

THE DEVELOPMENT AND PLANNING COMMISSION

Minutes for the 10th meeting of 2022 held remotely via video conferencing on 20th October 2022 at 9.30am

Present:

Mr P Naughton-Rumbo (Chairman) *Acting*
(Town Planner)

The Hon P Balban (MfT)
(Minister for Transport)

The Hon Dr J Cortes (MESCCE)
(Minister for Environment, Sustainability,
Climate Change and Education)

Mr E Hermida / Mr H Montado* (EH/HM)
(Technical Services Department)

Mr G Matto (GM)
(Technical Services Department)

Mrs C Montado (CAM)
(Gibraltar Heritage Trust)

Mr A Brittenden / Mr K De Los Santos* (AB/KDS)
(Land Property Services)

Dr K Bensusan (KB)
(Gibraltar Ornithological & Natural History
Society)

Mr C Viagas (CV)

Mrs J Howitt (JH)
(Environmental Safety Group)

Mr V O'Reilly (VR)
(Rep Commander British Forces, Gibraltar)

In attendance:

Mr C Key (CK)
(Deputy Town Planner) *Acting*

Ms N Segovia
(Minute Secretary)

Apologies:

The Hon Dr J Garcia
(Deputy Chief Minister)

Mr M Cooper
(Rep Commander British Forces, Gibraltar)

APPROVED
20 October 2022

*Mr H Montado and Mr K De Los Santos
replaced Mr E Hermida and Mr A Brittenden
respectively prior to Item 4

Approval of Minutes

374/22 - Approval of Minutes of the 10th meeting of 2022 held on 14th September 2022.

The minutes of the 10th meeting held on 14th September 2022 were not yet ready so this item was deferred..

Matters Arising

- None

Major Developments

375/22 - O/18140/22 - 17, 18-19 Devil's Tower Road and 5 Forbes Road -- Proposed mixed use development comprising commercial, storage, car parking, residential accommodation and ancillary uses.

Consideration of Major Developments:

- *Construct a part fifteen Storey and sixteen Storey building of 46.1m height*
- *Ground Floor, main entrance, two commercial units, access to the car park levels*
- *From third to sixteenth floor, 153 residential units (80 studios and one, two and four bedroom apartments, with over hanging balconies overlooking DTR.*
- *First and Second Floor, 73 car parking spaces (1 per flat excluding studio), 15 motorbike parking spaces, 24 bicycle spaces and electric vehicle charging points*
- *Sixteenth Floor roof terrace with a swimming pool.*

CK described the site context and showed some visuals.

CK reported that the OLS height has largely determined what has been permitted on sites for a number of DTR developments in recent years. A revision to the OLS last year gave some locations the chance to propose taller buildings in specific locations. However, no policy or planning guidance has been provided to direct those heights and there are a number of developments along DTR that have yet to be determined. In terms of prior decisions, there has been a precedent, and the OLS has typically been applied.

CK informed the Commission that DTR's appearance would alter going forward because as more high-rise buildings come forward and showed some contextual drawing showing the likely impact on DTR and the North face.

The applicant wants to give the building's front façade a more modern appearance by breaking up some of the elevation components, adding balconies, and adding planters. With many plants and other vegetation to give the facades character, their main goal is to create variously sized flats for future Gibraltar inhabitants. They have also taken steps to provide active frontage at ground floor level by including commercial spaces.

The aeronautical study shows evidence of a slight improvement of a 2cm breach within the OLS and confirms that the outline scheme has made no allowance for building intolerance within it. They also submitted a detailed sustainability study and these shows that they are working towards meeting the Nearly Zero Energy Building standards and they are looking to achieve this through natural ventilation, external movable solar shading devices, the incorporation of heat

pumps, installation of solar roof panel tiles and the re-using of greywater for irrigation and the topping up of swimming pool.

The gap on the east side between the newly completed Forbes development and NVT and the gap on the west side between NVT and the projected development were both visible on the North Elevations Overall View slide. The cut back within the middle, which is approximately a 5m gap with a blank wall façade leaving roughly a 2m separation from the homes, is seen in the West Elevation view slide facing the NVT.

The application has been subject to public participation and six sets of representations have been received from NVT Management Company and residents.

CK invited Mr Eugene Pons (EP) to address the Commission.

EP expressed his objections against the proposed development mainly due to the extreme little separation between the development and NVT. He currently has some natural light restrictions, and if the proposed development is authorised, he will not have any natural light left in his home. He referred to the encounter they have had for the past two years, as a result of the Forbes development with the noise and construction pollution whilst the building was being constructed. He suggested that either the government consider creating a park on this site or leaving a larger space between their home and the projected construction.

JH asked how much space EP thought would be reasonable.

EP answered at least 8 or 9m.

Members had no further questions.

CK introduced Mr Leo Fazzi (LF).

Nearly a year after moving in, LF is still remodeling his house. It was advertised as having a pleasant afternoon outlook and balcony light. If the development is approved, he would be staring at a brick wall. He concurs with EP that the distance between their home and the proposed development is short. Although he wasn't living there when the Forbes complex was being built, he is aware that he will endure construction-related noise and pollution for a while. He wants to continue living comfortably and in the sunlight at North View Terrace.

Members had no further questions.

CK introduced Ms Toni Nice (TN).

TN presently lets her apartment to a family with four very small children. There are young families, older individuals, and persons with physical disabilities in the building, which offers a great sense of community. They put in an elevator that transports people to a flight of narrow stairs that lead to DTR. Users must escape the property using the Forbes Road exit, which has no pavement but is safe because currently there is not much traffic. The Forbes development will be located on this road, which was utilised for the building site when work on the Forbes Development started. She recommended that the applicant make it simpler for NVT residents to access. As an alternative to two business units with no parking, she advised having one commercial unit with plenty of room for parking and for lorries to unload. The close proximity of the new development to NVT was also emphasised by TN.

Members had no further questions.

CK introduced William Reeve (WR).

WR spoke on behalf of all the residents who will be impacted by the new proposed development in any way. In reality, many apartments overlooking the western area have completely clear views, and only apartments two and four overlook the Coviran wall and have access to very little natural light. He explained that the plans submitted by the applicants are misleading because they give the impression that the Coviran Building roof affects most of the NVT flats. According to WR, if the proposed development is approved, apartments 12, 14, 16, 18, 28, 32, 38, 42, and 48, which currently overlook the western side with abundant natural light, will have a wall approximately 2 metres away from their window. Moreover, a wall would be built 2 to 4 metres away from apartments 22, 24, 34, 36, 44, and 46. Due to the proposed new development's proximity to the NVT, it may be difficult to maintain the NVT because there is no access for maintenance or rainwater drainage.

Members had no further questions.

CK introduced the applicant Mr Stephen Martinez (SM) from Arc Designs.

In a brief statement to the Commission, SM stated that they are sympathetic to the concerns but felt they had to defend their design. The only location in Gibraltar that is now seeing development boom is DTR. They offer a variety of flats so that individuals can live in a more comfortable environment. Due to the three parking floors and three separate entrances, the construction has some height. Similar to NVT's design, the plan incorporates a 2m setback requirement for the boundary. The boundaries of the evening sun are only a concern on the East and West sides of NVT. To provide greater oxygen to the area between the NVT and the new development, the applicant is continuing to reduce the height of the central component of the building by an entire floor (3m). For ventilation-related reasons, the application complies with Part (K) of the Building Rules. The commercial unit entrance would be via Forbes Road and not DTR, as it was at the former Coviran premises. They have given up a little portion of the land to gain access to the building's basement. A layby will be built on Forbes Road to allow vehicles to unload. SM informed the Commission that a new set of drawings had been created that included a building reduction of 120 mm to account for building tolerance.

The Chairman asked Members if they had any questions.

GM asked if there were going to be fewer parking spaces than the standard requirement and asked the Commission if this still stands.

CK confirmed that parking spaces would only be given for one-bedroom plus apartments and would not be offered for studio apartments, in accordance with earlier Commission approvals, resulting in a shortfall of 80 parking spaces.

SM clarified that they are adhering to past developments that the Commission had previously allowed. They would offer parking on three stories, including spaces for bikes and motorbikes.

GM recommended fewer apartments be built in order to create more parking spaces.

SM believes that since not everyone uses a car, there is no need to create a parking area for each apartment and mentioned that residents could utilise the parking area just across from the planned development.

CK requested clarification on the 15 motorbike parking spaces and the 24 bicycle spaces as this is significantly less than what the car park regulations state and the applicant confirmed it would include integrated bicycle racks, which would triple the amount of bicycle parking spaces. CK said, there is still a shortfall of 68 motorbike spaces, 134 bicycle spaces, and no parking provision

for commercial uses. The applicant suggested reviewing the basement plans and attempting to make it bigger.

MfT asked whether a pavement would be provided and its breadth. SM said Forbes Road would receive a new pavement with a standard width of over 2 metres and a layby for commercial use. SM noted that in order to provide a single full straight pavement, the existing business entrance/exit slopes would be repaved in addition to the existing pavement.

JH questioned the applicant about their plan to address the Forbes Road entrance/exit problem for NVT residents. SM clarified that because the road is a public one, there was not much they could do. The construction of a layby with pavement, however, will help to relieve traffic congestion. JH enquired as to whether the applicant will review the decision in further detail. SM went on to say that enhanced access had been included in the development as the Commission had previously advised. Accessibility to flats for NVT tenants would not be impacted by the development.

AB reminded the DPC that a motorcycle dealership and workshop was approved last year and asked the applicant if this scheme is included in the proposed development and, if so, how would this affect the traffic flow via Forbes Road. In response, SM said that the layby was better than Yamaha's initial suggestion. He added that developers communicate with one another after receiving planning approval. The triangle-shaped Yamaha site plot is included in the planned development and has a separate entry on the back of the property. AB questioned the applicant as to why commercial units were indicated but this motorcycle store was not listed as a component of the scheme. SM confirmed that if granted, the Yamaha dealership would be allocated the commercial unit.

CV asked whether NVT had a setback from the boundary line when they were first constructed. SM said he had been involved in those developments and certified that the flat roof terraces were constructed to minimise watertight difficulties with the garage and that a 2m setback was provided in accordance with Part K standards. With the exception of dropping a level through the centre of the land, they have proposed the same standards for their building, making it 2m and 4/5 m tall from the terrace deck. He also confirmed that the setback distance would be 2m.

The high proportion of studio flats in the proposed construction without parking spaces is a problem, according to CAM, who also raised the issue of the growing need for cheap housing for young families and professionals. She questioned the applicant about the price range because she is concerned about the oversupply of studio apartments on the market, particularly in the DTR area, which she believes are being purchased off-plan for rental purposes rather than being offered for sale as reasonably priced starter homes. Darren Olivera (DO) for the applicant, acknowledged CAM's concerns and clarified that apartments are priced by square metre, so the smaller the flat, the less it will cost and the easier it will be for individuals to climb the property ladder. The pricing point, according to CAM, has not been addressed. In addition, she noted that studio apartments can range in price from £200,000 to £500,000. DO acknowledged CAM's worries, but at this time, he is unable to guarantee the price point and would not know until the development is approved and the pricing is confirmed with contractors. The cost would be reasonable given the demand, the location, and the caliber of the construction.

MfT questioned the applicant on whether the motorbike parking spaces outside the commercial buildings were for the dealership's use or for general public use. SM confirmed they were public. The layby would be available to the business units for their uses.

JH reminded the Commission that the motorcycle dealership on the second level had already been given authorisation, and that no planning history was stated in the planning summary. Since there is not a comprehensive plan for the entire area, the inflow of applications for the same area has caused confusion. As a result, they are considering building on a site that has previously been granted planning approval, which was discovered well into today's discussion. She emphasised the need to wait until all the information was gathered before making choices about these schemes.

The Chairman underlined the need for DPC to assess applications as they come in. Both applications have been taken into consideration as they have been submitted. Both developers appear to have been communicating with one another. He went on to say that the issue was how it would be included into the plan, and the applicant had already responded that they were doing so. The Commission will need to be satisfied that all pertinent problems have been adequately resolved once it receives the specifics for this.

JH asked if the applicant for the motorcycle dealership is also involved in the current application. The Chairman asked SM if he could clarify. SM confirmed they were in active discussions with the other applicant.

MfT asked how many electrical charging points were included in the project. CK confirmed that there will be 20% active points in accordance with the regulations. MfT asked the developer if they would consider having communal parking space rather than allocated spaces to ensure they are fully used. SM confirmed they would consider this.

CK summarised the consultee comments:

- The DoE noted that the site might not be suitable for birds and swift nesting sites and the applicant would need to provide nesting sites at an alternative site.
- DoE considered that the applicant should demonstrate that the proposed development can meet bio diversity net gain. They have also confirmed that the refuse arrangement put forward are acceptable.
- The Director of Civil Aviation states that with a further application they need to have an updated aeronautical assessment taking into account any design amendments and would also need to include a wind turbulence study which includes cumulative impacts on other developments.
- The Ministry of Equality had no comments as this is an outline application.
- The Ministry of Heritage had no objections but do require an archaeological watching brief.
- The World Heritage Office had no objections but also require an archaeological watching brief as there is potential for Middle Paleolithic material.
- Technical Services confirmed that they have no objections.
- The Ministry of Transport have confirmed that the proposed development does not meet the parking regulations. They have welcomed the sheltered cycle parking spaces and considered that visitor public cycle spaces should be provided at Ground Floor Level.
- The Traffic Commission have considered this application and they have no in-principle objections but the applicant should provide public motorcycle bays and an unloading bay that would be lost at present as part of the proposed plans. They also raised concern with the noncompliance on the parking regulations on public on street parking on DTR.
- No comments have been received from The Heritage Trust or Land Property Services.

CK concluded: -

- No issues with demolishing the site's current structures.
- No objections to a residential led mixed-use construction on the site
- No objections to the loss of public servicing bay and current motorcycle parking spaces provided that these are incorporated within the scheme or elsewhere.
- In principle there are no objections to the height, scale or mass of the development. However, in the context of DTR, the site has a number of lower level buildings to the West, and there should be some transition between this site and the Western side of DTR. The scheme should be revised in order for the height of the building to be dropped in height by 2 stories from East to West across the site.
- The NVT residents had a very valid point in reference to the proximity of the East façade of the development to them and this should be revised to include a minimum of 5m setback from the first floor above as per the Forbes Development to the West of NVT.
- The applicant should introduce a green landscape or feature wall on the 3 Storey blank wall and this will be setback.
- The proposed balconies, which extend beyond the site's exterior boundary, give the impression of shutting in the streetscape and are unwelcome. Balconies should not project beyond the boundary line.
- In general, Town Planning does not object to the lack of residential parking spaces, but it does note that there are no parking spaces designated for commercial units, of which five spaces are required by law, and that the lack of spaces for motorcycles and bicycles is important. Car parking requirements would need to be relaxed if the Commission is to approve the application. Additionally, they consider that the applicant has to provide the development with minimum Commercial parking spaces in accordance with the regulations as well as additional motorcycle and bicycle parking spaces.
- Although Town Planning note that there are no guide lines in place, the Commission might want the applicant to setback the development and provide a cycle lane in front of the building.

CK explained that if the DPC finds the scheme acceptable it can proceed on the basis of a section 28 Direction meaning the applicant resubmits with the suggested revisions and DPC considers it again, or it could grant outline permission under section 30 but with conditions relating to the required changes.

The Chairman summarised the main issues: -

- Development should drop down to create a gradual transition of building heights as it reaches Laguna Estate.
- NVT to have a minimum 5m setback.
- Ground floor can remain in its proposed position but anything above would need to be setback.
- The projecting balconies are to be kept within the site boundaries.
- Parking issue.
- A further setback of the building to allow a footpath that in future can become a cycle lane.
- The Commission needs to decide whether it wants to Direct the applicant to make changes or whether it wants to make a decision at this meeting

CAM commented that there is no point in continuing with big developments in DTR if no policies or guidelines are in place. There is a need to reduce building heights towards Laguna Estate as in this particular case it is blocking views out from the Northern Defenses which is a major tourism attraction. Does not recommend the outline approval today.

JH commented on the lack of a holistic plan and the protection of the important vistas of Gibraltar. They have objected to all developments on DTR particularly as they block out the views of our rock. Residents of NVT will have poor quality of life and deserve to have better. They will have a huge impact on their property value and deserve to be compensated for dirt and filth or reallocated. Does not feel that the 5m setback is adequate either. Objected to this scheme.

The Chairman commented that property value is not a matter for the Commission to take into account and the reallocation of the existing residents would be a matter between the developer and the residents and has nothing to do with the Commission. However, he took on board the impact that this development would have on NVT hence the recommendation for a minimum of a 5m setback from its boundary. The Chairman also highlighted the recommendation to have a transition in building heights so the building would drop down towards the west

MESCCE said that the proposed development is not directly on a heritage building or impacting a natural area and that DTR is the last area of land other than reclaimed land that is available to construct tall buildings. However, the impact at the North face and the proximity with NVT is a dilemma. The holistic plans show how the proposed building is much lower than other buildings especially towards the west. MESCCE agrees with the recommendations to drop the height in order to alleviate the impact from North Defenses view and also agrees on the setback boundary from the residential neighbours. He is also concerned with the lack of greenery and suggested to include a green wall bearing in mind the species due to the wind factor in this area.

MESCCE mentioned that even though the applicant is striving to achieve the NZEB, it is a legal requirement. The Department of Environment also require for new developments to have 50% greywater recycling and 20% electrical vehicle charging points by law. However, MESCCE informed that the law is a few years old and the charging points should be increased to 40% and 100% capacity to convert, in order to avoid problems with residents when in a few years' time they have to go electric. He also proposed that as developers are earning a substantial amount of money with all these developments, and that in future, area should be given over to the community for cultural premises.

MESCCE, recognizing that the decision falls with the Commission, did ask the developer for their views as to whether they would prefer to come back with a new-outline plan or if they feel confident that they will absorb all the comments and address this at full planning.

The Chairman asked the applicant to give a clear answer whether they would be able to accommodate all the changes required to meet all the recommendations in a full application.

SM has no issues with the setback of 5m from NVT and they have no issues with the setback on the West by dropping a couple of storeys. A far more detailed plan will be presented with full planning submission.

The Chairman noted that SM's preference is to go away with an outline planning permission. He also made it clear that if that happened today that there will be very specific conditions that need addressing. The Chairman made clear that these kind of specifications will have a huge impact on number of units that can be accommodated in the development. If the outline

planning is granted and the developer comes back with a full planning permission without meeting these conditions, this is very likely to be refused.

MfT agreed that there should be a minimum of a 5m setback boundary with NVT. He was content that more developers are currently liaising with the Ministry of Transport before proposals are made, which alleviates many points having to be discussed at these meetings and invited the applicant to attend further discussions with him. A parking space per apartment is required. However, if the DPC is amenable for this development to go through without this provision, MfT suggests that the parking spaces available become communal. Going forward, all developments should have a pedestrian footpath with the required conditions as per the regulations. MfT agreed with MESCCCE on the fact that 20% electric vehicle charges will not be enough to meet the requirements in a few years' time. This should be increased to 40% active and the infrastructure should be ready to implement the 100% capacity of electric chargers when the time comes. He does not have any objections on the height of the building other than the issues with the residents at NVT.

GM at present cannot endorse this application as there are too many unresolved issues. The volumes and configurations of development, the streetscape and the internal parking requirements are issues that the developer needs to address before he can endorse this development.

The Chairman asked GM to clarify that he does not want to grant an outline permission even if all the issues that have been addressed are included as conditions.

GM answered there might even be more as the application from the design perspective seems to have discrepancies between the written submission and the verbal explanation. He feels that he needs to keep his options opened in order to reconcile those issues in order to come to a decision.

MESCCCE did not agree with GM and he knows that the applicant will meet the recommendations made due to his great track record. He also added that he is fine in granting the outline planning with all the conditions and he is confident that these will be addressed.

JH does not agree with the Government's response on the impact on Heritage from the Northern Defenses and scaling back 1 or 2 floors of the building will not address this issue. Also the 5% greenery requirement does not feature anywhere in this scheme. In addition, she does not feel that the 5m setback would be enough for the NVT residents to retain daylight. She kindly asks the planners to re assess the daylight issue. She also suggested for the DPC to visit the residents home to personally relate to the issue.

MESCCCE advised that his response was not a Government's response but his own personal view and that he did make the point that the height needs to be lowered so as to not impact the views of the Northern Defenses.

JH asked MESCCCE for his view if the applicant reduces the building a couple of floors if this will alleviate the impact of the Northern Defenses.

MESCCCE replied that would know when the developers come back with further plans.

CV explained that the holistic view of DTR was planned in 2009, where it was established that these developments would be High Rise Development. He does not feel that this particular application has a significant impact on the North face view and does not feel that the removal of two floors will have a major impact on this aspect either. Although it has been recommended for

a 5m setback, legislation requires 2m and this has been met in the application. Although the 5m setback is not ideal it will be for the better. CV stated that Rights to Light were not a matter for the Commission. In regards to the Northern Defenses views, CV invited all those who have put a claim forward towards the view impact, to visit the Northern Defenses and see for themselves that currently DTR is not a pretty site with all the industrial areas. Does not object to this application.

The Chairman concluded that there is a mix of opinions although everyone has agreed that the applicant does need to make changes to the scheme. A decision needs to be made whether or not the Commission want to grant a conditional outline with the limitations or whether they want to see a revised scheme before they make that decision. He proceeded in asking the members for their opinion on this.

MESCCE suggested that they need to vote as to whether they agree to issue an outline permission with condition or they agree to review with a show of hands.

The Chairman took a vote on whether the Commission wants to grant outline planning permission with the conditions discussed with the following result:

6 in favour

4 against

1 abstention

The Commission approved the outline planning permission with the recommendations made by the Town Planner and the additional comments that have been made during the discussion. In response to the raised issue of having objectors view the revised scheme, an extra condition was included and public participation would be required on the full planning application.

A ten-minute recess was taken.

Mr Kevin De Los Santos joined the meeting and replaced Mr Alfred Brittenden.

Mr Hector Montado joined the meeting and replaced Mr Emil Hermida.

Other Developments

376/22 - F/17938/21 - 5 Lake Ramp, Buena Vista Estate -- Proposed works to residence including basement works, extension, minor alterations and new swimming pool.

CK described the context of the site. He summarised the proposals: -

- Basement Level excavation to create a store room and a swimming pool in the patio / garden area.

- Ground Level extension to the covered terrace with sliding doors and inclusion of staircase to access the Basement Level. This would be extended to be flush with the neighboring building line in front.
- The First Level proposal is to extend and construct a new balcony where the enclosed existing balcony is currently at.

CK referred to other similar applications within the estate.

CK summarised the consultee comments: -

- The Department of Environment have no objections but require EPC.
- The Ministry of Heritage have no objections but require an archaeological watching brief during the excavation.
- The Trust, LPS and Technical Services have no objections.

Originally 2 objectors raised their concerns, both being the neighbours on either side of the applicants' residence. However, revised plans were submitted, and now there is only one objector from 6 Lake Ramp and they wish to address the Commission.

CK introduced the objector Mr and Mrs Richardson.

According to Mr Richardson, the reason why they are against this plan is because they believe their private rights have not been respected. The applicants' proposed balcony extension is twice the size as it was explained to them by the applicants' architect, and this will overtake all of the objector's terrace and invade their privacy. The second issue is that when their bedroom window is opened, the proposed veranda, which is referred to in the plan as an extension of the covered terrace, will practically directly undercut their privacy and quiet time. First, he suggested that the top balcony extension be kept within the original wooden railing's depth, which should be 1540mm rather than 800mm as proposed, and second, he suggested that the extension of the covered terrace be at least 40 cm shorter so that it does not end directly beneath their bedroom window.

The Chairman asked the objector to clarify how the proposed extension of the covered terrace can overlook their bedroom.

In his explanation, Mr. Richardson utilized the blueprints to show where the proposed terrace would finish and how, from the terrace, one could see their bedroom window if they leaned over the veranda and looked upward. Additionally, anyone on the terrace will have complete oversight of their patio.

The Chairman explained that the Commission does not normally consider overlooking garden areas as a significant loss of privacy.

The Chairman asked Mr Stephen Martinez (SM) on behalf of the applicant if he wished to address the Commission.

SM explained that he has previously done 16 other projects in the same area and is very aware of the boundaries and confirmed that the proposal would not extend beyond the boundary. Following adequate procedures, he liaised with both neighbours on either side prior to submitting the first proposals for the Management Company to take a decision. He took on board the objections from both neighbours and has modified 3 of the 5 points raised. The modifications were given to the Management Company and were approved and then submitted to the DPC.

Members had no questions.

CK reported that no comments have been received from the Management Company. Whilst the objectors' concerns raised are acknowledged, these works have been previously approved within the estate and in some instances have extended past what is proposed in this scheme. From a planning perspective, there seems not to be a loss of significant privacy and recommended approval of the application and revised plans that have been submitted.

The Chairman requested that CK indicate on the plans the relative extent of the extensions at ground and first floor levels for the benefit of Members.

GM stated that even though there is no objection to the extension, the neighbour's privacy concerns might be alleviated by raising the height of the fence that separates the objectors' residence from the proposed works residence.

The Chairman reiterated that there is a general rule that overlooking a garden/patio/terrace area is not considered to be a loss of privacy.

No further comments were made.

The Chairman took a vote on approval of the application with the following result:

5 in favour

4 against

2 abstention

The application was approved by majority vote.

377/22 - F/18177/22 - 76 Quay 31, Kings Wharf -- Proposed construction of an enclosed area to terrace including the installation of a conservatory and canopy.

CK said that the agent had requested deferral of the application after the agenda was issued in response to Town Planning's comments on the proposals. They will submit revised plans in the future.

The application was deferred.

378/22 - F/18189/22 - 24 Willis's Road -- Proposed refurbishment of an existing residential dwelling including partial demolition and redevelopment works.

CK reported that the application was originally scheduled to be discussed at the DPC meeting on August 3, 2022, but it was deferred to give the applicant time to file a Section 22 notice on the neighbouring property because the proposed development will directly affect them. This process has now been undertaken by the applicant and no representations have been received by the adjoining property.

It is a three-story house that has small external area in the lower ground level of the basement. It is situated near the intersection of Castle Road and Arengo's Palace Lane at the southern end of Willis's Road.

The Commission had previously permitted the renovation and addition of a single Storey to the top floor of flats 22/24 on Willis Road in July 2016. At that point the two properties were a single application. However, they have now been divided up and sold separately. Works have been going on for Flat 22, following approval for the refurbishment and extension by the Commission in February 2022.

The current proposal comprises:

- The addition of a top floor contemporary extension over the existing building with a mono pitch roof
- An enlargement of the second existing access to turn it into a garage with space for two cars, two motorcycles, and four bicycles. An on-street parking space located on the building's front façade will be lost as a result of these construction, and the previously approved access entry will be blocked.
- A new outdoor seating space to the west of the ground floor
- The restoration of the blocked windows
- The replacement of windows with timber doors and shutters

CK summarised the consultee's comments:

- The Department of Environment have requested an EPC, bird survey to be taken prior to commencement of work and nest box for swifts to be agreed with the department.
- LPS said that there is are no landlord's objections.
- The Trust have confirmed that despite the contemporary extension, they don't object to the proposed development.
- The Ministry of Heritage have no objections.
- The Ministry of Transport required a swept path analysis to be submitted which has been done.
- The Traffic Commission agreed on what is being proposed in respect of the widening of the access and the loss of the on street parking space.
- Technical Services confirmed they have no objections.
- World Heritage Organisation have no objections.

CK concluded: -

Refurbishment is generally welcomed and there is no objection to the additional storey. The only issue is with proposed blocking up of the approved access on 22 Willis's Road at basement level. There have also been different accounts from the agents in terms of the requirements for this and as a result Town Planning contacted LPS directly regarding the matter. Unless a different means of escape can be identified for 22 Willis's Road, LPS confirmed that the Government has reserved their right to add within the respective deed of lease an emergency right of way at basement level between the two properties. Despite correspondence with the Fire Department indicating that a fire door is not necessary, they are still awaiting the submission and approval of the final fire strategy before making a decision and completing this aspect of the development. CK added that this issue does not affect the overall planning merits of the scheme or outcome and recommended that no

planning permission is issued until this aspect is agreed upon by the parties involved because it may necessitate the need for updated plans to be submitted.

The Chairman summarised the material covered by CK.

MECCSE supports the development but prefers that the roof top be designed in the traditional style so that it has the classic appearance of the old town. The Chairman responded to MECCSE's remarks and suggested that the DPC could require a lighter colour cladding to the additional storey that would give it a 'lighter' appearance. MECCSE concurred since it would satisfy his objection to providing this development a more traditional appearance.

JH, GM and Minister Balban all agreed to this condition too.

The Chairman suggested approving the application with the condition that the cladding treatment of the additional storey would need to be revised and suggested this could be determined by the subcommittee.

JH excused herself from the meeting.

The Chairman's suggestion was accepted and the application approved unanimously.

379/22 - F/18313/22 - Suites 19 and 21, Block 3, Watergardens -- Proposed conversion and change of use of first floor offices (Class A2) into 6 residential units (Class C3).

CK summarised the proposal:

- Converting the use from offices at first floor in Block 3 Watergardens into six studio residential apartments.
- The replacement of existing windows as well as the louvers to match the existing current windows.
- No parking is proposed.

The consultee's comments:

- The Department of Environment request for an EPC.
- LPS have no objections.
- Technical Services have no objections.
- The Management Company were served notice of the application. Originally confirmed no objections but later retracted this as there might have been a breach of contract.

CK reported that representations had been received from Isola's on behalf of an adjacent owner and that they wished to address the Commission.

Mr Nick Isola (NI) was invited to address the Commission.

NI stated that the obvious division between commercial units on the bottom floor, offices on the first floor, and residential on the floors above has been at Watergardens for over 32 years and should be respected. The use of the property for anything other than an office or a commercial unit is expressly forbidden by the commercial leases. There is a restriction to use and occupy the property only as a self-contained residential flat, even for residential leases. Partial assignment is completely and totally prohibited in residential lease agreements. Because offices are located on this floor, they do not want disturbance from any residents. NI also raised the lack of parking

as an issue and would result in increased pressure on Government having to provide additional parking. This could set a precedent for further changes of use to residential.

Additionally, there is a chance that Section 21 has been breached. The validation date on the DPC planning portal was scheduled for July 12, 2022. However, on the online planning platform, the public comment period ended on July 19, 2022, when it should have had 21 days and a deadline of August 9, 2022. Potential objectors were misled and did not object since they believed the deadline to be July 19, 2022. NI suggested that this be advertised again with notifications of the applicants on each of the Watergardens blocks.

The Chairman clarified the issue about the public participation. There are two potential procedures. The first is Section 22, which entails notifying the owners and gives them 21 days from the application's validation to respond. Certain other developments are subject to a different process under Section 23, which is for the general public as opposed to the individual owners and is posted on the portal. As a result, the minimum time frame for public comment is five working days from validation, which applied to July 19, 2022. A 21-day public grace period was not required because this application did not fall under Section 23. For the owners, there was, but not for the general public.

Members had no questions for NI.

The underutilization of the offices was addressed by SM, on behalf of the applicant Mr Sean Gomez. Residents should not be a source of noise disruption since the maximum residential usage is mostly after work hours. The studio apartments would include soundproof doors, which will aid this issue. After 30 years, Gibraltar's market currently relies more on residential sales. The apartments would be spacious, well located and in a great environment.

Mr Ian Farrell, Hassans, on behalf of the applicant, thanked the Chairman for his clarification on the matter of public involvement. Alleged breaches of the under lease should be addressed directly by SNG and the management company's council; this forum is not the place for such discussions. He confirmed that the management company has not voiced any opposition to this proposition. Other developments within the same area have converted commercial units into apartments.

The Chairman asked the developers to confirm if the two parking spaces available for the two commercial units would become available for the studio occupants' use.

SM confirmed that they are.

CK concluded:

Recommended that the issue with the breach of lease raised by the objector is to be settled between the applicant and the management company. Town Planning have no in principle objections for the change of use from commercial to residential and no objections in terms of the parking arrangement. However, as per the norm, the Commission would need to waive the car parking regulations in approving the application. It is noted that a number of similar proposals have been approved and this site is located in very close proximity to the public transport network. They do not consider the noise nuisance will be an issue particularly due to the residential usage is generally a different time as to the office usage. Overall they recommend approval of the application on the basis of the Commission waiving the car parking regulation and inclusion of standard conditions.

MECCSE did not agree with the Town Planning recommendations and expressed concerns with the parking issues and the recurring changes in use from commercial to residential.

Due to earlier developments that led to the loss of commercial units, CAM does not endorse the proposals either.

Although MfT would want to see citizens use other forms of transportation he advises that if the Commission approves the proposal, there should be a restriction prohibiting the new homeowners from applying for a Zone 4 parking permit.

KDS agreed with MESCCE's comments.

The Chairman commented that he is aware of the parking difficulties and the numerous instances of previously approved developments that lacked parking. However, this specific property has the advantage of being close to the bus routes and the town centre, both of which can be reached on foot. He said that he would also take into account the sustainability angle in that it involves re-use of existing units. The demand for office use appeared to have fallen during the past few years. The building control regulations for things like sound insulation must be met by the developers.

MESCCE noted the Chairman's comments but felt that there will still be a demand for office space. He was concerned that we work hard to achieve specific designs and specifications in buildings and then years later someone wants to change it.

KDS said that there is a difference between when a building is converted from solely office usage to just residential apartments and when there is mixed use as this can be dangerous. There is currently a huge imbalance in both the supply and demand of office markets as well as the desire for affordable homes. In order to increase the demand for office space, the Landlord might think about cutting their office rental costs.

MfT does not agree with Town Planning's assertion that there is less demand for commercial use, when all new developments that have been approved have commercial units included. He does, however, concur with KDS that the price rate of the aforementioned office premises should be examined if they aren't being rented out.

The Chairman said that the Commission might need to take legal advice on MfT's proposal for the restriction to prohibit the new homeowners from applying for a Zone 4 parking permit.

The Chairman took a vote on whether to approve the application with the following result: -

1 in favour

9 against

0 abstention

The application was refused.

380/22 - D/18343/22 - Parking Space Number 5, Currey House, Buena Vista Flats Estate -- Proposed removal of a freestanding limestone outcrop within car parking space.

CK summarised the proposal:

- *Removal of a portion of a rock that prevents applicant from fully and appropriately utilising his parking space.*

The area of this rock is 3 m in height, 3.05 m wide, and 2.5 m deep.

The rationale for the application was to allow the applicant to be able to correctly park his vehicle. Currently the applicant argues that he must park outside the car parking space in order to access his car boot, consequently he can only use 4.5m of the available 7.5m of parking space. Having his car parked outside the designated area means it is susceptible to being damaged.

The applicant had previously requested approval to construct a garage for two cars but this was refused by the Commission on 8 September 2021 due to substantive excavation and/or tunneling into the rock requirements. Two design options were proposed and both were refused as the excavation would have negatively impacted the bio diversity and the natural landscape in an undesirable way.

CK summarised the consultee comments:

- The Department of Environment have not raised any objections but commented that any demolition material from this excavation is to be reused or recycled.
- LPS have not objected
- Technical Services do not have any civil or highways engineering objections. However, architectural objections have been put forward on the basis that the cliff base should remain untouched.

Notice of the application has been served on the management company and no representations have been received.

CK noted that the Department of Environment has not raised any objections in respect of Bio diversity, which was previously cited as a reason for refusal in the previous application, and that the proposed removal of the rock, which is to be reduced significantly from what was proposed previously, does not appear to have an impact on vegetation or wildlife at the base of the rock. This proposal would not have a visual impact as opposed to the previous refused application.

CK commented that removing a smaller portion of the outcrop than what was initially requested appears to be a suitable compromise that will still allow the applicant to fully utilise his parking space. However, it would be up to the Commission to decide if they are satisfied with approving this application considering their decisions regarding prior applications on this site.

The Chairman asked the CK for clarification on the tunneling depth for the previously rejected application. CK responded that the previous application involved up to 7m- tunneling or excavation into the rock face.

MFT noted that Technical Services commented that the rock face should not be removed and questioned whether this was due to structural reasons or if it was established that doing so would not affect the integrity of that portion of the cliff. The Chairman responded that the architectural section had raised an objection, not the engineering division. As the engineering section did not raise any objections, it is not in any way an issue of structural stability of the rock.

KB acknowledged that although there would not be much of an impact on bio diversity, this proposal would have an impact on the natural setting and would object on that basis alone.

CV commented that any work on bedrock is expensive, and there is no guarantee that the instability of one part of rock will not spread to another. As an applicant, he would have

researched the costs associated with the project and ensured that he is insured to handle any potential side effects that may arise, given that it appears that this is not for a crucial piece of infrastructure but rather to have additional space to open a car boot.

The Chairman invited the applicant, Mr Brandon Saccone (BS) to respond. BS commented that the Commission should not be concerned with the costs. He wants to park his car and open the boot because he owns the car parking space. The demise is 7.5m in depth and that is what he is after. All the car parking space leases are for the same measurements and he cannot find himself in the situation that one parking space has more depth than the other.

KDS, stated that the applicant only owns the parking area that extends to the base of the cliff face, not the actual cliff itself. The way the parking space lines have been drawn may have something to do with the variance in parking space depth. The Chairman questioned KDS if this meant that anything located above the cliff's base was either owned by the Government or by a different private entity. KDS made it clear that it is government property.

MESCCE asked the Chairman about whether this was the same location where environmental enforcement agents had been dispatched to prevent drilling into the rock face and vegetation clearance. The Chairman stated he believed that it is the same location. MESCCE expressed sympathy for the applicant's situation, noting that he has a similar problem with his own parking space and is unable to demolish the wall that is situated behind it. MESCCE did not believe that this is a busy road and was not convinced of the necessity of doing this work.

BS stated that the road leading to his parking is substantially busier because of the 12 new residents, local development, heavy construction vehicles are using that route and there is scaffolding all over the building. He described how his car is in danger of being damaged because he must park it outside of his designated parking spaces using a slide to demonstrate how he must park it in order to access the boot. When asked if his car was parked directly up against the cliff, the applicant claimed it was not since he could not open the boot.

The Chairman clarified that after the applicant uses the boot, there is room for him to reverse.

CV asked for clarification as to the proposed depth of excavation. CK confirmed this to be 2.5m

KDS suggested that the applicant contact the Management Company to change his parking space to the vacant space adjacent to parking space no. 1. BS clarified that the Management Company was in discussions with the neighbours about extending all parking spaces, so this area would be used. KDS questioned whether approval of this application would have an impact on the management company's proposal to enlarge parking spaces. BS stated it will be beneficial.

The Chairman asked BS if he would be interested in pursuing KDS's alternate suggestion. BS said he would not as all of the neighbours have agreed to keep the current parking arrangement.

The Chairman took a vote on the application as submitted ~~is the excavation of part of the cliff face (2.5 depth)~~ with the following result: -

0 in favour

10 against

0 abstention

The application was refused.

381/22 - MA/18119/22 - 267-269 Main Street -- Proposed fifth floor extension and creation of roof terrace gardens, installation of lift and internal refurbishment to common areas of property.

CK stated this was an application for retrospective Minor Amendments including:

- Adjustment of size of meter cupboards in entrance to hallway to suit GEA / AquaGib requirements; and
- Adjustment to the size of the bin store and adjoining store; and
- Removal of sliding door in unit 4.04 as per GFRS requirements.

The lease holder had raised objections to the application, but these have since been withdrawn, which was the major reason it was brought before the DPC.

The applicant proposed six bins, but the lease holder had objected requesting eight bins. Town Planning liaised with the Cleansing Superintendent directly who confirmed that eight bins would fit in the bin store if these were arranged in an 'L' Shape. Town Planning has no objections with this proposal, provided that the bins are located as per the Cleansing Superintendent requirements.

The Chairman asked if members were in agreement with the recommendations.

The application was approved unanimously.

382/22 - MA/18315/22 - 5 Ashbourne Ramp, Buena Vista Estate -- Proposed extension to residence, conversion works to basement and associated ancillary works.

CK stated this was an application for Minor Amendments including:

- Basement Level internal alterations on the front part. Enlargement of the west facing window with installation of French style sliding windows
- Ground Floor Level proposed extension to the rear terrace to bring it in line with the boundary
- First Floor Level proposed to change a window to a door and use the rest of the space on top of the carport as a balcony with glazed banisters in front.

CK summarised the consultee comments:

- Technical Services, Environment and Ministry for Heritage have no objections.

No representation has been received from the Management Company.

CK concluded:

There are no objections on the proposed Basement and Ground Floor works. However, there are concerns with the proposed front balcony on the First Floor Level as Buena Vista has a unique architectural character and form and have a staggered appearance. In the past, very few works have been allowed on the front façade of these residences. A small extension to the front first floor over part of the carport has been allowed previously subject to it being flush with the façade. The proposed balcony is out of character for the estate and would have a negative impact on the staggered effect and it would serve as a precedent for future balconies above carports.

CK recommended approval of the application other than the proposed first floor front balcony.

The Chairman verified with CK that if the balcony works to the carport is refused, the French window created on this level is to be converted back to its original rectangular window form that had been previously approved.

Members had no comments.

The Chairman invited Stephen Martinez (SM) on behalf of the applicant to address the Commission. SM justified his plan on the basis that it was previously approved by the Commission for a replicated 5m long carport to be rebuilt, with an extended bedroom wall over the carport within the boundary wall to the adjacent building. As a result, there is now a wall that extends further beneath the floor. This space can be used if a glassed balcony is erected around the carport roof top.

The Chairman noted that there is a planning concern with allowing the balcony above the carport and that allowing the first floor front elevation was already a compromise and that a lot of work had gone into trying to preserve the character of this estate.

The recommendation is to approve the application with the exception of the First Floor front balcony proposal. The Chairman asked the members if they were in agreement with the recommendation.

There was unanimous agreement with the recommendation so the application was approved with the exception of the proposed balcony on the front elevation.

383/22 Any other business

VR announced that he would be retiring at the beginning of November and wanted to express his gratitude for the opportunity to represent the MOD at the DPC.

The Chairman thanked VR for his service and wished him a happy retirement.

MESCCE on behalf of all the members also wished to thank VR for his hard work and for his MOD representation at these boards.

The Commission agreed to next meet on Thursday 17 November 2022.

Chris key

Secretary (Ag) to the Development and Planning Commission

Minor and Other Works– not within scope of delegated powers

(All applications within this section are recommended for approval unless otherwise stated).

- None

Applications Granted by Sub Committee under delegated powers (For Information Only)

NB: In most cases approvals will have been granted subject to conditions.

383/22 - F/16198/19 - First, Second, Third and Fourth Floor Apartments, 5 Town Range -- Proposed minor alterations to layout of apartments 1b, 2b & 3b and subdivision of a ~~three bedroom~~ three-bedroom apartment at fourth floor into two x apartments.

Consideration of request to renew Planning Permission No. 7203

384/22 - F/16280/19 - Fifth and Sixth Floor, 5 Town Range -- Proposed alterations to layout of duplex penthouse including eco-terrace and installation of photovoltaic panels on roof.

Consideration of request to renew Planning Permission No. 7210

385/22 - F/17672/21 - Ex Toc-H Site -- Development of a boutique hotel and spa.

Consideration of revised plans omitting lift and cantilevered platform from proposed development.

386/22 - F/17751/21 - Flat 2, 3 Turnbull's Lane -- Proposed refurbishment of flat.

387/22 - F/17844/21 - 15/1 South Barrack Road -- Proposed extension, alterations and redevelopment of property.

388/22 - F/17862/21 - Royal Ocean Plaza Car Park, Ocean Village – Proposed administrative changes to car park operation to allow egress of vehicles through the existing north exit to relieve congestion on the south exit, and to restrict carpark access to authorised users and clients of Sheppard’s Chandlery.

Consideration of revised planter proposals as requested by DPC.

389/22 - F/18073/22 - Arengo's Garden -- Proposed construction of plinth to support pole for aerial cable.

390/22 - F/18076/22 - 704 Basha Lodge, Mons Calpe Mews -- Proposed installation of glass curtains.

391/22 - F/18128/22 - 2 Smith Dorian Avenue -- Proposed internal works and alterations to special educational needs support facility and the removal of external porta cabins.

392/22 - F/18146/22 - Unit A B, Ground Floor Unit, 13 College Lane -- Proposed change of use of former ground floor offices into food storage unit.

393/22 - F/18159/22 - Blocks 1 to 3 Watergardens Estate, Waterport Road -- Proposed removal of the external soffit ceilings at the rear passageway to buildings 1, 2 and 3, carry out repairs and, replacement of soffit ceiling system to match recently replaced soffits to blocks 4, 5 and 6.

394/22 - F/18161/21 - 201 Grand Ocean Plaza -- Proposed installation of glass curtains.

395/22 - F/18169/22 - Merchant House, 124 Irish Town -- Proposed subdivision of a single office building into three units and retail on ground floor.

396/22 - F/18183/22 - Smith Dorian Avenue (Former Site Of Early Birds Nursery, Saint Martin's Special School) -- Proposed change of use from nursery to cafeteria and associated works.

397/22 - F/18200/22 - 1/C 1 Engineer Road, Maida Vale -- Proposed installation of new access stairs.

398/22 - F/18201/22 - The Cliftons Pool Area -- Proposed alterations and refurbishment of pool area.

399/22 - F/18302/22 - 1 Library Villas, 14 Library Gardens -- Proposed extension and internal alterations.

400/22 - F/18303/22 - Prior Park School -- Proposed emergency reparations to existing school boundary wall adjacent Arengo’s Palace.

401/22 - F/18312/22 - 11 City Mill Lane -- Proposed change of use from shop (Class A1) to café (Class A3).

402/22 - F/18323/22 - Flat 11, Barham Tower, Brympton Estate -- Proposed change of windows and internal alterations.

403/22 - F/18325/22 - House 1 and 29 Naval Hospital Hill -- Proposed demolition and reconstruction of an existing damaged masonry retaining wall.

404/22 - F/18335/22 - 22 Main Street -- Proposed installation of new glazed shop front including recladding of ground floor shop front and painting of upper facade.

405/22 - F/18339/22 - 140B Main Street -- Proposed refurbishment of vacant commercial unit (former ice cream parlor) into café.

406/22 - F/18340/22 - 5 Green Hills, Mount Road -- Proposed extension on to terrace and internal alterations.

407/22 - F/18342/22G - 6th Floor, Block 3 St. Bernard's Hospital -- Proposed internal alterations on the sixth floor and conversion into a TSSU department with external ductwork provided on the eastern facade to connect to the fifth floor plant room and encased in external render to match existing external walls.

GoG Project

408/22 - F/18346/22 - 23A Naval Hospital Hill -- Proposed alterations to terrace.

409/22 - F/18352/22 - 11A Benzimras Alley – Proposed change of use from void to storeroom

410/22 - F/18362/22 - Unit 1.1, Arlington, Midtown -- Proposed refurbishment and fit-out of unit as a dental practice.

411/22 - F/18369/22 - 7 Sandpits Views -- Proposed installation of glass curtains and internal alterations.

412/22 - F/18370/22 - Flat 8, 44 Turnbull's Lane -- Proposed refurbishment of flat.

413/22 - F/18375/22 - 87 Quay 29, Kings Wharf -- Proposed installation of awnings.

414/22 - A/18102/22 - Music Corner Ltd 114, Main Street -- Proposed installation of shop signage.

415/22 - MA/18063/22 - 4 Library Gardens -- Proposed refurbishment of house and construction of new roof and partial storey extension.

Consideration of proposed Minor Amendments including:

- *Two x new uPVC framed double glazed windows on flank wall.*

Consideration of revised plans omitting one window on front facade of building and other minor changes to top floor extension.

416/22 - MA/18153/22 - Upper Garage, Block 4, Ragged Staff Wharf -- Proposed installation of new ducting on upper garage ceiling to extend the kitchen extraction system of two restaurants to the east side of the building.

Consideration of proposed Minor Amendments including:

- *New ducting route for the two restaurants to expel by the upper and lower garage exit grill located on the east side of the building as opposed to that specified in minor amendment MA-17027-20*

417/22 - MA/18354/22 - 18-20 Town Range – Proposed conversion of ground floor rear workshop and rear storage unit to residential use, construction of extension and associated internal and external alterations to refurbish property

Consideration of proposed Minor Amendments including:

- *Internal alterations through floors including repositioning of lift and reconstruction of new load bearing walls and floors; and*
- *Consolidation of roof level accommodation (lift overrun/stair access storage etc.).*

418/22 - MA/18388/22 - 6 Europa Pass -- Proposed alterations and refurbishment of property.

Consideration of proposed Minor Amendments including:

- *Proposed additional basement and balcony works.*

419/22 - Any other business

Chris Key

Secretary to the

Development and Planning Commission