

S.1

P/2007/1421/MPA

Blatchcombe Ward

Torbay Garden Centre, Brixham Road, Paignton

Junction Improvements And Formation Of New Access To Facilitate Access To Land To The West (Resubmission Of P/2006/0678)

Site Details

Area of mainly existing highway land surrounding a 335 metre length of Brixham Road centred on its junction of Roselands Drive with the former Torbay Garden Centre (now Parkbay Garden Centre). The land shown includes the footpath, cycleway and grass bank on the north eastern side of Brixham Road, dividing the classified road from the Roselands estate.

Relevant Planning History

- P/1998/1919 Change of use to industrial land (Class B1 and B8) on land at Holly Gruit campsite, Brixham Road. Application originally approved on 7/6/2000.
- P/2002/0202 Use of land or Class B1, B2 and B8 employment development and Class A1 non food retail development (in outline) on land adjacent to and including Shorton Preston/Yannons Farm, Brixham Road. Application not determined as of 25/10/2002. Appeal lodged against non determination, but the appeal was withdrawn by applicant's letter dated 20/01/2004.
- P/2002/1100/PA Highway alterations in connection with proposed access to the land adjacent Yannons Farm, in the vicinity of the junction of Roselands Drive and Brixham Road. Application not determined by the Council and an appeal against non determination subsequently lodged. That appeal was withdrawn by the applicant on 20/01/2004.
- P/2002/1812/PA Use of land for Class B1, B2 and B8 employment and Class A1 non food retail development (in outline) on land adjacent to and including Shorton Preston/Yannons Farm, off Brixham Road. Application not determined by the Council.
- P/2002/1813 Highway alterations in connection with proposed access to land adjacent to Yannons Farm at the junction with Roselands Drive with Brixham Road. Application not determined.
- P/2003/0059/MOA Erection of 61,800 square feet of non food retail park A1 use and 5,000 square feet of restaurant A1/A3 use with vehicular and pedestrian access (in outline). Departure of local plan on land at Holly Gruit/Brixham Road. Application not determined. Appeal lodged 13/8/2003.
- P/2003/1829 Redevelopment to form use Classes B1, B2 and B8, on 105,000 square feet of retail floor space and a new vehicular and pedestrian access (in outline) on land fronting Brixham Road. Application refused 18/12/2003 on basis of being contrary to policy.
- P/2004/0883 Use of land from Class B1, B2 and B8 employment development and creation of new access (in outline) on land adjacent to and including Shorton Preston/Yannons Farm off Brixham Road. Application withdrawn 12/8/2004.
- P/2005/0601/MPA Change of use to industrial land (Class B1 and B8) (renewal of application 98/1919/PA). Application refused 10/6/2005 on basis that it was contrary to the provisions of the Local Plan and failed to make provision of the contributions towards public transport and highway works.
- P/2005/1055/CE Certificate of Lawfulness for the implementation of planning permission 1998/1919/PA dated 7/6/2000 and demolition of a building located in the approximate position marked 'X' on the application site plan and more particularly, illuminated and coloured yellow on drawing number 05.05.14901 with vision A. Certificate of Lawfulness granted 6/10/2005.

- P/2005/1804 Erection of A3 café with kitchen at Torbay Garden Centre. Application refused 21/11/05 on policy and highway grounds. Appeal subsequently lodged, but dismissed on basis of highways grounds only.
- P/2006/0275/PA Junction improvements and formation of new access to facilitate access to land to the west of Brixham Road in the vicinity of its junction with Roselands Drive. Application refused 20/10/2006 and is the subject of a current appeal which is still in progress.
- P/2006/0618/MPA Erection of replacement Garden Centre building: alterations to access and parking layout at the former Torbay Garden Centre. Application withdrawn 24/11/06.
- P/2006/0678/MPA Junction improvements and formation of new access to facilitate access to land to the west of Brixham Road in the vicinity of its junction with Roselands Drive. Application refused 20/10/06 and is the subject of a current appeal to be heard at Inquiry on the 5-6th February 2008.
- P/2006/0088 Junction improvements to facilitate access to adjacent land to the west of Brixham Road in the vicinity of the junction with Roselands Drive. Application refused 20/10/06 and is the subject of a current appeal to be heard at Inquiry on the 5-6th February 2008.
- P/2006/1086/CE Certificate of Lawfulness for a proposed use as a 50 seater coffee shop/café at Torbay Garden Centre. Certificate of Lawfulness issued 24/10/06.
- P/2007/1520/PA Junction improvements and formation of new access to facilitate access to adjacent lands to the west. Concurrent application also on this agenda.

Relevant Policies

Torbay Local Plan 1995- 2011 (as adopted in April 2004) -

- E1.16(C) New Employment on land at Yalberton Road, Paignton.
- E9.1,2,3,6,7 & 8 Layout, Design and Sustainability
- CF6 Community Infrastructure Contributions
- INS Infrastructure Strategy
- LS Landscape Strategy
- L10 Major Development and Landscaping
- NCS Nature Conservation Strategy
- NC5 Protected Species
- EPS Environmental Protection Strategy
- EP3 Control of Pollution
- EP4 Noise
- EP5 Light Pollution
- TS Land use Transportation Strategy
- T1 Development Accessibility
- T2 Sustainable and Environmental Acceptable Transport Hierarchy
- T3 Cycling
- T7 Access for People with Disabilities
- T9 Bus Network Measures
- T18 Major Road Network
- T22 Western Corridor Traffic Congestion Reduction Scheme
- T26 Access from Development onto the Highway

Proposals

This application is made by Parkbay Developments Ltd and is a resubmission of an application considered in 2006 under reference P/2006/0678/MPA. That application was refused and an appeal against that decision will be the subject of a joint Public Inquiry together with the Cavanna proposal to be held on the 5-6th February 2008.

The proposal affects a length of Brixham Road for approximately 335 metres and includes alterations to the footpath, cycle track, grass bank and Roselands Drive. The new access road into the proposed

industrial land is shown immediately opposite Roselands Drive and would provide a crossroads junction. Turning lanes and holding lanes are provided within the carriageway width which would involve the widening of Brixham Road. The extra carriageway width would be provided by taking land from both sides of Brixham Road.

The application is accompanied by Draft Heads of Terms relating to a possible Planning Obligation under Section 106 of the Planning Act.

Consultations

Strategic Transportation: Observations reproduced and placed in the Members' Room.

Representations

Reproduced and placed in the Members' Room.

Key Issues/Material Considerations

1. Highways

The plan submitted shows a new crossroads junction immediately to the north of the Garden Centre on Brixham Road with one arm accessing into the, as yet undeveloped land on the south western side of Brixham Road. In general terms, the new edge of the carriageway is shown as being closer to those properties on the Roselands estate than the existing. The proposal involves the closing up of the two existing access points that serve the Garden Centre and Holly Gruit. Primarily however, the proposed access is intended to serve the employment allocation at Yannons Farm, Yalberton Road which is proposed under policy E1.16 of the adopted Torbay Local Plan. The proposed access attempts to satisfy the criteria of the policy which requires that the primary access to the allocated land should be from a new single road junction on Brixham Road in the vicinity of Roselands Drive.

Members will note the comments from Parsons Brinkerhoff, namely that there are no problems in concept. The symmetrical layout would negate the visibility issues over the crest curve. Not having direct access to the garden centre from Brixham Road would remove the potential conflict between vehicles accessing the garden centre and vehicles on Brixham Road. The layout is further away from the Roselands Drive properties with consequential lesser effect on the issues of noise and air quality. It is also suggested that the junction is the subject of a "future proofing" exercise to ensure that the junction has sufficient capacity to accommodate the planned development identified in the Regional Spatial Strategy and any potential future development which might arise as a result of outcomes of Growth Point assessment. (This caveat would also apply to the Cavanna proposal, which is the subject of a report also on this agenda.)

2. Deliverability

In this context the applicant's Draft Heads of Terms referred to above seek to assist delivery by facilitating delivery of the "crossroads" junction access and then by setting out a formula to cover infrastructure costs both at Tweenaway Cross and on the employment allocation.

The Draft is in two parts:-

Parkbay will agree to transfer the necessary land from its ownership to the Council for £1 to enable the vehicular access, the subject of this application, to be constructed. Parkbay will also permanently close the two vehicular accesses from Brixham Road to the Garden Centre. (This agreement does not include the access to the Holly Gruit site also in Parkbay's ownership.)

This agreement is subject to the Council (1) granting planning permission for this application, (2) giving a Covenant, and (3) ensuring with Parkbay that secure arrangements enforceable by the Council to provide the Alternative Access to the Parkbay site from this new junction access are in place prior to

the closure of the existing Brixham Road access.

There is a caveat that the Alternative Access be provided at no expense to Parkbay, that the access be uninterrupted, be adopted by the Council and of a design agreed by the Council and Parkbay with sufficient capacity to serve the existing lawful uses of the Parkbay land. It is your officer's view that to obviate unnecessary discussion that if Members are minded to agree to this approach that an acceptable specification be inserted into the Agreement. It is considered that a 6 metre width road would be fit for purpose.

The second part of the Draft Heads of Terms related to Financial Contributions.

Subject to certain conditions Parkbay will make three specified contributions:-

- 1) To the cost of the junction and access to Parkbay land;
- 2) To the cost of Tweenaways Cross junction improvements;
- 3) To infrastructure costs of developing the employment land allocated in the Local Plan.

In terms of contributions:-

- 1) Parkbay would pay 50% of the costs of the junction/access;
- 2) Parkbay would pay a 'pro rata' amount related to the apportionment of total uplift in value of (a) an Enabling Use on Parkbay's land vis a vis (b) the uplift on all other land uses approved on the remainder of the employment allocation land;
- 3) This contribution would use a conventional accounting formula that referred to (i) the norms of commercial development economics; (ii) the concept of net developable service land, and (iii) apportionment referenced to the uplift in land value on Parkbay's land versus Cavanna and third party's land.

This would according to Parkbay enable the calculation of fair and reasonable contributions that Enabling Uses should make to provision of infrastructure on Employment Lane whose end value could not support/finance such infrastructure costs.

The formula would be drafted by an independent expert whom Parkbay suggest be jointly appointed by Parkbay and the Council.

The formula would then be applied to the actual mix of approved uses bearing the 'pro rata' relationship between infrastructure costs and uplift of the various parties' land. Parkbay would also wish the junction/access costs of (1) to be brought into the equation.

Your officers would at this point raise certain reservations about the above, some are detailed, others perhaps more fundamental. In detail the formula needs more details on how it would be derived and operated, infrastructure costs require definition. More information on what is meant by the "bringing into account the payment of the Third Way contribution (the junction access referred to above)" is required. Fundamentally however the concept of a Parkbay/Council agreement of the formula is flawed, any such formula would need to be agreed in cooperation with other landowners.

In return for its agreement to the three contributions, Parkbay put forward certain conditions:-

- that an Enabling Use Permission (EUP) (i.e. one that results in an uplift in value of Parkbay land from that of the existing lawful uses of the site) is granted;

- that Parkbay will in writing inform the Council of its election of intent to commence the EUP;
- that the Council's covenant has been given;
- that the Council and Parkbay have certified in writing, within a reasonable period following grant of the EUP, the amounts and timing of contributions 2 and 3, and that secure arrangements enforceable by the Council are in place to ensure that, if necessary, the Alternative Access to Parkbay land can be upgraded relative to the Enabling Use.

Your officers' comments are that, in some instances, the conditions are somewhat nebulous and one-sided. There are concerns about the idea of agreements in future and the lack of involvement of other landowners in terms of the second and third contributions and the open ended commitment to further upgrading of the Alternative Access. Ideally the agreement should, as previously stated, be built to an appropriate specification in the first instance.

Finally, the Heads refer to Parkbay's obligations and the need for the Council's covenant in two respects: (A) release of the highway land (transferred from Parkbay) to a third party; and (B) the release or application of contributions.

In terms of A it suggests that no release should take place unless/until there are in place secure arrangements enforceable by the Council to provide the Alternative Access and that the third party covenants that the highways land only be used to provide the junction and access. (The officer's view is that this can be achieved by use of Section 38 powers under the Highways Act.)

In terms of (B) the matters raised are considered generally acceptable. However, the grants and timing of Tweekaways contributions should be the subject of agreement with third parties, and that in respect of refund of contributions there should be more information/strengthening of this element. There should also be an arbitration clause.

Sustainability - Opening up the land west of Brixham Road for industrial development is clearly a sustainable use of that land.

Crime and Disorder - One of the primary objectives of this application ought to be to make the passage of traffic through and off the junction both safer and easier. Further advice has been sought from the Highways Officer in this regard.

Disability Issues - It is not clear from the submitted information how the detailed needs of disabled drivers and disabled pedestrians would be catered for in the new junction design, but the junction will inevitably have to be traffic light controlled and this must improve the situation.

Conclusions

In the light of the Council's recent negotiations and discussions about this road and the industrial land to the west of it, further information will be reported to Members.

Recommendations:

Report further information.