

Application Number

P/2014/0902

Site Address250 Babbacombe Road
Torquay
Devon
TQ1 3TA**Case Officer**

Matt Diamond

Ward

Wellswood

Description

Variation of condition 5 of previous planning permission (P/1983/0353) to permit additional items to be sold.

Executive Summary/Key Outcomes

The application is to vary Condition 5 of planning permission ref. 83.353 to allow more goods to be sold other than garden centre and Do-It-Yourself materials from the premises at 250 Babbacombe Road, Torquay, currently occupied by The Range, so that the store can continue to be occupied by The Range with the benefit of planning permission. The application has been implemented in full and is now entirely retrospective.

The application is almost six months old and during that time the applicant has failed to demonstrate in a suitably robust impact assessment that the development will not have a significant adverse impact on town centre investment, vitality and viability. Therefore, in accordance with national planning practice guidance the application should be refused, as failure to undertake an impact test can in itself be a reason for refusal. Members should be aware that if they decide to refuse the application, the implication of this decision is that enforcement action should be taken to cease the current use.

However, based on the information submitted to date, if Members wish to approve the application having weighed up the positive and negative effects of the proposal and all material considerations, including the positive benefits of reusing a previously vacant building and the jobs that have been created, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

1. Restrictive goods condition
2. Stop sub-division of the store
3. Define maximum net sales area and maximum area for ancillary cafe
4. No independently operated concessions
5. Hours of delivery

6. Staff Travel Plan
7. Waste Management Plan

Recommendation

Refusal; for the reason set out in this report.

Statutory Determination Period

The application was validated on 16.09.2014. An extension of time to determine the application has been agreed to 27.03.2015.

The additional time was agreed in order to allow the applicant to respond to the advice letter prepared by the Council's retail consultant dated 19.12.2014, which stated that insufficient information had been provided by the applicant to demonstrate compliance with the sequential test and to show that the proposal will not have a significant adverse impact on investment and town centre vitality and viability. The applicant submitted a Supplementary Retail Statement on 01.02.2015 and further advice was received from the Council's retail consultant on 01.03.2015 (letter dated 26.02.2015). The two advice letters have been circulated to Members.

Site Details

The site address is 250 Babbacombe Road, Torquay. The site area is 1.18ha. It forms part of the former Walls Hill limestone quarry. It comprises the former Focus DIY store in the southeast corner (now in use by The Range) and associated car park to the north and west. Until 28 November 2014 the store building had been vacant for a number of years. In addition, until the latter half of 2014 a garden centre had operated on the site and the associated greenhouse extension and structures have since been demolished. Vehicular access is provided via a two way access onto Babbacombe Road to the southwest. Trees and vegetation line part of the northwest and southwest boundaries. Another line of trees and vegetation split the car park, but some of this vegetation has been removed.

The site is bounded by a scout hut and quarry business to the north, the former quarry cliff to the east, a public footpath and woodland to the south, and Babbacombe Road to the west. The wider area is characterised by housing to the west, Walls Hill public open space to the north and east (accessed via the footpath) and the Palace Hotel to the south.

The following designations in the Adopted Torbay Local Plan 1995-2011 ('the Local Plan') affect the site and its setting:

- o Warberries/Walls Hill wildlife corridor passes through the north of the site
- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Area of Great Landscape Value (AGLV) adjoins site along east boundary

- o Coastal Preservation Area (CPA) adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Protection Zone (CPZ) in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel (northern edge) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

The following designations affect the setting of the site in the emerging Torbay Local Plan - A Landscape for success (2012 to 2032 and beyond) ('the emerging Local Plan'):

- o Prehistoric field system at Walls Hill scheduled monument adjoins site along east boundary
- o Undeveloped Coast adjoins site along east boundary
- o Hopes Nose to Walls Hill Site of Scientific Interest (SSSI) in close proximity to the site to the east
- o Coastal Change Management area in close proximity to the site to the east
- o Asheldon Copse - Anstey Cove Road County Wildlife Site (CWS) in close proximity to the site to the south
- o Palace Hotel Ground (North) Urban Landscape Protection Area (ULPA) in close proximity to the site to the south

Wildlife corridors are not shown on the Policies Map for the emerging Local Plan, but they still exist and are shown on Map 3 of the Torbay Green Infrastructure Delivery Plan (April 2011), which is part of the evidence base for the new Local Plan.

The site is in an out of centre location. It is 580m from Babbacombe Local Centre, 970m from Wellswood Local Centre, 1.26 km from St Marychurch District Centre and 2 km from Torquay town centre. Babbacombe Road is a bus route with two regular services, 11 and 32/32A/32C.

Detailed Proposals

The proposal is to vary condition 5 of extant planning permission ref. 83.353 to allow more goods to be sold other than garden centre and Do-It-Yourself materials. The extant condition is as follows:

"The premises shall be used only as a garden centre and for the sale of Do-It-Yourself materials and for no other purposes (including any purpose in Class 1 of the Schedule to the Town and Country Planning (Use Classes) Order, 1972.

Reason: The Local Planning Authority consider that the use of the building

for the purpose specified is appropriate but that a proposal to use the building for any other purposes would need to be made the subject of a separate application to be considered on its merits."

The proposed varied condition is as follows:

"The retail unit shall be used for retail purposes including the sale of DIY, hardware and garden centre products, kitchens, furniture, carpets and floor coverings, soft and hard furnishings including household textiles, electrical goods, pictures, homewares, glassware and tableware, lighting, cycles, motor and cycle accessories, pet food and pet products, and office equipment (including stationery, arts and crafts and office supplies), seasonal goods and giftware only. However without the written consent of the Local Planning Authority goods falling outside of this range may be sold where they form a minor and ancillary part of the operation of the retail use.

Notwithstanding the provisions above and for the avoidance of doubt the sale of the following additional items will be permitted to be sold:

- (i) The sale of non-fashion clothing from up to 30 sq.m.
- (ii) The sale of recreational and camping goods from up to 200 sq.m.
- (iii) The sale of confectionery from a maximum of up to 32 sq.m. net.

All of the above items can only be sold in conjunction with the occupation of the retail warehouse by a single retailer."

A further condition is suggested in relation to the cafe on the mezzanine floor:

"1. The café use hereby permitted shall not exceed 190 sq.m. in floor area nor be operated independently of the retail warehouse. In the event that the café use is ceased, the floor area occupied by it shall revert to the range of goods and form of retailing permitted under the terms of the existing planning permission.

2. The designated area referred to in 1 above shall only be used as a coffee shop, serving coffee, other hot and cold drinks, sandwiches and other light refreshments for consumption on the premises and for no other purpose including any other purpose within Class A3 of the Schedule to the Town and Country Planning (Use Classes) Order, 1987 or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order."

The Supplementary Retail Statement submitted with the application states that the mezzanine floor is used for the sale of furniture, lighting, recreational and camping goods, the ancillary cafe and storage. It states that the applicant is

willing to accept a further condition limiting the net sales area of the mezzanine to 1,250 sq m (excluding the cafe).

A separate application has been submitted to insert the mezzanine, carry out external alterations to the building, reorganise the car park and install plant in the car park, following demolition of the greenhouse extension (ref. P/2014/0901/MPA).

The application has been implemented and is therefore now entirely retrospective.

Summary Of Consultation Responses

Police Architectural Liaison Officer - West Devon, Torbay & South Hams: No comments.

Torbay Development Agency: No response.

Strategic Transportation: Initial comments stated £102,491 sustainable transport contribution required in accordance with Planning Contributions and Affordable Housing SPD based on net additional retail floorspace. The exact level of additional traffic and impact upon the highway network has not been clearly set out in the Transport Assessment, therefore unable to comment on whether or not the proposal is acceptable. The TA has undercounted trip generation and is not robust. Staff travel plan required.

Additional comments on P/2014/0901 (for the mezzanine floor) questioned validity of further technical information received. Traffic generation has calmed down since opening and travel patterns likely to revert to peaking at holiday times and peak weekends. No appropriate data provided for a recognised neutral time of year based on several stores instead of only one at Plymouth, which is in a different type of location. £102,491 contribution still required, including £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.

Community Safety: Recommend a condition to limit hours deliveries can be made to between 07:00 and 23:00 Monday to Friday, and between 07:00 and 13:00 on Saturdays to protect residential amenity from noise. (It is assumed the recommendation extends to no deliveries on Sundays and bank holidays.) Further comments on external lighting relate to P/2014/0901.

Waste: Unlikely to be any waste issues.

Summary Of Representations

None received.

Relevant Planning History

P/2014/0901/MPA: Construction of additional car parking following demolition of garden centre (retrospective), provision of two water tanks and a pump house, and insertion of mezzanine floor and exterior doors in existing building. (Revised description): Pending consideration.

P/2012/1124/VC: Variation of Condition 3 to enable deliveries to take place between 7am and 11 pm on Mondays-Saturdays and 8am to 6pm on Sundays and Bank Holidays and the removal of Condition 5 pursuant to planning permission reference 83.353 allowing the sale of all goods within Use Class A1, thereby allowing the premises to be used as a supermarket.: Refused 28.01.2013 (Appeal dismissed 15.01.2014)

P/2012/1123/MPA: Alterations to the building associated with its conversion to a supermarket and extension to the internal mezzanine floor by 282 sqm for ancillary plant and offices [non sales area]; together with new hard and soft landscaping, car park layout and site access arrangements (following demolition of greenhouse extensions, 297 sqm).: Refused 15.01.2013 (Appeal dismissed 15.01.2014)

ZP/2011/0698: Change of use and refurbishment of existing vacant unit to provide a food store of approx 3,500sqm with 175 car parking spaces (pre-application enquiry):

ZP/2008/0267: Extensions To Site And Use As A Supermarket (pre-application enquiry): Approve 01.04.2008

P/2005/1102/AD: Illuminated/Non Illuminated Signs: Approved 11.08.2005

99/1415/PA: Variation of condition 5 of application 83.353 to allow the sale of pets, pet food and pet products: Approved 15.11.1999

98/0470/PA: Change of use from DIY superstore to a store for the sale of furniture, carpets, beds and soft furnishings: Approved 30.04.1998

98/0140/PA: Variation of conditions 3 & 5 of application 83.353, to allow use of store as a food supermarket, including alterations and changes to form additional car parking and servicing areas: Refused 15.01.1999

83.2843: Erection of greenhouse Extension, Walls Hill Quarry, 250 Babbacombe Road, Torquay: Approved 17/02.1984

83.353: Erection of D.I.Y. Home and Garden Centre, with ancillary parking and service areas, Walls Hill Quarry, Babbacombe Road, Torquay: Approved 23.09.1983

Key Issues/Material Considerations

The key issues are:

1. The Principle of the Relaxation of Use on Town Centre Vitality and Viability
 2. Reuse of Vacant Building and Job Creation
 3. Impact on Local Highways
 4. Impact on Residential Amenity
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1. The Principle of the Relaxation of Use on Town Centre Vitality and Viability

The site is in an out of centre location, therefore the sequential test must be applied. An impact assessment is also required as the floor area exceeds the default threshold of 2,500 sq m set in the NPPF; the threshold in the emerging Local Plan is 1,000 sq m, but this is not adopted policy. The variation of the condition will affect all the floor area in the building. The total floor area in the building prior to the installation of a mezzanine floor was 3,230 sq m. The total floor area in the building as existing after the installation of a mezzanine floor is 4,775 sq m. As can be seen, notwithstanding the outcome of the separate application to insert the mezzanine (ref. P/2014/0901), the total floor area will exceed the default threshold for an impact assessment.

With regards to the sequential test, the applicant had originally provided insufficient information in the Supporting Retail Statement to demonstrate compliance. This related to the issue of flexibility and the requirement to search for alternative sites across the whole of Torbay. Therefore, a Supplementary Retail Statement was submitted. The Council's retail consultant has reviewed this document and concluded that the application now passes the sequential test, subject to a condition to stop the sub-division of the retail store. If the application is approved, this condition should be added accordingly.

With regards to the impact test, again originally the applicant had provided insufficient information to demonstrate compliance. No information had been provided on the impact of the proposal on town centre investment, as required by the NPPF, and no evidence had been provided to back up the assertion that 77% of the turnover can take place under the current permission. Furthermore, the Council's retail consultant considered that limited weight could be placed on the impact assessment provided, as it was based on DIY goods shopping patterns only and did not reflect the full range of goods being sold by The Range. The retail consultant was also concerned that no information had been provided on the potential impacts of other retailers using the store should The Range vacate the premises.

The Council's retail consultant considers that limited additional information has been provided in the Supplementary Retail Statement to satisfy his previous

concerns. The additional information focuses on the difference in turnover of the previous and current uses, stating that there will only be an increase of £1.4m. However, the retail consultant considers that the total turnover of the proposal must be taken into account because the building had been vacant for a number of years. Furthermore, a significant proportion of the turnover is still attributed to DIY goods and gardening products (55%) and evidence of this is required before the retail consultant can complete his advice. For information, the total turnover in the SRS is £6.8m, with a predicted impact on Torquay town centre of 0.3% and the Willows of 0.4%.

The national planning practice guidance states:

"It is for the applicant to demonstrate compliance with the impact test in support of relevant applications. Failure to undertake an impact test could in itself constitute a reason for refusing permission."

As the applicant has failed to undertake a robust impact assessment and in particular no assessment of town centre investment, given the length of time that has already been given to the applicant to complete this it is considered that the application should be refused at the current time in accordance with national guidance, and enforcement action taken to cease the current use. However, if Members consider that it is unlikely that the proposal will have a significantly adverse impact on the centres in its catchment, in combination with other development proposals, based on the information received to date, then the positive and negative effects of the proposal need to be considered alongside all other material considerations. The positive effects are discussed under 2. below.

For information, the recently refused application for a supermarket to occupy the premises was dismissed at appeal due to failing the sequential test and the predicted adverse impact to the vitality and viability of St Marychurch District Centre and Babbacombe Local Centre. However, this differs from the current application as it sought permission for the sale of convenience goods rather than an expansion of the comparison goods that can be sold from the premises.

2. Reuse of Vacant Building and Job Creation

The proposal brings back into use a building which has been vacant for a number of years. A proportion of the goods sold are consistent with the extant permission to sell DIY goods and gardening products. A core principle of the NPPF is to encourage the effective use of land by reusing land that has previously been developed (brownfield) provided that it is not of high environmental value. Local Plan Policy EP6 also supports proposals for the development of derelict, vacant or underused sites where schemes result in their beneficial reuse. Therefore, the proposal has a positive impact in this regard.

The Planning, Sustainability and Waste Management Statement submitted states

that the proposal will create 124 FTE jobs. It is unknown how many people are currently employed at The Range and an update will be provided at committee. Securing economic growth in order to create jobs and prosperity is consistent with the NPPF (paragraph 18) and emerging local policy.

The above benefits are material considerations that must be weighed in the overall planning balance of the application. If Members consider them to take higher priority than the uncertainty over the impact of the proposal on town centre vitality and viability, then they may wish to approve the application. In this case, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be re required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

1. Restrictive goods condition
 2. Stop sub-division of the store
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 4. No independently operated concessions
 5. Hours of delivery
 6. Staff Travel Plan
 7. Waste Management Plan
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3. Impact on Local Highways

As described under the Summary of Consultation Responses above, the Transport Assessment submitted with the application was considered by Strategic Transport officers to not be robust. The applicant submitted further technical information to demonstrate that the proposal will not result in additional trips, but Strategic Transport officers consider the robustness of this additional information to still be questionable.

However, following observation of the store operating on week days, Strategic Transport officers consider the proposal to be acceptable, subject to payment of a £102,491 financial contribution in order to: implement parking restrictions on local roads; carry out highway safety works to the junction at Babbacombe Road, St Anne's Road and Babbacombe Downs Road; and carry out sustainable transport enhancements in the area. The contribution is based on the net additional floor area of the proposal and associated trip generation.

The contribution will need to be secured in a s106 agreement. As the contribution has been calculated on the basis of the net increase in floor area of inserting the mezzanine, it is considered that the agreement should be tied to the concurrent application ref. P/2014/0901. However, legal advice will be sought on whether it should be tied to this application too.

A condition to secure a Staff Travel Plan within three months of the date of decision is also required. Subject to these provisions, the proposal is considered to be acceptable and in accordance with Local Plan Policies TS, T1, T2 and T26.

4. Impact on Residential Amenity

Community Safety officers have recommended a condition to limit the hours of delivery to between 07:00 and 23:00 Monday to Friday, and 07:00 and 13:00 on Saturdays in order to reduce disturbance to local residents. The condition should also prevent deliveries taking place on Sundays and bank holidays. Subject to this condition, the application accords with Local Plan Policies EPS and EP4.

S106/CIL -

A financial contribution of £102,491 is required towards the following:

- o £2,500 required to implement parking restrictions along Babbacombe Road to the south of the store, and a £5,000 bond returnable after 3 years to secure against the implementation of further parking restrictions on surrounding residential roads if this becomes necessary.
- o £33,491 to alter radius kerbs and islands at Babbacombe Road/St Anne's Road/Babbacombe Downs Road junction in the interests of pedestrian safety.
- o £6,500 for bus shelter on northbound side of Babbacombe Road near the store in the interests of promoting sustainable modes of travel.
- o £60,000 for a shared pedestrian cycleway along Babbacombe Road linking St Anne's Road and Asheldon Road in the interests of promoting sustainable modes of travel.

Justifications

The contributions towards highway works are justified in paragraphs 2.1-2.4 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6 and T26.

The contributions toward sustainable transport measures are justified in paragraphs 4.12-4.24 of the Planning Contributions and Affordable Housing: Priorities and Delivery SPD (LDD6) and accord with Local Plan Policies CF6, T1 and T2, and paragraph 32 of the NPPF.

Status

The applicant has not yet confirmed whether they agree to pay the above s106 contributions. Therefore, heads of terms have yet to be agreed and instructions have not been sent to Legal Services to start preparation of the s106 agreement. An update will be provided verbally at committee. Legal services will be consulted on whether the agreement should be tied to this application, as well as P/2014/0901.

Conclusions

In conclusion, as the applicant has failed to undertake a robust impact assessment and in particular no assessment of town centre investment, it is considered that the application should be refused in accordance with national planning practice guidance. The application was submitted almost six months ago and an extended period of time has been given to the applicant to address this. Members should be aware that if they decide to refuse the application, the implication of this decision is that enforcement action should be taken to cease the current use.

However, if Members consider that it is unlikely that the proposal will have a significantly adverse impact on town centre vitality and viability based on the information received to date, and the positive benefits of the scheme of reuse of the previously vacant building and job creation are sufficiently high priorities in the overall planning balance, then they may wish to approve the application. In this case, Members should be aware that the application will have to be referred to Full Council for decision and conditions will be required to limit the goods that can be sold from the store and to prevent the sub-division of the building, together with other matters. Suggested conditions are listed below, however final drafting and determination of conditions should be delegated to the Director of Place:

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Condition(s)/Reason(s)

01. The applicant has failed to demonstrate in a suitably robust impact assessment that the development as varied will not have a significant adverse impact on investment in the centres in the catchment area of the proposal, or on town centre vitality and viability. The proposal is therefore contrary to saved Policies SS and S6 of the Adopted Torbay Local Plan 1995-2011 and paragraph 26 of the NPPF. Furthermore, national planning practice guidance states that it is up to the applicant to demonstrate compliance with the impact test and failure to undertake an impact test could in itself constitute a reason for refusing permission.

Relevant Policies

SS - Shopping strategy

S6 - Retail development outside identified To

CF6 - Community infrastructure contributions

W7 - Development and waste recycling facilities
EP6 - Derelict and under-used land
TS - Land use transportation strategy
T1 - Development accessibility
T2 - Transport hierarchy
T26 - Access from development onto the highway
NPPF - National Planning Policy Framework