

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): 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

This application is to amend Condition 32 (a restrictive goods condition) of the outline consent granted under reference P/2014/0947.

Permission P/2014/0947 granted consent 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, along with related infrastructure and detailed consent for the access, and all other matters reserved.

The decision to grant outline consent was finely balanced as 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, and approaching a significant adverse impact, due to the poor health of the centres and their vulnerability to relatively small levels of impact. This remains a relevant contextual point in determining this application.

To limit the impact upon the town centres the decision to grant outline consent was subject to four conditions that restricted the nature and form of the retail element. These were;

Condition 32 (restrictive goods)

Condition 33 (total floorspace)

Condition 34 (minimum ground-floor floorspace of units)

Condition 35 (limit of concessions within retail units).

Condition 32 was imposed in order to limit the sale of comparison goods and retain 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, this did not include convenience (food) retail.

The application seeks to vary Condition 32 to permit the sale of a 12th category, being convenience (food) goods within one unit of up to 1,486sqm.

The amendment alters the retail offer within the scheme and the acceptability and impact of the change should be considered in terms of the current Local Plan, National Policy, and other relevant material considerations.

The key considerations are the acceptability and impact of introducing convenience (food) retail within the proposed development, and any impact upon the highway network.

Policy TC3 *Retail Development* of the Adopted Local Plan 2012-30 requires new out-of-centre retail development to meet three criteria and requires that (1) proposals do not cause any unacceptable impacts on the vitality and viability of existing or planned centres, (2) for there to be no town centre or edge of centre site to be suitable, available or viable, and (3) for the development to improve the spatial distribution of accessible facilities throughout the Bay and help achieve greater social cohesion.

The National Planning Policy Framework (NPPF) sets out two tests for assessing applications for town centre uses in out of centre locations, which align with criteria (1) and (2) of Local Plan Policy TC3, and these are the sequential test and the impact test, as outlined within Paragraphs 24, 26 and 27 of the NPPF.

Both Local and National policy guidance require the LPA to assess whether there is a sequentially preferable site and whether there is an unacceptable (Local Plan) / significant (NPPF) adverse impact upon town centres.

The Council's retail advisor has concluded that the applicant has not robustly demonstrated that the sequential test has been met and has not shown that there is no sequentially preferable alternative site for a convenience retail unit circa 1486sqm in size. The application fails the sequential test and national policy guidance is that where the sequential test is not met an application should be refused.

The second test is one of retail impact. Where it is concluded that the convenience store is likely to have a significant adverse impact upon town centres the application should be refused, as it would be contrary to local Plan Policies TC1-TC3 and the NPPF.

The Council's retail advisor has advised that Paignton town centre is vulnerable to even small changes and concluded that the applicant has not robustly demonstrated that the proposal would not have a significant adverse impact on that town centre.

The applicant states that the amendments are required to enable terms to be agreed with retail users in order to permit the implementation of a viable retail park following disappointing interest on the terms granted at outline stage. There is no detailed viability argument presented to support this notion.

The contribution that an approval for convenience retail could make to unlocking the development of the derelict brownfield site is a material consideration. However, paragraph 27 of the NPPF indicates that applications in out of centre locations should only be approved where both the sequential and impact tests are met, and therefore the interpretation and weight given to the sequential and impact tests is pivotal to consideration of the application.

Para 26 in the NPPF indicates that impact on committed and planned public and private investment in centres should be assessed, which gives weight to comments from the Torbay Development Agency. The TDA advise that the proposed development could jeopardise town centre investment and the delivery of town centre regeneration schemes. The Council and Torbay Development Agency's high priority to secure town centre regeneration is material to the determination of the application. It is in part in this context that it is concluded the retail issues outweigh other matters such as the provision of employment and housing.

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.

Recommendation

Refusal:

1. The applicant has failed to demonstrate that there are no sequentially preferable sites available to accommodate a convenience retail unit of around 1486sqm, having regard to the need for flexibility in the format and/or scale, and has failed to demonstrate that it is unlikely that the proposals would have a significant adverse impact upon existing town centres, meaning that the application is contrary to Policies TC1, TC2, TC3 and SS11 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF (Paras 24 and 27 and NPPG), and;

2. In the absence 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, the proposal fails to secure critical infrastructure improvements. The Local Planning Authority considers that it would be inappropriate to secure the required contributions by any method other than a legal agreement and therefore the proposal is contrary to Policies SS6, SS7 and TA2 of the Torbay Local Plan, and paragraph 206 of the NPPF.

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 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 within the retail element of the mixed use scheme.

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 two retailers and terms have been agreed with a third however this is a food retailer. The third retailer 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 also 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 and hence the amendment sought will aid in the regeneration of the whole of the Devonshire Park site.

Summary Of Consultation Responses

The Council's Retail Advisor (GVA)

There are two clear 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 Planning and Retail Statement Addendum (July 2017), the advice is as follows;

The sequential test:

The information submitted by the applicant to support the application, principally the PRSA (January 2017) and the PRSA Addendum (July 2017), has not provided sufficient information to demonstrate compliance with the sequential test.

In particular the applicant has failed to demonstrate that White Rock and Yannons Farm Local Centres, and Crossways Shopping Centre and Brixham Middle Street town centre sites, are not suitable and available alternatives to the application site, for the following reasons;

White Rock Local Centre -

This is a new centre in a sequentially preferable location and it has planning permission for a foodstore. It is therefore a suitable and available alternative to the application site for a convenience store of a similar scale to that which is proposed.

Yannons Farm Local Centre -

The applicant has failed to provide further information to demonstrate that the proposal cannot be accommodated in or on the edge of the Local Centre.

Crossways Shopping Centre and Brixham Middle Street -

Both sites have long been promoted as 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 advises that retail floorspace remains a key focus for both sites.

In light of the information available it is advised that as the application fails the sequential test it should be refused in-line with Paragraph 27 of the NPPF.

Retail impact:

There is concern about the reliability of the applicant's data as analysis is based upon historic shopping patterns, leading to a situation where (i) the survey data has had to be manually adjusted to take into account a number of recent foodstore

openings, (ii) there is no recent assessment of the impact of the proposal on existing investment in nearby town centres, and (iii) there is no up-to-date assessment of the health of Paignton and Torquay town centres.

Notwithstanding the above 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. This is a similar level to the extant permission for Devonshire Park. If correct whilst the financial impact could be to a similar level the breadth of effect on Paignton town centre will be widened as the scheme would be competing with the town centre on both comparison and convenience goods. This is a concern as previous advice indicated the vulnerability in the health of Paignton town centre and lead to conclude 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, which is a concern.

On the current available evidence the overall impact on the health of and investment within Paignton town centre is likely to be unacceptable due to the likely financial trading impact, the growing trading overlap, and due to the evidence regarding the vulnerability of the town centre and evidence of a falling market share.

Para 27 of the NPPF notes that proposals likely to have significant adverse effects on centres should be refused. Policy TC3 of the Local Plan notes that out of centre retail development proposals should not cause "unacceptable impacts" to the vitality and viability of existing and planned centres.

It is concluded that the proposal fails the sequential test and is likely to cause unacceptable impact upon Paignton town centre, which is vulnerable to even small changes.

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

Retail matters:

Sequential test

There is agreement with the Council's retail advisor (GVA) 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.

Notwithstanding that the applicant has argued that Devonshire Park has overcome the sequential assessment in gaining permission; the proposed sale of convenience goods is different from the range of (mostly) bulky goods permitted to be sold under P/2014/0947 and therefore it is correct that the Council has sought a sequential assessment of the proposed convenience floorspace alone.

On the information available, the advice from GVA is that the proposal fails the sequential test as there are sequentially preferable sites at White Rock Local Centre, Crossways (Paignton town centre) and Middle Street (Brixham town centre). It is reasonable to assess that Yannons Farm is not a sequentially preferable site.

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.

GVA have broadly accepted the applicant's general assessment that the proposal is likely to have 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, which is a material consideration to take into account.

The applicant has not provided updated household survey data, arguing that the 2013 Retail Study is proportionate to determining the application as it informed the Local Plan.

Aside the lack of up-to-date data there are apparent reasons to consider that Paignton town centre continues to struggle in terms of its retail position. At July 2016 there was 18% vacancy in Paignton, up from 15% in 2015.

On balance GVA advise that the "overall impact on the health of the town centre is likely to be unacceptable". Added to this that the Torbay Development Agency has objected to the application on the basis of the effect on town centre regeneration proposals. NPPF Paragraph 26 indicates that impact on committed and planned public and private investment in centres should be assessed, which give some weight to the comments of the Torbay Development Agency.

The conclusions of the Council's retail advisor are supported.

Spatial distribution of 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. It should be noted that 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. The Indices of Deprivation clearly show Paignton town centre as a deprived area. The proposal appears discordant with the aims of TC3(D)3 and Policy SS11.

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 1,486 sqm 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. Resolved approval by Development Management Committee subject to detail - Pending formal decisions.

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. Resolved Approval by Development Management Committee - Pending formal decision subject to formalising deed a variation to the original S106 legal agreement.

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. Resolved Approval by Development Management Committee - Pending formal decision subject to formalising deed a variation to the original S106 legal agreement.

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 (Subject to a legal agreement and conditions).

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, and;
2. Highway and movements impacts.

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 relevant as the site is in an out-of-centre location as it is not designated within the local retail hierarchy as a town, district or local centre 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, as convenience retail is a main town centre use as defined by the NPPF. The NPPF, as outlined in Paragraph 24, requires that a sequential test should be applied to planning applications for main town centre uses that are not proposed in an existing centre and are not in accordance with an up-to-date Local Plan.

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 aforementioned 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 a Planning and Retail Statement Assessment (PRSA) dated January 2017 in support of the proposal which includes sequential testing (Section 7). The applicant has also submitted a PRSA Addendum dated July 2017 that seeks to provide additional analysis in regard to the sequential assessment (Section 2) following initial comments from the Council's retail advisor.

In relation to the approach to the sequential test the applicant has presented that the whole of the retail floor space of the extant scheme should be considered. The

Council's retail advisor (GVA) has advised that this approach is not correct and as the proposal is to modify the sale of goods from one unit up to a stated size the consideration should be whether this proposed use could be delivered in a more sequentially preferable site. The applicant has considered this advice and the PRSA Addendum does consider the provision of a stand-alone unit rather than the provision of the retail park as a whole.

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 will be 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 deliverable.

The applicant contends that the site is not available as there is no publically available regeneration scheme. The Torbay Development Agency has indicated that Crossways is a priority site for regeneration and it has been expressed that an application for a mixed use retail and residential scheme is expected soon.

Given the priority of the Council and Torbay Development Agency to secure development of Crossways, the Council's retail advisor (GVA) advises that the applicants' assessment falls short of what is expected to demonstrate that Crossways as a redevelopment site is not suitable or available.

On the basis of the evidence presented by the applicant and 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 consider Crossways is a sequentially preferable site at the present time in terms of its potential for redevelopment.

The above judgement is made on the information in the current context and hence Members should be aware that if progress is not made towards a food store application within a reasonable period, then in time it may be unreasonable to consider the site available for sequential test purposes.

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 2,791 sqm net sales area, plus 218 sqm 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, however they are currently seeking to appoint consultants from the HCA Property Panel to help work up a viable scheme.

The Council's retail advisor has advised that the applicants have not shown that development could not be achieved in a reasonable period of time and hence this site should be considered a sequentially preferable site for the proposed development at this moment in time.

Similar to the situation with Crossways, Members are advised that this is a judgment as matters stand and this view may need to be adjusted if reasonable progress is not made towards progressing a scheme for the site.

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 Local centre contains an Aldi food store and is unlikely to be able accommodate another food store of the scale proposed. Although not presently robustly demonstrated by the applicant it is likely that the centre could be dismissed as a potential sequentially preferable site.

White Rock Local Centre

White Rock proposed Local Centre appears to be deliverable and has permission (P/2011/0197/MOA and reserved matters application P/2016/0411) for a foodstore of a similar scale. The site is designated as a Local Centre in the Adopted Local Plan and therefore is a sequentially preferable site that is suitable and available. The applicant has not addressed this in their PRSA Addendum.

It is noted that the White Rock Local Centre and Devonshire Park site are similarly located on the Western Corridor and they display similar characteristics in terms of scale, location and access. However White Rock is an identified Local Centre and sits in the retail hierarchy of the Local Plan. They are distinctly different in this respect.

Having considered the accompanying information in support of the application and having given due consideration to the comments of the Torbay Development Agency's Regeneration Programme Manager and the Council's retail advisor (GVA) the proposal is considered to fail the sequential test as there appears three sequentially preferable sites. These are White Rock Local Centre, Crossways (Paignton town centre) and Middle Street Car Park (Brixham town centre).

As the proposal is considered to fail the sequential test the application should be refused in-line with the Local Plan Policy TC3 and the NPPF (Para 27) as there are preferable sites that could deliver what is a town centre use.

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). It is worth noting that the NPPF does not require an impact test to be carried out if the sequential test has not been passed. However, it is considered appropriate to consider the impact of the proposal in order to present a comprehensive picture.

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 provides relevant policy guidance in regard to new out-of-centre retail development. Policy TC3 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 500 sq m to trigger the impact test, which is below the baseline 2,500 sq m 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, on town centres, and as stated above conditions were 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.

The submitted PRSA and PRSA Addendum has been considered by the Council's retail advisor and will be discussed below.

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 2012 survey data); 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 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.

There is concern that this 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.

On the current available evidence the overall impact on the health of and investment within Paignton town centre is likely to be unacceptable due to the likely financial trading impact, the growing trading overlap, and due to the evidence regarding the vulnerability of the town centre and evidence of a falling market share. It may also undermine the Council's efforts to support regeneration schemes within the town centres.

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 fails the retail impact test having considered the comments of the Council's retail advisor and the advice to Members is that as there is a likely significant impact then, particularly as Paignton town centre is vulnerable, the proposal should be refused 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. The proposal, for these reasons, is considered not to accord with the aspiration of TC3(D)3 in terms of seeking to improve the spatial distribution to facilities. Similarly, it could conflict with the aims of Policy SS11 to help close the gap between the most and least disadvantaged, and reduce social exclusion.

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 100 sq m. On this basis 1,486 sq m 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.

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.

However the economic consideration should also include the retail impact upon town centres and the potential loss of retail jobs in retail elsewhere in Torbay and adverse impact upon town centres.

Consideration should also be given to whether it has been demonstrably shown that the development would not come forward as approved without the provision of a food store and the potential retail impact of this.

The extent to which the application will secure the regeneration of the derelict site and provide housing and employment are material considerations. On the one hand, the NPPF operates a presumption in favour of sustainable development, which is echoed by Policy SS3 of the Local Plan). The delivery of housing has been held to create a "tilted balance" in favour of granting planning permissions where five year supply is at stake. Devonshire Park is being counted in part as part of the Council's five year supply (160 units out of 255 total).

The applicant refers to the need to secure a third retailer to make the Devonshire Park development viable. However, there appears to be no guarantee or solid viability evidence that allowing convenience retail will ensure speedy delivery of the housing and employment.

The Council negotiated application P/2014/0947/MOA in good faith and allowed bulky retail, which was potentially contrary to the NPPF and the then extant development plan, in order to enable regeneration and boost housing. It has subsequently allowed a relaxation in the size of one unit.

It will be for members to decide whether the end-point is one they would have been initially willing to approve.

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 not supported for the following

reasons.

Firstly the proposal fails to satisfy the sequential test that is ingrained within the Local Plan (Policy TC3) and the NPPF (Paras 24 and 27), as it is considered that there are sequentially preferable sites available and viable at White Rock Local Centre, at Crossways in Paignton town centre, and at the Middle Street car park site in Brixham town centre to deliver a convenience store circa 1486sqm in size. In line with policy guidance, where there are sequentially preferable sites, it should be refused. The Council's retail advisor has concluded that the sequential test has not been met.

Secondly the proposal has failed to demonstrate that it is unlikely to have a significant adverse impact on existing or planned centres.

The Council's retail advisor has concluded that the applicant has failed to robustly demonstrate that there would not be a significant impact and has principally raised concern over the vulnerability of Paignton town centre.

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. This has not been furthered as the proposal fails on other grounds and should be included as a reason for refusal in the context.

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 the application fails the sequential test and impact tests. In particular it could jeopardise town centre investment and the delivery of town centre regeneration schemes. It could also reinforce a relatively inaccessible distribution of food retail.

The Council and Torbay Development Agency's high priority to securing town centre regeneration must be given significant weight. It is in-part in this context that the retail issues outweigh other matters such as the provision of employment and housing.

The officer recommendation is therefore one of refusal in line with Policies TC, TC2, TC3, SS6, SS7, TA2 and SS11 of the Torbay Local Plan 2012-2030 and Paragraph 27 of the NPPF.

Condition(s)/Reason(s)

01. the applicant has failed to demonstrate that there are no sequentially preferable sites available to accommodate a convenience retail unit of around 1486sqm, having regard to the need for flexibility in the format and/or scale, and has failed to demonstrate that it is unlikely that the proposals would have a significant adverse impact upon existing town

centres, meaning that the application is contrary to Policies TC1, TC2, TC3 and SS11 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF (Paras 24 and 27 and NPPG).

02. in the absence 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, the proposal fails to secure critical infrastructure improvements. The Local Planning Authority considers that it would be inappropriate to secure the required contributions by any method other than a legal agreement and therefore the proposal is contrary to Policies SS6, SS7 and TA2 of the Torbay Local Plan, and paragraph 206 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