

Application Number**Site Address**

P/2017/0493

Devonshire Park (Formerly Nortel Site)
Brixham Road

P/2017/0494

Paignton
TQ4 7BE**Case Officer****Ward**

Mr Scott Jones

Blatchcombe

Description

P/2017/0493: Demolition of the remaining structures, grubbing out of the trees, foundations and floor slabs/basements, remediating contamination and earth works to re-profile the site (Option 1).

P/2017/0494: Demolition of the remaining structures, grubbing out of the trees, foundations and floor slabs/basements, remediating contamination and earth works to re-profile the site (Option 2).

Executive Summary/Key Outcomes

The site is the former Nortel site located adjacent to Brixham Road and Long Road on the western outskirts of Paignton. It has a site area of 9.76ha.

The site has outline planning consent for a mixed use development of housing, employment and retail (bulky goods) space, including a garden centre and restaurant/café use.

This report relates to two full applications for groundworks to prepare the site for the consented mixed use scheme in order to accelerate delivery.

The two applications are principally similar and they have been submitted in tandem to provide the developer with two options for their emerging Reserved Matters Proposals with different ground levels sought for a small parcel of the site in the south east corner (near to the controlled road junction where Long Road meets Brixham Road).

The proposed groundworks for both applications include substantial regrading of the northern part of the site that presently rises to the north in-line with the natural topography of the area. The aspiration is to provide three principal platforms on which the future residential element will sit through a process of cut and fill. The proposed development platforms are to be retained and defined through the provision of concrete retaining walls, which will principally run from east to west, up to height of 5.5m in places. The re-profiling of the site includes the removal of all trees and areas of vegetation. The groundworks include the remediation of the site as the land is contaminated and the remediation principles are to reuse

materials on site where possible or to cap with clean top and/or subsoil where appropriate or remove from the site where it is not suitable to reuse or cap.

As stated the applications differ solely in terms of the proposed treatment of the south east border with the adjacent highway.

Option 1 (P/2017/0493) proposes a graded bank to traverse the level change down in to the site.

Option 2 (P/2017/0494) proposes a sheet piled retaining wall that will rise to a height of around 3.5m within the site.

There are three areas that officers have been working with the applicant on;

The proposals as initially submitted remove existing trees, hedgerows and other natural features of significant landscape value. Following discussions with the applicant a revision to the schemes is anticipated that would retain the most significant features.

Further information is required to provide certainty that protected species will not be harmed. More detail has been requested about the translocation of slow worms and retention of potential nesting habitat.

In order to ensure the principles of the development granted in outline and the design principles presented within the Design and Access Statement that accompanied the outline application are maintained, the applicant has been requested to delete the retaining walls from the proposals. There is concern that as submitted the proposals would impede the evolution of an acceptable residential layout as the resultant site profile would be likely to impede good access and permeability through the site for pedestrians, would constrain the ability to provide good quality environments, as high retaining walls would form part of garden borders creating unpleasant outlooks and unnecessary shading of amenity areas. A retaining wall between the residential area and retail area is considered acceptable provided that suitable pedestrian access can be maintained.

Officers are negotiating with the applicant in order to seek the positive resolution of the matters cited above in order to reach a position to support the delivery of an important regeneration scheme on a prominent and key site on the outskirts of Paignton. Members will be updated on the progress of these discussions.

Recommendation

For both applications the recommendation is Conditional Approval; subject to the submission of revised plans and further information that satisfactorily resolves the following, the resolution of which to be delegated to the Executive Head of Business Services:

1. The submission of additional information in respect to contamination and remediation that demonstrates that the extent of tree removal currently proposed is essential to make the site safe for future uses, or the submission of revised plans that presents an acceptable impact upon trees and important landscape features,
2. The submission of a revised Construction and Ecological Management Plan (CEMP) that is in full accordance with Clause 10 and Annex D4.1 of BS42020:2013 in order to ensure due regard and provide certainty in regard to the protection measures and mitigation afforded protected species,
3. The submission of revised groundworks that will retain the ability for a future Reserved Matters application relating to the extant permission reference P/2014/0947 to present a high quality residential and retail development, which accords with the guiding principles established within the Design and Access Statement that accompanied the outline application, affording due consideration to design, movement and landscape principles.

Should the matters above be positively resolved it is requested that appropriate conditions are to be delegated to the Executive Head of Business Services, which should include those suggested by the Community Safety Team.

In the absence of satisfactory information that positively resolves the outstanding issues cited above by the 4th September 2017 the application to be refused, contrary to Policies C4, NC1, DE1, TA1 and TA2 of the Torbay Local Plan 2012-2030. The precise wording of the refusal to be delegated to the Head of Business Services in order to take into account any subsequent information submitted as part of the application.

Statutory Determination Period

Both application have a 13 Week determination period and decisions are due by the 4th September 2017.

Site Details

The site comprises the former Nortel/Bookham site, now known as Devonshire Park, which sits to the west of Brixham Road and to the north of Long Road, on the outskirts of Paignton. The site area is 9.76ha.

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 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 located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head. The topography of the site rises by about 20 metres from south to north. It is within Flood Zone 1 and a Critical Drainage Area. The southern part of the site is absent of vegetation. The northern part of the site is verdant in comparison with prominent landscaping framing a series of car parks scattered lines of trees on and around the boundaries of the site. Parts of the site are contaminated from the historic uses.

A provisional Tree Preservation Order has been placed over a linear belt of trees that runs east to west adjacent to the existing access point to the site off Brixham Road, and the north-south belt of trees that sit aside the boundary with the Brixham Road north of the access point (excluding leylandi and Monterey Cypress within this group). The Tree Preservation Order is provisional and subject to representations as it is presently within the 28 day notice period.

Detailed Proposals

This report considers two very similar applications that have been submitted in tandem to provide the developer with an option for their emerging Reserved Matters proposals, by proposing different treatment of the ground levels of a small parcel of the site in the south east corner (near to the controlled Junction where Long Road meets Brixham Road).

Both proposals as submitted are to demolish the remaining structures, grubbing out of the trees, foundations and floor slabs (and basements), remediating contamination and earth works to re-profile the site.

In detail both proposals includes:

1. The removal of the remaining section of the former Nortel building that lies semi-demolished in the southern part of the site close to Long Road,
2. The removal of basements, tunnels, foundations etc., including the network of roads and car parks found within the northern part of the site,
3. The removal of all trees and hedges within the site,
4. The re-profiling of the site through cut and fill and the provision of three principal lines of retaining walls, which sit across the site from east to west, and creates three tiers within the northern part of the site (residential area) and a lower tier within the southern part of the site (retail and employment area). The northern most wall will vary from 1.5m to 5m high. The central wall will vary from 2m to 5.5m high, and the southern-most wall will vary from 1.5m to 3m high. The walls are proposed to be concrete in construction.

As stated where the applications differ is in the proposed treatment of the south east border with the adjacent highway, which is set higher than the site level.

Option 1 (P/2017/0493) proposes a graded bank to traverse the level change.

Option 2 (P/2017/0494) proposes a sheet piled retaining wall that will rise to a height of around 3.5m within the site, with a fence/wall above.

For both applications it is noted that all suitable concrete and hard-core will be crushed and used on site as fill material.

The works are detailed as being preparatory works to facilitate the mixed use development approved in outline and includes ensuring that the site will not qualify as contaminated land under Part 2A of the Environmental Protection act 1990.

Summary Of Consultation Responses

Community Safety: The remediation and treatment of the contamination on site is acceptable.

Recommend that a condition regarding unknown contamination and the provision of a validation report at the end of the works is placed on any grant of consent.

In regard to broader issues relating to the contamination it is recommended that the removal of trees, if valued, is validated with further information, with either a site map produced with all the locations of previous investigations detailing the level of contamination, and/or soil sampling carried out around the trees to establish the extent of the contamination if their removal is reasoned on grounds of contamination and remediation.

No objection to the proposed demolition and associated works and no comment in relation to the proposed hours of work or method of demolition.

Arboricultural Officer: The protected trees on the site are of increasing visual prominence.

If the application is granted full planning consent no restriction will remain to the removal of all trees on site (subject to bird nesting restrictions). It is considered that this will be contrary to Policy C4 of the Adopted Local Plan and will lead to a readily appreciable and long term detrimental impact upon the public visual amenities of the local and wider landscape.

Recommend that the application be unsuitable for approval on arboricultural merit in relation to the earthworks and tree removal.

South West Water: No Objection.

Ecological Advisor: The site clearance is unlikely to have any adverse implications for greater horseshoe bats and is therefore very unlikely to affect the South Hams SAC. A Habitat Regulations Assessment (HRA) is not required.

There is concern about the ecological information submitted to support the applications as the Construction Environmental Management Plan prepared by Engain (May 2017) lacks crucial information about the mitigation proposals - without which it is difficult to establish the necessary likely success of the proposed measures.

If minded to grant approval it is suggested that the Council needs to be convinced that the need for the proposed ground clearance and re-profiling of the slopes is necessary for future development of the site i.e. loss of vegetation is outweighed by the benefits of the scheme.

If convinced the Council should request a revised and fully detailed Construction Environmental Management Plan that is in full accordance with Clause 10 and Annex D4.1 of BS42020:2013. The CEMP should also provide detailed information on the appointment and on site responsibilities of an Ecological Clerk of Works (with clear evidence to show that any proposed individuals are competent to assume this role).

Any future revised information should not leave questions unanswered or details unaddressed. To do so, would be poor practice and not in accordance with CIEEM's Code of Professional Conduct.

Urban Design Advisor: It is vital to ensure that the fundamental principles of the outline application are upheld to ensure that Reserved Matters applications respond successfully to Design and other Policies that are within the Torbay Local Plan.

The current submissions appear an attempt to achieve an early start on site, the assumption being that these basic enabling works would not materially affect the parameters set by the Outline Consent.

The approach in terms of re-structuring the slopes and existing land profile of the site is an extensive one and relies on a heavily engineered approach - utilising sheet piling and concrete retaining structures. It is not known whether less drastic means of dealing with the sloping ground have been explored, but it is clear that this solution may have significant impacts on the ability of the final layout and form of the development to deliver some of the important 'design principles' that were anticipated in the outline consent.

The future north-south route within the residential element will be impeded by two tall retaining walls that are only capable of being negotiated by flights of steps. These are 5.5m, 4.0m and 3.4m in height. These will not be satisfactory for the use by cyclists, those in wheelchairs or mobility scooters, those using pushchairs and many older and infirm residents and visitors with more limited mobility would find these challenging.

Torbay Local Plan Design Policy DE1, point 6 calls for development to "(where appropriate) ensure equality of access and use for all sectors of the community." The current proposals do not achieve this and cannot be supported as the resultant Reserved Matters applications will not adhere to the design principles set out in the original Design and Access Statement.

It is noted that the primary 'Prospect View' identified of the site (in the south east corner) will include the two options proposed for resolving levels alongside the Brixham Road. Neither are likely to relate well to, nor 'celebrate', the focal, circular building in this corner of the site.

It is also uncertain how the visual screen structural tree-planting shown against the flank wall/corner of the main commercial units here can be successfully incorporated within the engineering cross sections submitted. Option 2, with the piled wall, removes all scope for planting in this area. The impact on the Brixham Road frontage would be considerable if these were omitted.

The current applications are not supported as they appear to present insuperable difficulties and impacts that subsequent Reserved Matters applications would then suffer, or in the worst case, later fall foul of / be unable to satisfy planning policies at the detailed stage. A loss of quality and a divergence from the design principles set out in the Design and Access Statement seems inevitable.

Conclude that there seems to be too heavy a reliance on an engineered solution to the challenge of the sloping site - this challenge was recognised at the Outline Stage but seems not to have been sensibly tackled / acted upon in this submission.

RSPB: Pending response.

Natural England: Pending response.

Drainage Engineer: Pending response.

Environment Agency: Prior to each phase of development approved a remediation strategy to deal with the risks associated with contamination of the site has should be submitted to, and approved in writing by, the Local Planning Authority, in order to protect controlled waters, which can be achieved by condition.

Strategic Transport Officer/Highways: Pending response.

Summary Of Representations

Two letters of support received. One does raise concern that the boundary construction fencing should be all around the site to limit dust as at present the fencing is not continuous.

Relevant Planning History

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/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. Committee Resolution: Approval: Pending formal decision subject to agreeing a deed of variation.

P/2017/0123:

Variation of condition on planning application 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) - Variation of Condition P1 (approved plans) to amend the access off Long Road . Committee Resolution: Approval: Pending formal decision subject to agreeing a deed of variation.

Key Issues/Material Considerations

Principle and Planning Policy

The rationale for the proposed groundworks is stated to be in order to deliver the regeneration scheme approved in outline for housing, retail and employment space, granted consent in March 2016 under planning reference P/2014/0947. It is proposed to be necessary in order to:

1. Ensure that the contamination within the ground is remediated.
2. Present ground conditions that address the rubble and other material on the site.
3. Undertake earthworks that ensure that the site is at a suitable level for future occupants, and,
4. Present ground conditions that enable new planting to take place at a future

date that will replace the trees that will need to be removed and, based on the outline permission, enhance biodiversity.

The principle of a mixed use development across the site has been established with an extant outline approval granted planning consent in March 2016. This provided consent for up to 255 dwellings, 5,574sqm of B1 and/or B8 business and/or warehousing uses, 8,501sqm Class A1 (bulky goods) retail, with up to 515sqm garden centre and up to 139sqm of A3 cafe /restaurant uses on the site. The key principle to consider in regard to this application is whether the proposal is acceptable in order to bring forward and enable the extant regeneration scheme.

In broad principle and policy terms a number of strategic Local Plan policies support the delivery of appropriate development on the site, which is within a designated Future Growth Area. Policies SS2 (Future Growth Area), SS3 (Presumption in favour of sustainable development), SS4 (The economy and employment) and SS5 (Employment space) all present positive aspirations towards delivering regeneration, jobs and infrastructure. The aspiration to help deliver the regeneration scheme is hence supported.

The basic rationale for the proposed groundworks cited within the application (points 1-4 above) are considered reasonable. Notwithstanding this the rationale and the proposal in detail needs to be duly considered against relevant planning policy guidance and take into account other material considerations.

Although the proposal will help bring forward the regeneration scheme, there are a number of relevant planning considerations to consider, which are discussed below, which should inform the decision making process.

1. Contamination and remediation

The site was developed in the 1950s and has held a number of industrial uses. A number of assessments within the last 25 years has established that contamination is present within the site and the groundworks are supported by a remediation strategy to deal with this contamination.

As previously stated the site has an extant approval for housing and mixed commercial uses. The proposal seeks to address the contamination and ensure that the site is fit for these future uses and protects human health, controlled waters and the environment.

The remediation approach is primarily driven by the cut and fill exercise that is stated as being required to profile the site to achieve acceptable levels in order to enable the outline development to be delivered. In response to this the remediation approach includes:

- The controlled re-use of soils unsuitable for their current situation in areas of lower sensitivity (for example the translocation from a proposed

- residential area of the site to a proposed commercial area of the site).
- The removal of made ground to levels below expected finished levels in order to permit the placement of a cover system to prevent direct contact. The cover system will include the import of clean top and/or sub soil as necessary.
- Where elevated concentrations are found, areas will be capped or excavated and capped, depending on whether they are in areas of cut, fill or retained at the existing level.
- Where not reused on the site off-site disposal to a suitably licenced waste management facility.

In addition to the principles above, the remediation strategy details a strategy of a watching brief during works for indications of significant contamination, the understanding that asbestos may be encountered and would be dealt with in accordance with the Control of Asbestos Regulations 2012, and that material stockpiles will be managed in order to ensure that they are stored in appropriate locations on the site during construction.

Policy ER3 (Contamination) of the Torbay Local Plan provides relevant policy guidance and seeks that development proposals are supported by appropriate investigations and remedial or precautionary measures, and demonstrate that any identified or suspected contamination can be satisfactorily overcome without risk to health.

The supporting information has been considered by the Council's Community Safety Team and the remediation strategy is considered acceptable. In order to secure appropriate development two conditions are proposed should planning consent be granted, to require implementation of the remediation scheme with a verification report to be submitted on completion, and a condition requiring the reporting of any unexpected contamination to the Local Planning Authority and if considered necessary updated remediation strategies to be agreed.

The considerations and impacts of Option 1 (P/2017/0493) and Option 2 (P/2017/0494), in terms of contamination and remediation, are similar.

The proposals are considered acceptable in regard to contamination and remediation, being in accordance with the aims and objectives of Policy ER3 of the Torbay Local Plan 2012-2030.

2. Ecology

The site presently holds features of ecological value with trees, hedges and areas of scrub present in the northern section of the site, around the borders of the site and as a network framing the roads and car parks. The southern section of the site is largely absent of any notable green infrastructure.

The outline planning consent established measures to secure appropriate

mitigation and enhancement by way of planning conditions, with a requirement for the Reserved Matters to respond to the submitted ecological assessment, and the requirement for the submission and approval of a CEMP (Construction Ecological Management Plan) and a LEMP (Landscape and Ecological Management Plan). The outline application also established the enhancement of the sites suitability for bats, particularly noting the desire to retain and enhance boundary vegetation. In addition in regard to reptiles a detailed strategy for translocation of slow-worms to avoid harm during construction was identified, which noted that this may require an off-site receptor site. Additional measures included created and enhanced habitats for invertebrates and enhancement to bird nesting opportunities within the building form. It is noted that the outline landscape design noted varied pockets of vegetation to be retained.

The proposals are not aligned with the ecological assessment and strategies presented at outline stage because as submitted it proposes the removal of all trees, hedges and areas of scrub within the site in order to deliver the revised site levels. The impact of this on ecology is discussed below.

The updated ecological assessment states that the preferred approach to retaining slow-worms on site is not possible due to the extent of earth movement and that a translocation process will be undertaken. In regard to bird nesting the ecological assessment proposes that an ecologist will check for nesting activity prior to the removal of any habitat with nesting potential.

Policy NC1 (Biodiversity and geodiversity) of the Torbay Local Plan provides relevant policy advice and the policy seeks to conserve and enhance biodiversity and geodiversity, through the protection and improvement of environments and flora and fauna.

The Council's ecological advisor has considered the proposals and accompanying information and has concluded that the site clearance is unlikely to have any adverse implications for greater horseshoe bats and is therefore very unlikely to affect the South Hams SAC. There is however concern about the ecological information submitted to support the applications as the Construction Environmental Management Plan submitted is considered to lack crucial information about the mitigation proposals, without which it is difficult to establish the necessary likely success of the proposed measures.

It is advised that certainty should be established prior to the grant of planning permission. To achieve certainty a revised and fully detailed Construction Environmental Management Plan should be submitted, which should include detailed information on the appointment and on site responsibilities of an Ecological Clerk of Works (with clear evidence to show that any proposed individuals are competent to assume this role).

The rationale for the development is stated as being to remediate the

contamination, deal with the rubble and other material on the site, ensure that the site level is suitable for future development, and enable future replacement planting to be engrained within future regeneration, provide a biodiversity enhancement. The proposal to remove all ecological features as part of the preparatory groundworks for a forthcoming Reserved Matters application does not accord with the policy aim to protect and improve environments for flora and fauna, and at present there is a lack of evidence to suggest that the removal of the green infrastructure is necessary to appropriately remediate and prepare the site for future development.

The ecological impact of Option 1 (P/2017/0493) and Option 2 (P/2017/0494) is similar with no notable ecological features or sensitive habitats present in the south east corner of the site where the proposals differ.

The applicant is presently considering the outstanding matters and members will be updated. It is noted that the RSPB and Natural England have yet to provide comments and members will be updated on any salient points.

3. Trees

The northern part of the site features tree lined borders with further pockets and linear tree groups within the site that historically softened and framed a network of car parks and access roads.

The proposals seek to remove all trees that are present on the site, which includes a number of Category B and Category C trees, which is reported to be necessary in order to achieve the development platforms required.

Following the submission of the applications the Council has made a provisional Tree Preservation Order that includes a veteran hedgerow and two linear groups of trees, one adjacent to the east-west internal distributor road that is loosely in-line with the access point off Brixham Road, and the north-south belt adjacent to the boundary with Brixham Road.

Policy C4 (Trees, hedgerows and natural landscape features) of the Torbay Local Plan provides relevant policy guidance. It states that development will not be permitted when it would seriously harm, directly or indirectly, protected or veteran trees, hedgerows ancient woodlands or other natural features of significant landscape value. It furthers that development proposals should seek to retain and protect existing hedgerows, trees etc. wherever possible.

In regard to context the Design and Access Statement submitted as part of the outline application contained aspirations that accord with Policy C4, citing the protection and enhancement of existing landscape features and an overarching strategy for the landscaping to seek to embrace the existing features and extend them to create a distinctive place.

As matters stand there is an absence of evidence that the removal of trees is considered necessary in order to appropriately remediate the site, or that the extent of cut and fill is necessary in order to deliver an appropriate residential layout.

The groundworks, where they include the unnecessary removal of important trees and hedgerows, is considered to conflict with the aims and objectives of Policy C4 of the Torbay Local Plan.

It is also considered important to note that the proposals are considered inconsistent with the outline consent and would impede the delivery of a Reserved Matters application that accords with the extant scheme in terms of trees and landscaping.

The arboricultural impact of Option 1 (P/2017/0493) and Option 2 (P/2017/0494) is similar with no existing trees in the south east corner of the site.

Officers have raised concern in respect to the loss of trees and natural features with the applicant and have requested that a less impacting solution is explored in order to secure a scheme that responds to guiding Local Plan policy and aligned with the outline consent. Members will be updated on this matter.

4. Design and impact upon the extant outline consent for retail, employment and residential uses

The groundworks are cited as being necessary to prepare the site for future development. It is hence important to consider the impact of the enabling works as it is important to ensure that the fundamental principles established at outline stage are upheld so that Reserved Matters applications can respond successfully to design and other Policies that are within the Torbay Local Plan.

The approach in terms of re-structuring the slopes and existing land profile of the site is an extensive one and relies on a heavily engineered approach, resulting in concrete retaining structures through the site inset with occasional steps. There is a supporting indicative layout that suggest how a housing layout may respond to the re-profiled site and retaining structures.

Having considered the information it is deemed that the re-profiling the site as proposed is likely to have significant impacts on the ability of the final layout and form of development to deliver some of the important design principles that were anticipated in the outline consent.

The submitted application drawings suggest that the north-south pedestrian routes through the site will be impeded by two tall retaining walls that are only capable of being negotiated by flights of steps. These are 5.5m, 4.0m and 3.4m in height. This presents a poor movement strategy as these cannot be satisfactorily used by cyclists, those in wheelchairs or mobility scooters, those using pushchairs and

many older and infirm residents and visitors with more limited ambulant mobility would find these challenging. The introduction of steps on key pedestrian routes within the site to areas of greenspace, and potential key routes out of the site towards Long Road, will present a poor pedestrian environment and will not encourage walking and cycling for local trips. Policy DE1 (Design) of the Torbay Local Plan seeks for development to, where appropriate, ensure equality of access and use for all sectors of the community. The current proposals would inhibit this. Importantly the proposals appear poorly aligned with and do not adhere to the design principles set out in the outline Design and Access Statement that sought to promote a sustainable movement hierarchy and create a pedestrian friendly environment.

In regard to other design considerations the introduction of large retaining walls within a residential environment is likely to impair the ability to provide good quality environment and where the walls will form part of private border treatments it will impede the ability to engrain good outlooks and good quality amenity space.

In regard to the lower part of the site within the expected retail area in terms of other matters relating to the outline consent it is noted that the identified primary 'Prospect View' of the site (in the south east corner) does not appear to resolve the levels satisfactorily alongside the Brixham Road and appear unlikely to relate well to, nor 'celebrate', the focal, circular building in this corner of the site. It is recommended that further discussion on the resolution of the levels in this corner are evolved. It is also uncertain how the visual screen structural tree-planting shown against the flank wall/corner of the main commercial units can be successfully incorporated within the engineering cross sections submitted. The impact on the Brixham Road frontage may be considerable if the ability to landscape is impaired and again further resolution of the levels is considered necessary in this area. Option 2, with the retained wall, appears to remove the ability to successfully landscape this prominent boundary.

As currently proposed the groundwork operations appear to create difficulties, which will be difficult to overcome, in delivering acceptable Reserved Matters applications. There is the potential that forthcoming reserved matters schemes will be unable to satisfy planning policies at the detailed stage and it is apparent that the potential loss of quality and a divergence from the design principles set out in the Design and Access Statement seems inevitable.

Members are advised that there seems to be too heavy a reliance on an engineered solution to the challenge of the sloping site. Discussions have been carried out with applicant and amendments to the proposals are anticipated as a result of these discussions.

Environmental Impact Assessment Regulations

The site area for the proposed groundworks exceed the applicable threshold for Schedule 2 Development for an urban development project, as laid out within The

Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

The proposals are required to be duly screened in order to ascertain whether the development is EIA development for the purposes of the EIA Regulations.

Members will be updated on this matter.

Statement of Pro-active Working

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

Local Finance Considerations

Positive resolution of the outstanding issues will help delivery of the outline mixed use consent that could bring a number of economic benefits to Torbay through the mixed provision of housing, retail and employment space.

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.

S106/CIL

N/A.

Conclusions

Both proposals in their original submitted form, which removes all of the existing trees and natural features and also introduces extensive retaining walls that will in the future provide a tiered site contour and context for the provision of housing, retail and employment, is considered contrary to a number of Local Plan Policies. Positive discussions have been held with the applicant and amendments to the scheme are anticipated.

The premise of ground works to remove the existing car parks and deal with the contamination on the site is considered acceptable. Officers would support in principle a more considered scheme that seeks to retain important ecological and landscape features and safeguards good access and permeability within future Reserved Matters application/s detailed design proposals for the mixed use scheme granted consent.

Relevant Policies

SS2 - Future Growth Areas

SS3 - Presumption in favour of sustainable dev

SS4 - The economy and employment

SS5 - Employment space

SS8 - Natural Environment

SS12 - Housing

SS9 - Green Infrastructure

TA1 - Transport and accessibility

TA2 - Development access

ER1 - Flood Risk

ER2 - Water Management

ER3 - Contamination

NC1LFS - Biodiversity and Geodiversity

C4 - Trees, hedgerows and natural landscape

DE1 - Design

DE3 - Development Amenity