not unacceptable. The proximity of the application building to 1 Daphne Close is over 30m and an acceptable distance between windows.

The Snug is already overlooked quite significantly by Briarfield and Pine Trees. The development will improve the interrelationship between existing occupiers.

#### *Intensification of use of the building*

Concern has been raised that the increase in footprint will increase the activity of the property (which was originally to be used only for holiday use) thus having an adverse impact on parking and the local area. The property has been a dwelling now for several years, the number of people residing in the property has not been questioned nor is it conditioned in earlier planning permissions. It is not considered reasonable in this instance to limit the number of people who reside at this property.

The proposal shows a floor area only considered acceptable for up to 3 people based on the Local Plan dwelling space standards and therefore the consent is granted with this level of use in mind.

A continued residential use, albeit for a slightly larger property, will not cause any demonstrable impact upon amenity through intensification.

In light of a degree of concern in terms of overlooking and loss of privacy, which can be mitigated by condition, the proposal is acceptable on amenity grounds and meet the requirements of Policy DE3 of the Torbay Local Plan 2012-2030.

#### **Highway Safety**

The parking provision for the application building has been questioned during the course of the determination process and an area that has raised concern in many of the representations received. Historically the application building was a garage to Pine Trees, the property to the north. When the building was separated from the property it was agreed on the basis that Pine Trees would have two off road parking spaces. One of these was located at the front of Pine Trees accessible

from Lower Warberry Road and the other would be on a new area of paving located to the south west of Pine Trees. This remains unchanged however it would seem from numerous visits to the site as well as using GIS and Google images this arrangement is not being used as it was intended. Instead two vehicles are often seen to park transversely on the paving for Pine Trees which results in overhanging the footpath. Similarly the parking at the application site also not being utilised correctly further transverse parking and overhanging of the highway occurs.

The proposal shows two parking spaces, one partly integral and the other located parallel to the road and across the front access into the property. The spaces are considered adequate in that they meet the parking standards as set out in the Torbay Local Plan 2012-2030, this is providing the occupiers park as shown in the plans submitted.

In terms of an acceptable living environment adequate access to the property should be retained and should not be impeded by parked vehicles. There is some concern that parking within the parallel space, combined with the perpendicular space, may impede access to the property. There appears potential for parking across the front door, however adequate space could be maintained if vehicles are parked with due care. Clear delineation or a change in materials could encourage the retention of sufficient space to the front door and this could be achieved by condition.

Highways are content that the space requirements can be achieved for off road parking the proposal and with some care on retaining adequate access it is considered that the scheme is acceptable on parking and highway safety grounds.

Although raised in objections the way in which the occupiers of Pine Trees park is not a matter that should influence the determination of this application if parking provision can be adequately met. It is however important to ensure that the parking of vehicles is carried out in accordance with the approved plans and the detailed design of the hard surfacing should seek to assist in improving the existing parking arrangements.

.The parking provision for the application site can be conditioned and subsequently improved in the wider area.

Given the existing concerns over the parking arrangements it is considered appropriate in this instance to agree a Construction Management Plan via condition to ensure the impact on highway safety is not compromised and development has minimal impact on local residents.

No objections have been raised by the Councils highway officers. The proposal is considered to meet the requirements of policy TA2 and TA3 of the Torbay Local Plan 2012-2030.

### **Human Rights and Equalities Issues -**

Human Rights Act: The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests/the Development Plan and Central Government Guidance

Equalities Act: In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **S106/CIL and Affordable Housing -**

S106 contributions are not required from this development.

CIL: The CIL liability for this development is Nil as the CIL rate for this type of development is Nil and therefore no CIL is payable.

### **Proactive Working**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

### **Conclusions**

The proposals are considered to accord with the provisions of the Torbay Local Plan 2012-2030 and all other material considerations.. The building, subject to materials, can be improved visually. The floor area for the property would meet the required standards for a 2 bed 3 person home, and the garden is large and over and above the national amenity standards. Parking provision is also met for two cars. The proposal is therefore recommended for approval.

Conditions to include:

FULL CONDITIONS SHALL INCLUDE DRAINAGE, CONSTRUCTION MANAGEMENT PLAN, PARKING, REMOVAL OF PD, OBSCURE GLAZING AND MATERIALS

1. Prior to commencement of any works above damp proof course level of the new extension, samples of all the materials to be used in the construction

of the external surfaces of the works, including the laying out and delineation of the two car parking spaces that retain adequate pedestrian access to the dwelling, 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.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the street scene in accordance with policy DE1 of the Torbay Local Plan 2012-2030.

2. The development, hereby approved, shall be carried out in accordance with the Flood Risk Assessment dated 10th February 2016, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development. The development will then proceed in accordance with the approved details.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan "A landscape for success" 2012-2030 and beyond and paragraph 103 of the NPPF.

3. No development shall take place until a method statement for the construction of the development hereby approved has been submitted to and approved by the Local Planning Authority. The approved statement shall be adhered to throughout the construction period. The statement shall provide details of the management of material deliveries and where they will be stored, the times of construction on the site, and the management of parking provision for visitors and contractors working on the site.

Reason: This information is required prior to the commencement of the development as it will confirm how the construction process will be managed in the interests of highway safety and local amenity in accordance with policies TA1, TA2 and DE3 of the New Torbay Local Plan 2012-2030.

4. The opening at first floor on the north facing elevation (Drawing reference 3851-02 Rev A) shall be obscure glazed and retained as such at all times. The obscure glazing level must be at least equivalent to Pilkington Level 3.

Reason: To protect neighbour amenity in accordance with Policy DE3 of the Torbay Local Plan (2012-2030)

5. The opening at first floor on the east facing elevation to the new bathroom (Drawing reference 3851-02 Rev A) shall be obscure glazed and retained

as such at all times. The obscure glazing level must be at least equivalent to Pilkington Level 3.

Reason: To protect neighbour amenity in accordance with Policy DE3 of the Torbay Local Plan (2012-2030)

6. All windows in the first floor east elevation, hereby permitted, shall be hung in such a manner that all views out of opened windows face south and down the garden of the application building.

Reason: To prevent overlooking of the adjoining properties in accordance with Policy DP/3 of the adopted Local Development Framework 2007.

7. The parking spaces, hereby permitted, shall not be used for any other purpose than for the parking of vehicles. Parking provision must take place in accordance with the arrangements detailed on drawing 3851-02 Rev A, they shall be kept clear of obstruction and only be available for the parking of vehicles. No vehicle must not overhang the public footpath.

Reason - To ensure the continued provision of off-street parking space in the interests of highway safety and to safeguard the amenities of adjoining occupiers in accordance with Policy DE1, DE3, TA1 and TA2 of the Torbay Local Plan 2012-2030.

### **Relevant Policies**

-

# Agenda Item 7

**Application Number**

P/2016/1047

**Site Address**

Land At Barton Road  
Torquay

**Case Officer**

Mr Scott Jones

**Ward**

Tormohun

**Description**

Construction of new building to provide up to 75 one and two bedroom apartments.

**Executive Summary**

The site is the remainder of the former South Devon College Site in Torre, Torquay, which sits just north of the Newton Road set between Kwik Fit to the south and McKay Avenue to the north.

The application seeks outline planning permission, with all matters reserved except for access, for up to 75 apartments.

The indicative plans show a large single building with undercroft and basement parking with 6 floors of accommodation above, with the upper two floors being recessed.

The application proposes a vehicular access off McKay Avenue and the indicative plans show 75 one and two bed apartments within a modern looking building. The plans have been amended and now show 92 car parking spaces and amended cycle and waste storage.

There is a long history to the development of this site which forms part of the former South Devon College. The site was originally included in the Master Plan for Torre Marine, as the wider site is now known.

Permission was granted originally for 61 sheltered flats with 1500 m2 of office accommodation in a building that extended up to 7 storeys. As the permission for the wider site has been implemented this could be built out at any time.

Planning permission was subsequently granted in 2010 for the deletion of the office accommodation and the use of the whole building for 'higher dependency' extra care accommodation (75 units). A start on site was made but mothballed due to the state of the housing market at that time.

A further application was granted permission to vary the tenure of the units and deliver 50 extra care units and 25 sheltered units, but this was not implemented.

The proposal shows a building that is essentially a similar footprint and size as the previous approvals on the site.

The site is considered suitable for residential use and the key issues are whether open market housing can be adequately provided with the necessary parking, amenity space, and other necessary elements required for permanent residential occupancy within what is a restricted site. For the purposes of an outline permission the indicative plans largely resolve an acceptable scheme that suggests that 75 units can be adequately delivered on the site.

The accommodation would be CIL liable and based on the indicative plans would secure around £192,000 in liability payment.

### **Recommendation**

Approval: Subject to conditions delegated to the Executive Head of Business Services, to include those listed within this report.

### **Reason for Referral to Development Management Committee**

The application is a Major Outline Application.

### **Statutory Determination Period**

13 Weeks - Extension of Time agreed until 17th November 2017 to permit proactive discussions to take place.

### **Site Details**

This vacant site originally formed part of the old South Devon College site located in Torre before it was redeveloped for housing purposes.

The site sits to the north of the Newton Road and to the south of the completed residential streets of Torre Marine, where there is an established access point to the site off McKay Avenue. The listed terrace of Edinburgh Villas and the Kwik Fit building sit to the south-east and there is a small play area currently being completed to the south-west.

This site was included in the Master Plan for Torre Marine and was to provide 61 sheltered units in a building that extended up to seven storeys with office floor-space and included 42 car parking spaces.

The site is at a key location in terms of public views and routes through the wider development site and key areas of public realm about its boundaries.

A previous owner did make a start on construction however the development stalled due to difficulties in the market and the site has remained vacant for a number of years. As the permission for the wider development has been implemented, the permission to construct the 61 sheltered units and office floor-space remains live in perpetuity and can be built out at any time.

*Date of Officer Site Visit: W/C 3rd April 2017.*

### **Detailed Proposals**

This is an outline application for up to 75 residential apartments with all matters reserved for future consideration other than access, which is detailed within this application.

The detailed access is in the north-east corner of the site off McKay Avenue, in the location of the current access.

Indicative plans have been submitted that seek to show that the site is capable of achieving up to 75 apartments in an acceptable form of development consistent with the Local Plan and the National Planning Policy Framework. The supporting plans have been revised through the course of the application to address concerns raised by Council Officers on matters that include parking numbers, cycle and waste storage, pedestrian access and linkages, and surface water drainage.

The supporting indicative plans show a large single L-shaped building with two floors of integral parking, one being below ground level, and six floors of accommodation, with four main floors and two recessed floors at the uppermost level. The plans show a modern looking building that incorporates large elements of glazing and rhythmic sections of coloured panelling. Appearance is however reserved for future consideration and hence this is only indicative.

Moderate-sized cantilevered balconies are shown to provide private outdoor amenity space for most of the units.

Parking has been increased from 75 spaces to 92 spaces by increasing the size of the basement level and rationalising the internal layout and the external layout around the building.

Cycle storage has been moved from the basement level to the undercroft to show a more accessible location and bin storage has been introduced within the building and in close proximity to the site entrance to show a facility that is suitably located for collection purposes.

A pedestrian movement strategy has been recently submitted to demonstrate how the building could be adequately accessed, which has introduced a lobby access on to the footpath link to the west in the south-west corner of the building near to the play area and the Newton Road.

An addendum to the initial flood risk assessment and drainage strategy has been recently submitted in support of the application, and there is also supporting documentation in respect to transportation, contamination and health impact.

## **Summary Of Consultation Responses**

### *Design Consultant:*

The amendments have overcome a number of points previously raised.

Key points that require some further resolution are (i) an alternative design strategy is required for the southern end of the building which will be prominent within the locality. The ground floor lobby has improved matters but the lack of circulation above has presented an unsatisfactory strategy at this stage. (ii) The access strategy is improved but open access to the under-build could present security issues due to the lack of natural surveillance. A proposed strategy should be evolved. (iii) The landscape detail appears to need significant development as the lack of any shared outdoor amenity space for residents appears a clear omission.

It is recommended that a set of design strategy diagrams should be developed and approved prior to the submission of the Reserved Matters in order to resolve the remaining areas of concern.

### *Drainage Engineer:*

Providing the surface water drainage is constructed in accordance with the latest submitted hydraulic design and drawings there is no objection on drainage grounds to planning permission being granted.

### *Strategic Planning/Transport, incorporating the views of the Local Highway Authority:*

The revised plans now include visitor parking and this is welcomed. They now show 92 spaces for an outline application for up to 75 units where the initial plans showed 75 spaces. It is recommended that as the area suffers from a high degree of street parking pressure that visitor spaces in addition to the 1:1 ratio for the number of flats is secured to at least a ratio of 0.3 (i.e. 23 visitor spaces for 75 units). However if a robust travel plan and parking management strategy can be secured the current level of parking is possibly acceptable given the central location.

Key technical points are:

- Cycle parking now included but uncertain on storage numbers.
- There are no disabled parking spaces and policy guidance seeks 10%.
- There are no electronic changing points and policy guidance seeks 20%.
- There are a handful of spaces that may have impaired access.
- The connecting ramps within the parking areas are shown at 1:10 which doesn't accord with the Torbay Highway Design Guide that indicates a maximum gradient of 1:12.
- A modal shift of 30% should be sought via a residential travel plan
- Access to and operation of designated and/or visitor spaces and cycle

- storage should be resolved by seeking a parking management plan.
- As there is a retaining highway wall that is currently unadopted a detailed design should be secured to ensure the adoption of the highway (McKay Avenue) is not prejudiced.

*Conservation Officer:*

The composite Heritage, Planning and Design & Access Statement acknowledges that the Torre Marine developments are 2½-3-storey town houses (as at McKay Avenue) with some 4-storey apartment blocks (on the east side). All range up the hill in a spatially contoured way, equating to the established patterns of housing on the west side of Barton Road. It is viewed that the scheme does not follow the topographical contours in close harmony and is too big.

*Waste Services Team:*

The revised plans for the bin store area looks like it is approximately 96 square metres. If 1100L bins were to be used then I believe that this would provide adequate space for both refuse and recycling leaving additional space for food waste caddies. The location of the bin store on the ground floor and with access from the highway to facilitate the collection of waste and recycling, is an improvement on the initial application which resolves the access issues identified previously.

*Community Safety Team:*

No objection. Recommend that a full contaminated land condition is attached to the decision if minded to grant the application due to the possibility of contamination on the site from made ground and other sources and to ensure that that site is safe for residential use.

*Arboricultural Officer:*

No significant arboricultural features are present on site to constrain a development however a detailed landscaping plan should be achieved that bears relevance to the recent development and elements of the historic landscape retained as part of the Torre Marine development. This should be supported by a landscape management plan.

*Police Designing Out Crime Officer:*

To minimise opportunity of criminal activity an access control system should be applied to entrances to the building and underground parking. Lighting of the underground parking should be in-line with British Standards and light coloured walls should be considered to increase the effectiveness of lighting. CCTV may be considered for the parking area. 75 spaces for 75 apartments appears inadequate in terms of parking and is a concern to the police. Achieving adequate parking on-site prevents potential parking problems. It is requested that the Local Planning Authority considers the ramifications of inadequate parking within its decision making.

*Historic England:*

No comment.

### **Summary Of Representations**

Publication type: Neighbour notification letters, site notice and newspaper advertisement.

14 representations have been received (12 objections from 9 local residents and also the community partnership, 2 neutral submissions).

Issues raised:

- The proposal would exacerbate the parking problems experienced in Torre Marine.
- Loss of light and views.
- Concern that the proposal would have a greater impact locally than the scheme for retired flats in terms of cars and general activity.
- Only a handful of visitor spaces is not sufficient.
- Lack of play space for children.
- Waste collection concerns.

The predominant issue of concern raised by local residents is the impact of the development upon local on-street parking where Torre Marine already suffers from congested streets due to the limited provision of private parking within the wider development.

### **Relevant Planning History**

P/2005/0138: Redevelopment of South Devon College to provide 258 residential units, 61 Sheltered units and 1500 m2 office floorspace. Approved: 30.09.05

P/2007/0968: Amendments to the approved scheme comprising changes to balconies, fenestration and roof detail. Approved: 9.08.07

P/2010/1389: Redevelopment to form 75 assisted living extra care units with associated communal and care facilities, car parking, landscaping and servicing. Approved: 29.09.2011.

P/2012/1264: Development of site comprising 25 Retirement Living Apartments and 50 Assisted Living Extra Care Apartments with associated parking, landscaping and servicing and communal and care facilities. Approved: 20.02.2013.

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

#### **Principle of residential**

The site has historically benefitted from planning permission for sheltered housing

(61 units and office space) and then more recently for extra care residential use (75 units), and then a mix of retired living and extra care units (75 units). The general thread through these historic permissions is the use of the site, predominantly or in whole, as being acceptable for some form of residential use, which is a material consideration. The materiality of the planning history is relevant as there is an extant permission that includes 61 sheltered units that can be built out at any time.

The proposal now seeks unrestricted residential apartments and it is the opinion of officers that the site is well-suited to this use, being in a central location with good access to shops, services and transportation links. In addition in terms of the character and immediate context, the site is also set in an area with a largely residential character, and hence the proposed use would assimilate easily and reinforce the character of the area.

Subject to ensuring that the proposal provides adequate internal living environments, adequate parking and associated residential elements, such as waste and cycle storage, amenity space etc, in order to secure good quality living environments, the principle is considered acceptable and aligned with a number of relevant strategic and housing policies within the Torbay Local Plan and the National Planning Policy Framework (NPPF), which support a sustainable pattern of housing provision with an emphasis upon the regeneration of brownfield sites, town centre sites and urban sites such as this one.

In strategic policy terms the principle is considered consistent with Policies SS12 (Housing) and H1 (Applications for new homes) of the Torbay Local Plan and Para 49 of the NPPF where housing applications should be considered in the context of the presumption in favour of sustainable development (unless other material consideration indicate otherwise).

### **Access and highway matters**

The application seeks approval for a detailed access off McKay Avenue in the location of the current access point where a dropped kerb and initial spur road already exists in to the site. Considering the site context this appears the only realistic vehicular access point in to the site and one that has historically been considered acceptable in the various historic applications over the past 12 years.

The Highway Authority have noted concern in respect to the access via McKay Avenue being not yet adopted. The Applicant is currently in discussion with the developer of Torre Marine in respect of the maintenance of the retaining wall that supports McKay Avenue, which is understood to be the issue preventing the road from being adopted. It is anticipated that the detailed design of the eventual proposals for the site would ensure that they did not prejudice any solution that is proposed for the retaining structure.

It is the opinion of Officers that the structural security of the road could be secured

by attaching a condition requiring that, prior to the commencement of construction, a detailed design of the building and in particular the structure and maintenance of the retaining wall which abuts McKay Avenue, is submitted to and approved in writing by the Local Planning Authority. By attaching such a condition it should ensure that the development does not prejudice the adoption of the remaining section of McKay Avenue.

There are no other particular issues of concern in terms of the highway network and safe access.

The proposed access is hence considered acceptable to serve the development, in accordance with Policy TA2 of the Torbay Local Plan, subject to the Condition noted above.

### **Car Parking**

Car parking has long been a contentious issue in the area, which has been exhibited by the level of concern noted in the public representations on this point. It is hence one of the key issues to consider.

The application was submitted with the indicative layout showing a proposed parking ratio of 1:1 with no visitor spaces, which gave a provision of 75 car parking spaces for 75 apartments. The representations submitted were in response to this initial proposal.

Policy TA3 and Appendix F of the Torbay Local Plan provides the policy context regarding parking provision for development and provide estimated requirements for parking that reflect a balance between ensuring that the levels of car parking generated by development are met on site, with the need to ensure that due consideration is also given to sustainable transport methods.

Appendix F identifies an expected requirement of 1 car parking space per flat and also notes that parking for visitors should also be provided. There is no guidance on what levels of visitor parking should be provided though. The guidance notes also state that 20% of available spaces should have electric charging points.

The site is in a relatively central location with good access to facilities and sustainable transport infrastructure (bus routes, Upton Coach Park and Torre Train Station all being in close proximity to the site). This would normally provide a context where the level of parking provision could be considered more flexibly if necessary. However, notwithstanding the central and sustainable location, given that there is an evident pressure for on-street parking in the area Officers requested that the applicant reconsidered the scheme in order to explore opportunities to demonstrate that adequate visitor spaces could be provided beyond the 1:1 parking ratio initially shown. In response to the concern over the potential impact of overspill parking in an area that already suffers from a high demand for street parking the applicant has submitted revised indicative plans that

show a layout that could provide 92 spaces for 75 units, which introduces 17 visitor/overspill spaces in to the development. As the Local Plan provides no detailed information on the levels of visitor parking in residential development it is a judgement on whether this is adequate. 17 additional spaces provides a ratio of one additional space for every 4-5 apartments. In the context of a very central and sustainable site, which may encourage some occupants not to own or use a car, the level of parking now shown is considered acceptable. The Local Highway Authority have recommended that at least 22 or 23 visitor spaces should be sought or other forms of residential development be sought to deliver an improved ratio of parking. However they also commend that a ratio around the level now shown would be acceptable on balance if this was supported by a robust travel plan and parking management plan were secured in order to try and reduce car dependency and use.

On balance it is considered that the applicant has moved sufficiently on this and the scheme provides an acceptable balance in terms of parking provision to limit its impact upon the surrounding area. In accordance with the highways advice the need to secure a robust travel plan and a parking management plan, which will help resolve the management of spaces to ensure that they are used efficiently and operate effectively, is supported.

Having considered the policy context and the concerns of neighbouring occupiers it is considered acceptable to support a scheme that provides 1:1 residents parking and additional visitor parking to a ratio of no less than 0.23 (i.e. 17 spaces for 75 flats), by condition, together with the requirement to submit and agree a travel plan and a parking management plan, to ensure that other forms of transport are duly promoted and the parking spaces operate efficiently for both residents and visitors. These parameters are considered to provide development that accords with Policy TA3 and Appendix F of the Torbay Local Plan.

### **Drainage and flood risk**

The application site sits within the wider Torbay Critical Drainage Area (CDA) as designated by the Environment Agency and hence a rigorous surface water disposal strategy is required in order to ensure that this brownfield site achieves reduced rates of surface water runoff.

The Council's Drainage Engineer has reviewed the initial flood risk assessment and drainage strategy and raised concern that the proposal did not meet the design criteria engrained within the Local Plan and the Environment Agency's CDA Advice Note (May:2015).

Following the receipt of further information the proposal achieves the desired controlled discharge rate in to the Public Sewer (it has been accepted that ground conditions make soakaways unachievable).

Subject to the development proceeding in accordance with the submitted drainage

detail it is considered that the proposal is acceptable on flood risk and surface water drainage grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan.

**Visual impact and impact upon the setting of the adjacent Tormohun Conservation Area and the adjacent Listed Buildings**

As the proposal is submitted in outline the location, footprint and the appearance will ultimately be considered at Reserved Matters stage.

However the indicative plans are representative and illustrative of the likely location, scale and form of building that is necessary to deliver the amount of development being proposed.

The illustrative plans for the proposal show a single large building with a modern appearance, with an L-shaped footprint and recessed upper floors that seek to reduce the bulk of the building at the higher levels. The elevations are a mix of render, glass and coloured panels in the illustrative plans that have been submitted, with repetitive balcony details also engrained within the design.

The proposed building ranges in height from 5 storeys (4 storeys of accommodation and a parking level) adjacent to Kwik Fit to a maximum of 7 stories towards the junction of McKay Avenue and Richardson Walk. At the northern extent it will be a similar height to the bookend buildings which terminate these streets when excluding the recessed upper floor that is set further back in to the site. The scheme is in terms of size, mass and footprint, similar to the extant consent approved under P/2005/0138, which is a material consideration.

Although the plans are indicative it is important that there is a clear contextual relationship with the wider site. The design should retain a relationship between it and the adjacent development as it is contended that for a building of the likely size to be readily absorbed into the built environment, it is important that the design does relate to the wider context in terms of architectural features, public realm, overall approach and use of materials. The detailed design stage should seek to resolve these concerns.

The quality of the relationship between this building and the public realm is also considered important. How the undercroft parking presents itself to the public realm will be important. It will also be important to adequately resolve the prominent southern tip of the building as well as the northern element, which will address McKay Avenue. The detailed design stage should seek to resolve these points.

The applicant has sought to address some of the already identified concerns by introducing a potential access point in to the building from the south with a ground floor lobby, and also illustrating how the undercroft parking could be softened. The improvement is welcomed and will help secure a solution at detailed design stage.

As matters stand the applicant has provided further illustrative plans that show an attempt to provide a positive relationship with the public realm. However the design solution is requires further thought and it is recommended that this is achieved by a condition requiring the submission and agreement of a set of design strategy diagrams prior to the submission of any Reserved Matters.

Considering the footprint and height of building is likely to be similar to that previously proposed and approved, the impact upon the setting of the adjacent Conservation Area and the setting of the adjacent Listed Buildings is considered acceptable, notwithstanding the concern raised by the Council's Conservation Officer that the proposal fails to step down adequately in-line with the falling topography. The extant permission is a material factor in determining this.

The proposal is considered to generally accord with Policies DE1 and SS10 of the Torbay Local Plan and areas of concerns will be considered through a Reserved Matters application. The proposal is considered acceptable in terms of the likely visual impact.

### **Quality of the residential environment**

The outline proposal should provide adequate comfort that a good standard of residential environment for future occupiers can be achieved.

The indicative layout plans show a generic division of apartments throughout the various floors. Each apartment generally accords with the size standards outlined within the Torbay Local Plan where Policy DE3 indicates a space standard for 1-bed flats of 50sqm and for 2-bed (3 person) flats of 61sqm.

In terms of outlook and natural lighting the layout of the building will provide all apartments with an acceptable level of outlook and lighting to key rooms as there is the potential to provide a uniform external frontage.

There is a design expectation that most apartments will benefit from a balcony, which will provide some form of external amenity space for occupants. Policy DE3 identifies that development should make provision for external amenity space where possible and as a guideline suggests that a minimum of 10sqm will be sought for apartments. It is unclear what size of balcony could be adequately achieved within a finely resolved design however the provision, within a constrained central site, together with the potential for some supportive communal space at ground floor, is likely to present a satisfactory provision of amenity space for occupants.

In terms of supportive facilities the indicative plans show how cycle and waste storage could be adequately achieved and through revised plans these facilities are shown to have responded positively to the concerns from the Councils Waste Team and Strategic Transport Officer. These facilities are now better located and adequately scaled.

Pedestrian access to the building has been evolved to include a link from the south, which responds more positively to the context and provide improved access and egress for occupants.

All matters considered the proposal is considered to provide adequate certainty that a good standard of residential accommodation can be achieved and thus the development is considered to accord with the aspirations of Policy DE3 of the Torbay Local Plan.

### **Impact upon local residential amenity**

Concerns have been expressed by residents about the impact that a building of this size will have on their amenity, principally through the loss of light and views.

Whilst the addition of a large building will present some loss of general outlook and light in terms of the properties to the north, there is an extant permission to a similar scale which can be built out at any time, which is a material consideration.

The properties to the north are shown to be round 16.5 metres away (15m to the edge of the balconies), which is similar to the established street pattern in the area where properties face each other, often with balconies. To the west the termination of Richardson Walk is in close proximity to the proposal and there would be residential amenity relationships to resolve at detailed design stage. Again the presence of the extant scheme is a material consideration in terms of the impact upon these properties. To the east and south the relationships are less sensitive and amenity impacts from loss of light, outlook and privacy do not appear demonstrable.

In the context of there being an extant scheme that presents a similar scale of building in a similar location the impact upon amenity is considered acceptable. As detailed the relationship, principally to the north-west would be duly considered at Reserved Matters stage. For the purposes of the outline application that seeks details approval for access alone this detailed matter can be resolved at Reserved Matters stage.

The proposal is considered suitable for approval having considered the aims and objectives of Policies DE1 and DE3 of the Torbay Local Plan.

### **Biodiversity**

The site is a somewhat barren brownfield site with large expanse of foundations providing the majority of the ground coverage. There is very little that is present or likely to be present in terms of flora and likely fauna and as such there will be no harmful impact upon biodiversity.

### **Human Rights and Equalities Issues -**

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

8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests/the Development Plan and Central Government Guidance

Equalities Act: In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

Full details of the build are unknown as the proposal is in outline however the applicant has estimated that given the likely scale of the building and potential need to remove existing piled foundations the build cost could be between £5-£10 million which would generally equate to producing 60-130 construction jobs. Sourcing of these jobs is yet to be determined but it is anticipated that a significant proportion could be filled locally.

In addition based on average income data 75 new households, even based on single occupancy, could result in a combined income of £1.73 million per annum being added to the local economy.

### **S106/CIL and Affordable Housing -**

#### *Affordable Housing:*

The implemented permission for the redevelopment of the former college site delivered a range of S106 contributions including the necessary affordable housing provision.

As the affordable housing requirement for the wider Torre Marine site has been delivered, there is not considered to be a requirement for any additional affordable units on this site.

#### *S106:*

S106 contributions are not required from this development in accordance with Policies SS5, SS6, SS7, SS9, SS11 and H2 of the Local Plan and the Planning Contribution and Affordable Housing SPD.

#### *CIL:*

The application is for residential development in Zone 1 where the Community Infrastructure Levy (CIL) is £30 per square metre of additional gross internal floor

area created.

The site is absent of buildings and hence the gross internal area in lawful use immediately preceding this grant of planning permission is zero.

The CIL liability for this development is £30 per square metre. The amount will be determined at Reserved Matters stage where the application will be CIL liable.

Based on the outline floor area the CIL liability is in the region of £192,000.

## **EIA/HRA**

### *EIA:*

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

### *HRA:*

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC and a formal HRA screening is not necessary in this instance as the proposed development is unlikely to have a significant effect on the South Hams SAC.

The proposal presents a controlled discharge that mimics greenfield runoff rates into the Public Sewer, which will minimise impacts upon outfall flows and any potential impact up the marine candidate SAC, in-line with Policy ER2.

## **Proactive Working**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval with imposed conditions to enable the grant of planning permission.

## **Conclusions**

The proposals are considered to accord with the provisions of the Torbay Local Plan 2012-2030 and all other material considerations and hence the Officer recommendation is approval.

### **Conditions to include:**

1. Prior to the submission of any Reserved Matters a set of design strategy diagrams shall be submitted to and approved in writing by the Local Planning Authority, which shall seek to illustrate access and circulation arrangements, a strategy for the treatment of the northern and south elevations, and a strategy for the provision of communal amenity space.
2. Prior to the submission of any Reserved Matters a geotechnical report,

- which demonstrates that the level of excavation necessary in order to deliver the basement level parking indicated within the outline application, shall be submitted to and approved in writing by the Local Planning Authority
3. Submission of Reserved Matters relating to appearance, landscape, layout and scale.
  4. The submitted reserved matters shall be based on the approved Master Plan and associated Design and Access Statement and Access and Security Diagram.
  5. Construction Method Statement: development shall not take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority.
  6. Prior to the commencement of construction a detailed design of the building and in particular the structure and maintenance of the retaining wall which abuts McKay Avenue is submitted and approved by the Local Planning Authority so that it does not prejudice the adoption of the remaining section of McKay Avenue.
  7. The development shall proceed in accordance with the submitted surface water drainage strategy and detail to secure an appropriate controlled discharge to the Public Sewer in a designated Critical Drainage Area.
  8. The reserved matters shall include the provision of 1:1 parking for the occupants of the building plus an additional provision of visitor spaces to a ratio no less 0.23 spaces per flat. For the avoidance of doubt a Reserved Matters proposal shall provide no less than 92 car parking spaces. All spaces shall accord with the size and manoeuvring requirements as outlined within Appendix F of the Torbay Local Plan 2012-2030 and 10% of the spaces shall be designed to the disabled parking specification and 20% of the spaces shall be provided with electrical charging points.
  9. Prior to the first occupation a Parking and Management Plan that ensures that the proposed parking provision and layout operates effectively for both occupiers and visitors and adequately resolved the provision and access to disabled spaces, electronic charging points, and cycle parking for occupiers.
  10. Prior to the first occupation of the building a Travel Plan, that seeks to secure a modal shift of 30% of potential users to sustainable modes of travel, shall be submitted to and approved in writing by the Local Planning Authority.

11. The Reserved Matters shall include the detailed provision of covered, safe and secure cycle parking to a ratio no less than 1:1, and shall include a detailed design of any proposed storage mechanism (such as racks or hoops). The proposal shall also provide for adequate additional secure visitor cycle facilities.
12. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the buildings or the completion of the development whichever is the sooner, or at such other time as agreed by the Local Planning Authority in writing, and any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.
13. The Reserved Matters shall include the provision of waste storage for 1100L waste and recycling bins and food caddy units, in-line with Policy W1 of the Torbay Local Plan and aligned, in terms of scale and location, with the provision outlined within the submitted plans.
14. Prior to the commencement of development a full contaminated land survey shall be submitted to and approved in writing by the Local Planning Authority.

### **Informative(s)**

01. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

### **Relevant Policies**

SS1 - Growth Strategy for a prosperous Torbay

SS3 - Presumption in favour of sustainable dev

SS10 - Conservation and Historic Environment

SS11 - Sustainable Communities Strategy

SS12 - Housing

TA2 - Development access

TA3 - Parking requirements

NC1LFS - Biodiversity and Geodiversity

HE1 - Listed Buildings

H1LFS - Applications for new homes

DE1 - Design

DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ER3 - Contamination  
W1LFS - Waste hierarchy  
W2LFS - Waste audit