



Friday, 31 May 2019

## **PLANNING COMMITTEE**

A meeting of **Planning Committee** will be held on

**Monday, 10 June 2019**

commencing at **5.30 pm**

The meeting will be held in the Rosetor Room, Riviera International Conference Centre, Chestnut Avenue, Torquay TQ2 5LZ

### **Members of the Committee**

Councillor Barrand

Councillor Brown

Councillor Dart

Councillor Dudley

Councillor Hill

Councillor Barbara Lewis

Councillor Manning

Councillor Pentney

Councillor Jacqueline Thomas

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**A prosperous and healthy Torbay**

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For information relating to this meeting or to request a copy in another format or language please contact:

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01803 207087**

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# PLANNING COMMITTEE AGENDA

1. **Election of Chairman**  
To elect a Chairman/woman for the remainder of the 2019/20 Municipal Year.
2. **Apologies for absence**  
To receive apologies for absence, including notifications of any changes to the membership of the Committee.
3. **Appointment of Vice Chairman**  
To appoint a Vice-Chairman for the remainder of the 2019/20 Municipal Year.
4. **Minutes** (Pages 4 - 6)  
To confirm as a correct record the Minutes of the meeting of the Development Management Committee held on 11 March 2019.
5. **Disclosure of Interests**
  - (a) To receive declarations of non pecuniary interests in respect of items on this agenda.  
  
**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.
  - (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda.  
  
**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.  
  
**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)
6. **Urgent Items**  
To consider any other items that the Chairman decides are urgent.
7. **Corbyn Head Hotel (P/2018/1086)** (Pages 7 - 53)  
Demolition of an existing 45-guestroom hotel, and the construction of a new, purpose-built 152-guestroom hotel within the Core Tourism Investment Area.

8. **Land Off Martinique Grove (P/2019/0265)** (Pages 54 - 69)  
Erection of 5 dwellings on land off Martinique Grove, Torquay
9. **Land Off Luscombe Road, Paignton (P/2019/0291)** (Pages 70 - 79)  
Reserved Matters application relating to the proposed appearance, landscaping, layout and scale of seven dwellings, resulting in a change to their previously approved siting.
10. **213 St Marychurch Road, Torquay (P/2018/0962)** (Pages 80 - 99)  
Demolition of existing building to form 17 apartments & parking.  
(Revised plans received 6/3/19)
11. **Waldon Point, St Lukes Road South, Torquay (P/2018/1274)** (Pages 100 - 108)  
Installation of 12 no. telecommunications apertures, antennas, raised working platforms, cabinets, dishes and ancillary works on the roof of Waldon Point, which is a multi-storey apartment building.
12. **133-135 Winner Street, Paignton (P/2019/0152)** (Pages 109 - 117)  
Change of use of the ground floor of 133-135 Winner Street, Paignton, from a retail unit to a one-bedroom apartment.
13. **Café Cockington Court, Cockington Lane, Torquay (P/2019/0268)** (Pages 118 - 122)  
Listed building consent for the redecoration of an existing café dining space and to provide a new serving counter.
14. **Old Maids Perch, Shedden Hill Road, Torquay (P/2019/0301)** (Pages 123 - 131)  
Variation of condition relating to application P/2014/0198 to vary condition 2, which states that the use permitted shall be discontinued on or before 1<sup>st</sup> May 2019. The variation sought is to allow the use to continue up until 1<sup>st</sup> May 2029.
15. **Public speaking**  
If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.



## Minutes of the Development Management Committee

11 March 2019

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Brooks, Darling (S), Lewis (B), Manning and Morey

(Also in attendance: Councillors Darling (M))

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### 47. Apologies for absence

An apology for absence was received from Councillor King.

It was reported that, in accordance with the wishes of the Conservative Group and Liberal Democrat Group, the membership of the Committee had been amended for this meeting by including Councillor Brooks instead of Councillor Tolchard and Councillor Darling (S) instead of Councillor Pentney (respectively).

### 48. Minutes

The Minutes of the meeting of the Development Management Committee held on 11 February 2019 were confirmed as a correct record and signed by the Chairman.

### 49. Torquay Pavilion and Marina, Vaughan Parade, Torquay (P/2015/0961& P/2015/0962)

The Committee considered an application for planning permission and listed building consent for development of Torquay Pavilion and Marina car park and adjoining land. The Committee was advised that as a result of a legal challenge the previous decisions made at the Development Management Committee held on 27 February 2017 and 8 May 2017 had been quashed by an Order of Court and therefore required redetermination. Members were provided with details of the updated information required from the applicant and it was confirmed that this information had not been submitted to the Council by the requested deadline.

At the meeting Alan Griffey, Cordelia Law and Paul Fraser addressed the Committee against the applications.

Resolved:

That applications P/2015/0961/MPA and P/2015/0962/LB be refused for the reasons set out in the submitted report.

**50. Grange Court Holiday Centre, Grange Road, Paignton (P/2018/0579)**

The Committee considered an application for use of land for static holiday lodge caravans.

Prior to the meeting, Members of the Development Management Committee undertook a site visit.

Resolved:

Subject to the completion of a legal agreement/unilateral undertaking to secure a contribution towards monitoring of the holiday use, the application be approved subject to the conditions set out in the submitted report and additional conditions in respect of delivery of the static caravans and landscaping/planting, with the final drafting of conditions being delegated to the Assistant Director for Planning and Transport.

**51. Land South Of 27 Empire Road (P/2018/0901)**

The Committee considered an application for formation of two detached two-storey dwellings (revised plans received 29/1/19). The Committee was advised that minor changes had been made to the plan since the agenda was published, these were:

The vehicle turntable for unit 2 had been removed;  
The shared store serves unit 2; and  
Condition 6 should refer to P1002 received on 4 March 2019.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website.

Resolved:

Approved with the final drafting of conditions, to include those set out in the submitted report, being delegated to the Assistant Director of Planning and Transport.

**52. Curtilage Of 1 Laura Grove, Paignton (P/2018/1136)**

The Committee considered an application for the formation of a dwelling and garage.

Prior to the meeting written representations were circulated to members. At the meeting Caroline Perry addressed the Committee against the application.

Resolved:

Approved with the final drafting of conditions, to include those set out in the submitted report, being delegated to the Assistant Director for Planning and Transport, and the following amendments:

Condition 2 to include the existing landscaping to be retained  
Condition 10 to refer to plan 18.428a.

**53. Barton County Junior And Infant School , Barton Hill Road, Torquay (P/2018/1211)**

The Committee considered an application for formation of a nursery building.

Prior to the meeting written representations were available on the Council's Website.

Resolved:

Approved with the final drafting of conditions, to include those set out in the submitted report, being delegated to the Assistant Director for Planning and Transport.

**54. Exmouth View Hotel, St Albans Road, Torquay (P/2018/1283)**

The Committee considered an application for demolition of the existing hotel and construction of twelve apartments, two townhouses, and associated car parking.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Messrs Robinson and Bryant addressed the Committee against the application and Miss Stewart addressed the Committee in support of the application.

Resolved:

Approved, subject to;

- (i) the satisfactory receipt of surface water drainage details to ensure that there would be no increased risk of flooding;
- (ii) highway mitigation as outlined within the submitted report to amend parking restrictions in the immediate area, secured either through an upfront payment or a Section 106 Agreement;
- (iii) the receipt of amended plans to show the provision of at least one additional parking space;
- (iv) the provision of an electric car charging point; and
- (v) the final drafting of conditions, to include those set out in the submitted report, being delegated to the Assistant Director of Planning and Transport.

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Chairman

**Application Number**

P/2018/1086

**Site Address**

Corbyn Head Hotel  
Torbay Road  
Torquay  
TQ2 6RG

**Case Officer**

Mr Robert Brigden

**Ward**

Cockington with Chelston

**Executive Summary/Key Outcomes**

The proposed development would result in the demolition of an existing 45-guestroom hotel, and the construction of a new, purpose-built 152-guestroom hotel within the Core Tourism Investment Area. The proposal would include a roof-top bar, restaurant, public function rooms, spa facilities, and 101 spaces of car parking. The proposal would involve changes to the site's access arrangements, with one of the two existing access points being closed off and replaced by a safer alternative.

It is considered that the form, layout and design of the proposed hotel building would make appropriate use of the site's size and location close to Torquay's seafront and tourism facilities within the Core Tourism Investment Area, allowing for an economically viable scheme. Subject to the use of appropriate conditions to secure suitable materials and landscaping, it is considered that the proposal would result in a high quality addition and visual enhancement at what is a prominent site within the Bay. The provision of modern accommodation and associated leisure facilities has the potential to improve Torquay's attractiveness as a visitor destination. The proposal would bring economic benefits and, in the absence of any unacceptable harm in the other material respects, the proposal is recommended for approval, subject to the attached conditions and the completion of a legal agreement.

**Reason for Referral to Planning Committee**

The application has been referred to Planning Committee as it proposes Major development, and due to the number of objections that have been received.

**Recommendation**

That planning permission be granted subject to the completion of a legal agreement to secure financial contributions towards sustainable transport and local parking restrictions; and compliance with the conditions detailed at the end of this report. The final drafting and addition of conditions, along with the negotiation and completion of the legal agreement to be delegated to the Assistant

Director for Planning and Transport.

### **Site Details**

The site is a broadly rectangular area of land measuring around 3300sqm in area, comprising land occupied by the Corbyn Head Hotel, and situated along the western side of Torbay Road in Torquay. The site is located approximately 1.2 miles (2km) to the south-west of Torquay town centre; 1.9 mile (3km) to the north-east of Paignton town centre; half a mile (800m, or a 10 minute walk) from Torquay railway station; and 0.8 miles (1.3km) from the Riviera International Centre and Abbey Sands development (formerly Palm Court). The site is located within the Core Tourism Investment Area and within Flood Zones 2 and 3.

The site's south-eastern boundary runs alongside Torbay Road; the northern end of the site adjoins Livermead Hill; the north-western boundary runs alongside the railway; whilst the southern end of the site lies adjacent to the Corbyn Apartments, which are in use as holiday lets and dwellings. Ground levels generally rise up steeply to the west beyond the railway line and behind the existing hotel.

The existing building is a standalone structure, which is two to three storeys in height and is set within a curtilage area mostly comprised of a car park. The building fronts onto Torbay Road, and the site has two vehicular access points onto the public highway.

The locality is characterised by a range of building types including hotel buildings, apartment blocks, and houses. The neighbouring Corbyn Apartments is a four storey building with a mansard roof; to the west, and located on the hillside beyond the railway line, is the Cromartie Point Flats building, which is four storeys in height, and there are various other, similarly sized apartment buildings around the same location, off Livermead Hill. The three-storey Livermead Cliff Hotel is located on lower ground to the south-east.

The railway line, which runs alongside the site is classed as a County Wildlife Site.

### **Detailed Proposals**

The application proposes the demolition of the existing, 45-guestroom hotel, and its replacement with a new, purpose-built 152-guestroom hotel with associated leisure facilities, including a spa, roof-top bar, and a restaurant, which would be open to the public. Sandstone walls and landscaping would be introduced along the road frontage. An outdoor terrace area would be created at ground-floor level to the front of the building and at the northern end of the site, with pedestrian access to the public highway. An outdoor terrace area would also be provided at the fourth-floor level, at the northern end of the building, in association with the roof-top bar.

The proposed hotel would be of a modern design, incorporating a mix of glazing, white brick, black/blue brick, zinc cladding, and coloured panels across a horizontally patterned fenestration. The building would be up to 6 storeys tall at its highest point above ground level. The proposal would range from four storeys at its southern end, to six storeys in height at its northern end, above ground level, however, a sub-surface car park would also be provided at the building's southern end. The building would measure between approximately 15m (around 23m AOD) in height from the road level at the southern end of the building, and 21m (around 29m AOD) from road level at the northern end of the building. This compares to around 12m (around 20m AOD) in relation to the existing building. The proposed building would be tallest at its northern end and would step down towards its southern end. The footprint of the building would measure approximately 104m in length, and would have an average depth of around 17m. The footprint of the building would measure 1657sqm, which compares to 1089sqm in relation to the existing building.

The proposed building would provide 9,182sqm of accommodation, most of which would be given over to the guestrooms and associated elements, along with the car parking areas. The following would also be included: roof-top bar (218sqm), roof-top terrace (116sqm), restaurant and kitchen (369sqm), ground-floor terrace (196sqm), and spa-related facilities (123sqm). The proposed guestrooms typically measure around 24.5sqm in area, although there are larger, 'accessible' rooms approximately 30sqm in area.

The seven levels would comprise the following elements:

- A lower, under-croft car park at the southern end of the building, which would be accessed by a ramp. A small basement containing plant and a tank would sit just below the level of the under-croft car park.
- The lower ground-floor, comprising two areas of undercover car parking, along with a reception, staff facilities, and other services. The reception would be accessed from an area of outdoor parking, to and from which access to the public highway would be taken.
- The ground-floor level would comprise guest rooms at the southern end of the building, and a lounge area, kitchen, eating and drinking facilities at the northern end, which would have access onto the outdoor terrace, located above part of the lower ground-floor. A delivery reception area, accessed from Livermead Hill, would also be located at this level.
- The first, second, and third floors would mostly contain guest bedrooms, along with some associated facilities. The third and fourth floors would see the introduction of flat roofed areas at the southern end of the building.
- The fourth floor, which would mostly be located along the northern half of the building would comprise a spa, roof-top bar, outdoor terrace, other hotel-related services, and plant.

A new vehicular exit point would be created on to Torbay Road. The more northern

of the two existing access points would be closed off and stopped up. The existing, more southern, access would be retained and widened for use as an entrance to the site. The proposal would include 101 car parking spaces in total, equating to 2 spaces per 3 guestrooms, along with a temporary coach drop-off area capable of accommodating two coaches. A loading bay for deliveries would be provided along Livermead Hill, with access into the northern end of the building at the ground-floor level. Improved pedestrian access along Torbay Road would also be provided. The development would also include the introduction of new boundary treatment and landscaping features.

The proposal had originally been for a 175-bed hotel, however, revised plans were received in February, reducing the height of the building by one storey (approximately 3m), lowering the area of the roof to be occupied by plant, and increasing the number of parking spaces from 94 to 101, whilst the number of guestrooms has been reduced by 23.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- Torquay Neighbourhood Plan

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Summary of Consultation Responses**

**Torquay Neighbourhood Plan Forum:** Objects to the proposal on the following grounds (full letter provided at Appendix A):

- The proposal is too tall and not in keeping with the prevailing building heights;
- The proposal is significantly larger than the existing building;

- The proposal is contrary to Policy DE4 of the Local Plan and Policy TH8 of the Neighbourhood Plan;
- The proposal will have a harmful visual effect;
- It will block local and long views;
- The socio economic benefits are limited;
- Inadequate parking and access arrangements;
- Shortcomings in the submitted transport assessment;
- Harm to neighbouring amenity in terms of their outlook and privacy;
- The proposal may need to be assessed for compliance with Marine Management Organisation Policies.

**South West Water:** No objections provided foul flows only are connected to the public sewer and all surface water discharged either to the Sea or culverted watercourse to the south of the site.

**Environment Agency:** No objections.

**Network Rail:** No objections; conditions and informatives requested.

**Police Designing-Out Crime Officer:** *The increase in parking provision for the proposal is noted and supported but unfortunately this has not fully alleviated previous concerns raised, especially given the lack of alternative 'off-site' parking. It is appreciated that the Highways Authority will be fully consulted but it is respectfully requested that the proposed parking provision for the development is considered sufficient when balanced against the schedule of accommodation; the lack of alternative off-site parking options and the requirements of Policy TA3, to do all that is reasonable in preventing the potential for vehicle related complaints and issues as a result of inconsiderate and/or obstructive parking, damage to vehicles and property, all of which can easily introduce a source of conflict for the local neighbourhood.*

*The ramifications of failing to factor in sufficient parking provision for new development are not always appreciated until full occupancy, by which time it is likely to be too late to remedy.*

Otherwise no objections, subject to the use of a condition to secure a scheme of measures to design-out crime.

**Natural England:** No objections.

**Habitats Regulations Assessment Advisor:** Considering the proposed mitigation measures, there would be no adverse effect on the Integrity of the Lyme Bay and Torbay Marine Special Area of Conservation, either alone or in combination with other proposals or projects.

**Structural Engineer:** No objections; condition recommended seeking measures

to prevent damage to the highway along Livermead Hill during demolition and construction works.

**Highways:** No objections; see Strategic Transport comments.

**Strategic Transport:** No objections; planning obligations and conditions recommended (see Section 7 below).

**Community Safety:** No objections; conditions requested to secure details of and/or control kitchen extractor equipment and roof-top plant, including noise emissions; controls in relation to the use of the roof-top bar and terrace; and a demolition and construction management plan.

**Arboricultural Officer:** No objections subject to the use of a condition to secure a detailed landscaping scheme.

**Drainage:** Revised information is being considered by the Council's Drainage Engineer; an update will be provided to Members at the Development Management Committee.

**Torbay Development Agency:** Application is supported; the proposal would bring economic benefits to Torbay.

**Design Review Panel:**

05.04.2018

*The long thin site has a very fine prospect (outlook) to the front and the railway line to the rear – this contrast ought to find inflection in the building design.*

*The scale of the building in relation to local context seems to be appropriate. In our site visit, we also anticipated the impact of the building when viewed back from Torquay Harbour area and again did not see in principle any difficulties in redevelopment at the scale proposed. Materials specification strategies and the play of light and shade on any modelling of the façade will need further consideration and, we would expect, to be tested with accurate CGI renderings.*

*The vehicular access and servicing of the site, given its proportions and the 'tightness' of the site, is challenging.*

*The north-eastern end of the site forming a 'prow' in between the two vehicular routes needs and deserves particular attention – it will be a very powerful and prominent end of the building.*

*The Initial Design Approach*

*The bold sweep of the proposed building is supported, whilst the use of two different materials for the two halves of the hotel is understood as a means of relating the scale more closely to the context, we would have been interested to see the building tested as a more singular, consistent proposition – still gaining height towards the north-eastern end – but not so evidently sub-divided. This option ought to be explored. Clearly the massing relates to the location of the internal vertical circulation cores and we wonder if there isn't an opportunity for a final 'flourish' at the north-eastern end? We welcome retaining a view corridor on the western side of the site.*

*The idea that the form is conceived to have a heavier 'rear' bank of rooms (overlooking the railway) and a lighter 'front' bank of rooms seems to make great sense. We would encourage a far bolder horizontally emphasised aesthetic for the front bank, stretching/sweeping along the site, parallel (or almost parallel) to the main road. The semi-circular finale of this form at the north-east end seemed very appropriate.*

*By locating the vehicular entrance in the centre of the plot and allowing drop off at the main building entrance here, it is difficult to make this entry condition attractive for pedestrians. The character will be dominated by the necessary design and detailing for vehicles. The use of this same arrangement for receiving coaches was not quite possible for us to understand, but presumably there have been vehicular tracking assessments that show this to be possible. Whilst all may be proven to 'work', we are left wondering if the result will be sufficiently elegant as an experience for guests, and therefore some time spent exploring some alternative options / parking formats would be recommended. It is also difficult, visually, where the mezzanine level of parking pushes forward in front of the building line established by the rooms above – this will ensure that this part of the site will appear to be overwhelmed with vehicles. The edge of the mezzanine needs to be held back and the edge detailing of the balustrade to the deck needs careful thought – the current stone cladding seems incongruous.*

*We are concerned about the new edge being formed to the main road – a coherent idea needs to be established that retains a characteristic stone boundary to the site and we might expect that a 2 – 3 metre planting zone as part of the landscape design (both in front of the parking areas and above the semi-subterranean spa element). This planting should be luxuriant and bold and, if possible, space should be found for some larger trees (especially at the southern end).*

*The route into the building and up to the main reception level needs to be elegant and more intuitive than we currently detect. Consider opening out double-volumes to allow direct eye contact between the reception desk and the entrance doors below. The main staircase could be tested in alternative configurations and locations in the plan – perhaps the final ascension and arrival on the main level should consider the potential for sea views, straight ahead?*

*If a little more height could be gained on the north eastern end of the building then a rooftop bar / restaurant spilling out onto the adjacent flat roof would be incredibly attractive and benefit from good orientation and excellent views. Rooftop plant might also be elegantly incorporated within the same structure?*

*We see that the internal organisation of the plan is tight, but we regret how the public function rooms push forward of the building line above – this needs further exploration and ideally we believe a flush relationship should be aimed for. Whilst the presence of the railway is not a significant difficulty, we wonder whether some form of visual screening or softening (perhaps by means of planting) is worth considering to improve views from overlooking properties to the rear of the building?*

*Night-time (illuminated) appearance and handling of signage will be key considerations as part of the overall aesthetic being aimed for.*

#### *The More 'Developed' Version of the Design*

*In your additional development and analysis you explored options to break down the form and massing further – but we do not see any great merit in this – surely the building needs to be confidently and honestly, primarily a horizontal composition? Whilst the north-eastern end is clearly the dominant one, there may be some merit in adjusting the position of the south-western stair core in order to allow this end of the building to be more flexible in how it presents to the approach along the main road?*

*In further discussing and considering the strategy for accommodating car-parking there seemed to be an option to excavate to a greater extent under the north-eastern half of the building and thereby relieve pressure elsewhere (arrival/entrance area and external landscape spaces?). This approach would certainly be supported.*

*The variegated architectural language which accompanies the breaking up of the mass seems particularly retrograde as a design tactic and hope that this can be avoided.*

*We encourage the development of a sustainability strategy for the project and this we hope might have a natural influence over the design of the facades and their passive environmental performance. The panels of bright colour indicated on the images seem rather forced and more subtle/useful tactics for introducing irregularity within the elevation might be explored. We are surprised that balconies do not seem to be part of the client brief in this location.*

#### *Concluding Remarks*

*Our main concerns are to do with accommodating the arrival and presence of*

*vehicles on the site – options ought to be explored before confirming the strategy. We urge that the formal design is bold and uncompromised – there are clear precedents of good contemporary and modern design nearby which are confident in expressing their basic building anatomy.*

11.06.2018

*Design Issues deserving some further attention*

*We are pleased to see the new treatment of the northern end of the project, where we were calling for a bolder 'prow' in this prominent position. The design is more confidently handled in this respect but we noted a dis-satisfying 'duality' emerging between the front and rear components of the building as they presented in this end elevation. We think that options ought to be drawn / tested that examine the effect of a little greater height to one or the other, and the possible exploration of some alternative detailed strategies for dealing with the articulation of the joint where they meet. Once the compositional principles have been established then it would be good to transfer and repeat these on the simpler southern end of the building.*

*We are still disappointed to see the weakness of the main arrival stair up to reception. A 90 degree dog-leg is a fairly inelegant type and we feel that the movement of guests at this key moment of arrival needs to be gracefully choreographed by the optimum placement and configuration of the important staircase. The opportunity of exploiting good views out to sea as a key part of this pattern of movement should be seized.*

*The bold horizontal lines of the building are successful and only broken by the central vertical gap – making the detailed handling of this gap crucial. We debated whether or not vertical or horizontal glazing bars ought to be deployed – we think options for both ought to be tested.*

*We were much more certain that the 'additional' room which had been placed within this elevational zone of the building was a mistaken idea and this needs addressing – either by re-planning to remove the room from this location, or by reducing the width of the gap to merely denote the common parts (although we have doubts about the aesthetic impact of this latter strategy).*

*The rear elevation (facing the railway) is bound to be more of a challenge to maintain and we firmly recommend considering a finish / construction that is low or zero maintenance to ensure graceful aging of the appearance.*

*Concluding Remarks*

*We believe that the points raised above can be relatively easily addressed and we are pleased to offer our support for this project. It should provide an exciting,*

*handsome and positive addition to this part of the seafront.*

### **Pre-Application Advice**

Pre-application advice (reference DE/2018/0030) was given in relation to a proposal to redevelop the site with a new hotel. The letter was issued on 10<sup>th</sup> May 2018 and is appended to this report (Appendix B).

### **Summary of Representations**

The application is accompanied by a Statement of Community Involvement detailing the applicant's community engagement efforts. These have included a public exhibition and the use of a dedicated website. The Council has publicised the application through the use of letters, site notices, and advertisements in the local press.

201 representations have been received in total: 4 in support, and 197 objecting to the proposal. 161 objections had been received prior to the receipt of amended plans in February, and a further 36 have since been received re-iterating previously raised concerns.

The letters of objection include representations from members of the public; the Torquay Neighbourhood Plan Forum; the Cockington, Chelston, and Livermead Community Partnership; and the Torbay Coastal Heritage Trust. A summary of the concerns raised to date, where material to planning, is as follows:

- The proposal is contrary to the policies of the Torquay Neighbourhood Plan, the Torbay Local Plan, and the National Planning Policy Framework;
- Height, scale, bulk, and massing on a constrained site considered excessive, amounting to over-development;
- The regeneration benefits are limited in the location proposed and would not outweigh the harm that the proposal would cause;
- Harm to the character of the area, contrary to Para. 127 of the NPPF;
- Out of proportion in comparison to the existing building;
- Would dominate the local landscape;
- Would be forward of the existing building line;
- Overlooking, loss of natural light, and an overbearing effect in relation to neighbouring buildings and properties, including, but not exclusive to, the Corbyn Apartments and Cromartie Point apartments;
- Noise, dust, air quality, and light intrusion nuisances, along with general disturbance, arising from construction; traffic; deliveries, air conditioning and other plant; and the use of the outdoor terrace areas in relation to neighbouring properties, particularly Corbyn Apartments, Cromartie Point, and others around Livermead Hill;
- Proposal inappropriate in a quiet residential setting;
- Likely traffic impacts and harm to highway safety, particularly along that part of the public highway in relation to the bus stop, crossing pedestrians, and nearby junctions;

- Shortcomings in the submitted Transport Assessment;
- Insufficient numbers and types of parking spaces, including disabled spaces, on-site and lack of public car parks likely to result in overspill parking and congestion in surrounding streets, contrary to Policy TA3;
- Insufficient bicycle storage;
- Visitors to the hotel are unlikely to use public transport;
- Inadequate and dangerous servicing arrangements proposed for Livermead Hill;
- Bridge over the railway line is weak and cannot cope with HGVs or significant additional traffic;
- Will set a precedent for similar development;
- Greater in height than allowed by Policy DE4 of the Local Plan, and TH8 of the Torquay Neighbourhood Plan;
- Risk of flooding;
- Lack of landscaping.
- The changes made to the submitted plans have not addressed issues around the proposal's scale and appearance, parking arrangements, and other matters previously raised.

The four letters of support state that:

- The existing hotel is outdated and not compliant with health and safety standards;
- The design and scale of the proposal would complement the seafront and surrounding area;
- There would be benefits to the local economy.

A joint letter of representation received from the applicants and the owners of the neighbouring Corbyn Apartments discusses a number of non-planning issues, including access rights and access to light, relating to a separate planning application to change the use of holiday lets at that site to permanent dwellings. The matters raised are not considered to be material planning considerations.

### **Relevant Planning History**

There are no previous planning decisions of particular relevance to the proposal.

### **Key Issues/Material Considerations**

The matters for consideration are:

1. Principle of Development
2. Economic Benefits
3. Design and Visual Impact
4. Impact on Amenity
5. Trees and Ecology
6. Flooding and Drainage
7. Highways Impact

8. S106

9. Other Considerations

## **1. Principle of Development**

There is an established hotel use at the site, and the proposal is therefore acceptable in principle.

Insofar as the proposal would result in the replacement of the existing hotel, Policy TO1 of the Local Plan promotes the improvement, modernisation and the addition of new tourism facilities in order to attract new visitors, particularly overnight, to support the local economy. The Policy states that the Council wishes to see the quality of accommodation improved, with a wider range of new and refurbished facilities and services. This will be achieved by supporting the principle of new tourist accommodation, subject to other policies in the Local Plan, and the creation of new high quality tourism accommodation in sustainable, accessible locations. The Policy also states that Core Tourism Investment Areas (CTIA), such as the site's location, are the main focus for investment in tourism.

Policy TE1 of the Torquay Neighbourhood Plan states that new tourism developments will be supported where, in particular, they make use of brownfield land. Policy TS4 (Support for Brownfield and Greenfield Development) confirms that:-

*Development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in this plan.*

The proposed hotel would provide a larger, modern and improved tourist facility in an area allocated for such developments within the Local Plan, on brownfield land, and in place of a tired and apparently unviable hotel. Furthermore, the Torquay Neighbourhood Plan specifically addresses tourism and highlights Torquay as a 'destination in transition'. The Neighbourhood Plan also refers to 'Turning the Tide for Tourism', which identifies an oversupply of in small B&B guest house sector (less than 10 rooms) with a significant oversupply of low quality, low value added small hotels. There is an identified lack of good quality, large hotels and branded chains.

The proposal is considered to be acceptable in principle.

## **2. Economic Benefits**

Policy SS1 (Growth strategy for a prosperous Torbay) of the Local Plan states that development should reinforce Torbay's role as a main urban centre and premier resort. Policy SS4 (The economy and employment) supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The

Local Plan supports existing businesses; it encourages new businesses and investment into the area in order to create new jobs; and it promotes the expansion and diversification of the economy of the Bay. The Local Plan seeks to promote growth in sectors that are particularly important in Torbay, namely tourism and catering.

Policy SS11 (Sustainable communities) explains that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle.

Policy TC5 (Evening and night time economy) states that the Council supports, in principle, development that helps create a vibrant, diverse evening and night-time economy within the town centres, seafront and harbour areas of the Bay.

Objectors have stated that the regeneration benefits of the proposal are limited in the location proposed, and would not outweigh the harm that the proposal would cause.

The proposal would result in the replacement of what is considered to be a tired and, according to the submitted information, loss-making and unviable hotel, which is scheduled to close in the Spring of 2019, with a modern hotel facility. The submitted information states that some of the existing guestrooms are as small as 10sqm in area, whereas the guestrooms forming part of the proposal would have floor areas around 24.5sqm or more. The proposal would include visitor attractions available to the general public as well as hotel guests, including a spa, roof-top bar, and restaurant. The applicant's submitted viability report concludes that a 152-bed hotel is the minimum size required to ensure a viable scheme, ensuring the necessary efficiencies within the business to deliver cash-flows which derive a value in excess of the cost of delivery. These conclusions have been independently corroborated by the Council's viability advisor.

It is estimated that the proposal would result in around £20 million being invested in the site. It is anticipated that the proposed hotel would operate year-round and accommodate up to 304 guests at any one time. Assuming an occupancy rate of 75%, the submitted information estimates that there would be 83,000 sleepers per annum, generating up to £2.7 million of extra leisure spend per annum in Torbay. It is anticipated that the new hotel would create around 110 new full-time equivalent jobs compared to the 30 currently employed, 20 of which are full-time. During the construction phase there are likely to be additional jobs created. Including the construction phase, the gross value added (GVA) could be in excess of £6 million.

The Torbay Development Agency supports the application, noting that:

*“Of particular importance, the new hotel will support the development of the visitor economy, currently worth £430m, attracting 4.6m visitors a year. The proposed*

*investment aligns to the ambitions of the English Riviera's Destination Management Plan 2017-2021 including:*

- *Attracting new visitors (particularly international)*
- *Attracting investment*
- *Improving the quality of accommodation*
- *Improving hotel occupancy throughout the year*

*The current proposals present a purpose built hotel with improved leisure facilities which the modern fully independent traveller (FIT) expects. For overseas travellers especially, having an internationally recognised hotel brand available to book online all year round will undoubtedly attract new visitors to the destination.*

*The demand for quality holidays in the UK is also continuing, with 'staycations' expected to increase and importantly, moving into the 'shoulder' and winter months – this is also a shared strategic objective of the English Riviera BID Company Business Plan."*

Given that the proposal would modernise and enhance the tourism facilities available at the site; create new jobs; and is expected to generate significant additional spend within the local economy, it is considered that it corresponds with the aspirations of Policies SS1, SS4 and SS11 of the Local Plan, and would bring economic benefits to the Bay compared to the existing situation.

### **3. Design and Visual Impact**

The National Planning Policy Framework states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition it states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. New development should be sympathetic to local character and history, including surrounding built environment and landscape setting.

Consistent with these paragraphs, Policy SS11 of the Torbay Local Plan states that development must help to create cohesive communities within a high-quality built and natural environment where people want to live and work and that development proposals will be assessed according to whether they achieve certain criteria as far as they are relevant and proportionate to the development. Criterion 3 refers to development that helps to develop a sense of place and local identity and criterion 10 refers to delivering development of an appropriate type, scale, quality, mix and density in relation to its location.

Following on from this, Policy DE1 states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials and whether they positively enhance the built environment.

Policy TH8 of the Torquay Neighbourhood Plan states that development must be of good quality design, respect the local character in terms of height, scale, and bulk; and reflect the identity of its surroundings.

Policy DE4 (Building Heights) states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. New development should be constructed to the prevailing height within the character area in which it is located, unless there are sound urban design or socio-economic benefits to justify a deviation from this approach. The policy goes on to state that new buildings above the prevailing height will be supported where they:

- Enhance the vitality of an area
- Contribute to the regeneration of Torbay
- Strengthen the character of an area
- Are appropriate in terms of their visual impact
- Provide wider urban design or socio-economic benefits
- Make a positive addition to the built form, townscape and surrounding landscape; and
- Preserve or enhance local and long-distance view, and key vistas.

Objections to the proposal have stated that it would result in harm to the character of the area, contrary to the guidance contained in the NPPF along with Local Plan and Neighbourhood Plan policies. The height, scale, bulk, and massing on a constrained site are considered excessive, amounting to over-development. It is stated that the proposal would be out of proportion to the existing building, that it would dominate the local landscape, that it would be forward of the existing building line, too tall in comparison to other buildings in the locality and therefore contrary to Policy DE4 of the Local Plan, and that it would suffer from a lack of landscaping.

In terms of the proposal's height, it is worth bearing in mind that measuring building by storey heights alone can be misleading. Floor to ceiling heights can vary from building to building, ground levels can vary from site to site, and, as in the current case, some floors can be sub-surface. The proposed building would vary in height from one end to the other, and would include sub-surface elements. Above ground level, the proposal would range in height from four storeys at its southern end (around 15m from ground level), up to six storeys in height at its northern end (21m), where the highest floor would be recessed to reduce its visual impact.

Whilst it would be taller than other buildings in the local area, it is noted that its immediate surroundings are characterised by a range of building types and sizes, and that ground levels are subject to significant change. When the prevailing ground levels are taken into consideration, the proposal, at its tallest point above ordnance datum (AOD) would only be around 3m higher than the Cromartie Point Flats, which are located on higher ground, approximately 31m to the west. This

excludes two lift overruns measuring around 1m in height and set well within the proposed roof. A number of 4+ storey buildings, which are also located close by, are located on significantly higher ground and, arguably, have as imposing an effect as the proposal would, if not more so depending on the vantage point. These include the Sunleigh Apartments, Panorama, and Hyperion, and there are other examples.

In considering the “prevailing” building heights in the local area, a further consideration is how far to ‘cast the net’ in terms of what the “local area” is. It seems reasonable to consider the site as forming part of a wider waterfront character area stretching northwards and parallel with the coast, and encompassing the wider Core Tourism Investment Area in which it is located. Considered in this way, the proposal would be quite in keeping, in terms of its height and scale, with other buildings located along the coast line, including the Grand Hotel, the Seaway Court building, and Abbey Sands development, all of which are located off Torbay Road.

It is noted that the Building Heights Strategy, which formed part of the evidence base for the Local Plan, states that tall buildings can be acceptable in the Coastal Zone in which the site is located, subject to the guidance contained in Chapter 6 of that document. Tall buildings in this context are defined as being twice the prevailing height in areas of varied height. It is considered that the heights of buildings in the area under consideration are varied, although the site’s immediate context does include a number of structures that are 3-4 storeys in height. It is therefore debatable whether the proposal (being up to six storeys above ground level) ought to be considered a tall building in relation to the Building Heights Strategy. In any case, Chapter 6 states that tall building proposals will be required to demonstrate either urban design or socio-economic benefits, and provides further criteria against which tall buildings should be considered. These criteria include location, conservation, views, topography, design, public realm, streetscape, microclimate, amenity, land use, and sustainability. Some of these elements are considered in other sections of this report. In terms of the criteria relating to the proposal’s visual impact, the proposal is considered acceptable for the reasons set out in this section of the report.

In terms of its height and scale, the revised scheme is considered to be appropriate to the location, historic character, and the setting of the development. Even if the proposal were considered to be above the prevailing heights in its character area, as the proposal would result in the replacement of a tired and unsightly building with what is considered to be a significant visual and townscape improvement; that it would preserve wider public views; would strengthen the character of the area and be appropriate in terms of its visual impact; enhance local and long-distance views; bring socio-economic and regeneration benefits, and contribute to the vitality of the CTIA and immediate locality; it is considered that there are sufficient grounds to allow for an exception in this case, as allowed by Policy DE4.

The proposal would involve a significant increase in the quantum of development at the site, compared to the existing situation. It was noted in the previous section that an independently corroborated viability report concludes that the scale of development proposed is necessary to ensure an economically viable hotel development at the site. However, given that the proposal, in terms of its overall size, is not considered to be unacceptably harmful to the character of the area or local amenity, and that it would provide what are deemed to be acceptable arrangements in relation to parking, access, amenity space, landscaping, and other services, that the proposal would not result in an over-development of the site. Public realm improvements would include enhanced pedestrian access along the public highway.

The proposed development was considered by the Torbay Design Review Panel, and their comments are regarded as a material consideration. It was concluded that a development along the lines proposed would be acceptable in this location. The proposal is seen as an opportunity to 'bookend' the wider seafront landscape, which, as discussed above, incorporates a number of buildings of a similar height and scale to that being proposed. A bold, horizontally orientated façade, in keeping with other waterfront developments, such as Abbey Sands and Seaway Court, was also encouraged. In terms of its design and appearance, the proposal is considered to be consistent with the advice and conclusions of the design review process. The proposal would incorporate a range of materials, including red sandstone to the lower boundary structures, to front Torbay Road, and in keeping with the historic character of the area. The remainder of the building would incorporate a mixture of white and black/blue brick, glazing, zinc cladding, and coloured aluminium composite panelling.

The proposed building would be set forward of the street-line marked by the existing buildings located alongside Torbay Road in the vicinity of the site, however, the proposal would still maintain what is considered to be a sufficient area of open space to the front to prevent unacceptable harm, particularly considering the other benefits of the proposal in relation to the character of the area.

Policy C4 states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features. The site is currently very limited in terms of its landscape features. The submitted landscaping information shows proposed hard and soft landscaping along the frontage of the site, with terracing, steps, tree and shrub planting which it is considered would improve the appearance of the site. The Council's Arboricultural Officer has raised no objections to the proposal subject to the use of a condition to secure a scheme of landscaping.

With specific regard to the Torquay Neighbourhood Plan Policy TH8 of the Torquay Neighbourhood Plan, much of the above assessment considers the issue of design quality. However, it is important to highlight that Policy TH8 does not require a

replication of the existing building at the site in terms of its scale, height and bulk but requires that the new development is of a good quality and reflects the identity of its surroundings. The policy is well founded as, in design terms, it is considered that the focus of design should always be about responding to the context of the site and identity of the area. In this respect, officers are satisfied that the building is of an appropriate design quality to meet the requirements of the policy.

It is considered that the form and layout of the scheme would make effective use of what is brownfield land, and that the proposal responds well to the topography of the site. It would result in a significant enhancement of what is a visually prominent site within the CTIA, replacing a dated and tired structure. There would not be any harm to heritage assets and the proposal would result in urban design benefits. Given the proposal's siting, layout, scale, and overall design, it is considered that it would not result in any unacceptable harm to the character of the area. Subject to the use of conditions to secure the use of high quality materials; a scheme of hard and soft landscaping; boundary treatment details; external lighting, bicycle, and refuse storage arrangements, it is considered that the proposal is in accordance with Policies DE1, DE4, and SS11 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

#### **4. Impact on Amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors, including the Torquay Neighbourhood Plan Forum, have raised concerns about the proposal's potential impact on neighbouring and local amenity. Reference is made to overlooking, loss of natural light, and an overbearing effect in relation to neighbouring buildings and properties, including, but not exclusive to, the Corbyn Apartments and Cromartie Point apartments. Concerns have also been raised about the potential for noise, dust, air quality, and light intrusion nuisances, along with general disturbance, arising from construction works but also during the use of the development, owing to traffic, deliveries, air conditioning and other plant, and the use of the outdoor terrace areas, particularly in relation to the Corbyn Apartments, Cromartie Point, and other properties around Livermead Hill. The proposal is considered to be inappropriate in a quiet residential setting.

The site is located within the Core Tourism Investment Area; it is occupied by a hotel and is located in close proximity to other, long established hotel developments, including the Livermead Cliff Hotel, which is located immediately to the east, and Livermead House Hotel, located to the north. The site's western and eastern boundaries adjoin a railway line and Torbay Road respectively, the latter being a well trafficked route between Torquay and Paignton.

The proposed building would be located around 12m to the west of the nearest

residential property along Livermead Hill, known as Sea Jay. The Cromartie Point apartment building would be located around 32m from the main body of the proposed hotel, at its nearest point, with the apartment building being located on higher ground (the difference being around 3.6m at this point.) The adjoining Corbyn Apartments would be located approximately 9m to the south of the building, with an access ramp to the lower car park and a boundary wall being located between the two. Otherwise, the nearest residential property, located to the west of the Corbyn Apartments on the opposite side of the railway, would be a house and its curtilage located at the north-eastern end of Woodleys Meadow. The curtilage of this property would be located around 19m from the proposed hotel, and the dwelling in excess of 32m. The Sunleigh and Panorama apartments, which are located on higher ground to the west of the proposed hotel, would be located in excess of 40m away. The Livermead Cliff Hotel would be located around 46m to the east. Further dwellings, located to the south, would be located in excess of 60m away.

The neighbouring properties that would be most affected by the proposal would be the units at the northern end of the Corbyn Apartment building, which have windows facing into the site; the nearest property located along Livermead Hill, known as Sea Jay; the Cromartie Point apartments and Panorama; and the aforementioned property located at Woodleys Meadow.

#### *Daylight and Sunlight Impacts*

The application is supported by a Daylight and Sunlight Study, which has been prepared by chartered surveyors who specialise in the effects of development on light, and right-to-light issues. The guidance contained in the NPPF states that a flexible approach to daylight and sunlight impacts should be taken by planning authorities to ensure the efficient use of land. The study aims to assess the impact of the development on the light receivable by neighbouring properties, and is based on the tests established in British Research Establishment (BRE) guidance, which is linked to the requirements of British Standard 8206. The study considers daylight and sunlight availability to windows, along with overshadowing to gardens and open spaces.

It is concluded that, with the proposed development in place, all but one of the neighbouring windows pass the relevant tests in relation to sunlight availability, both during the winter and summer months, once factors such as overhanging balconies are taken into consideration. The one exception falls short by a very small amount. In relation to overshadowing to gardens and open spaces, the proposal far exceeds the requirements of the BRE test. In terms of daylight availability to neighbouring windows, the proposal passes the relevant tests, except in relation to isolated windows at Cromartie Point, The Corbyn Apartments, Seajay (referred to as Oversands in the study), and Panorama. However, once overhanging balconies are taken into consideration, along with the nature of the rooms affected (mostly bedrooms or kitchens, where daylight is less important),

the remaining impacts are considered to be low. Where living room windows fall short of the BRE tests, it is by a very small amount, and the guidance is intended to be used flexibly.

The study concludes that the proposal would have a relatively low impact on the light receivable by its neighbouring properties, and that there are no daylight or sunlight related reasons why planning permission should not be granted.

### *The Corbyn Apartments*

The Corbyn Apartments building includes flats at its northern end, which include windows that face towards the site. The southern end of the hotel would be located approximately 9m from these windows, although the curtilage of the application site would be between 0.8m and 2m from this building. The proposal would involve the erection of a 1.8m high wall along this boundary. An access ramp leading down to the under-croft car park, along with part of the car park itself, would be located between the proposed building and the side of the Corbyn Apartments. The openings in the north-eastern elevation of this neighbouring building relate to two holiday lets (ground and first floor), and two residential flats (second and third floor.) The windows in each case relate to a bedroom, a kitchen and a lounge (secondary window in this case.)

In terms of privacy, it is considered that the proposal would not result in any unacceptable harm. The only openings to be located in the proposal's southern elevation can be obscure glazed if necessary, and a condition can be imposed to secure this. In terms of outlook and access to natural light: the proposal would introduce new built development in closer proximity to the neighbouring windows than is currently the case, amounting to around 15m in height, 9m away. Given the nature of the way kitchens and bedrooms tend to be used, the loss of outlook in relation to these rooms is considered acceptable. The lounge windows facing the development are secondary openings, and the proposal would not affect the quality of outlook from the main, east-facing openings of these rooms. In terms of noise and other disturbance, it is noted that the site is already in use as a surface-level car park at the southern end of the site. The proposed sub-surface car park is likely to move car parking further away from the windows under discussion, with most of the spaces being screened by the proposed building. It does not seem likely that the proposed car park and its access would see significant usage at unsociable hours and given their siting and design, it is considered unlikely that there would be any unacceptable increase in disturbance to the Corbyn Apartments, over and above the existing situation.

### *Seajay, Oversands, and Rosaire*

The nearest neighbouring properties located along Livermead Hill are Sea Jay, Oversands, and Rosaire, the closest of which is Sea Jay, located around 12m from the proposed building, and 9m from the proposed loading bay. It is noted that these

neighbouring buildings are generally orientated towards the south-east and that the proposal would not be located within their main line of sight towards the sea. Sea Jay does include openings within its south-western elevation, facing towards the site, and includes a wrap-around balcony along this and its south-eastern elevation. The proposed building would not be located directly within the line of sight even of this building's south-western elevation, although it would be visible and have an effect on this building's outlook. This neighbouring property is generously served by openings facing the south-west and south-east, and given the proposal's siting, scale, and design, it is considered that it would not result in an unacceptable loss of outlook in relation to this neighbouring property. The privacy of this dwelling's occupiers can be secured through the use of conditions to ensure that the proposed roof-terrace includes a privacy screen, and obscure glazing in relation to the roof-top bar. It is noted that the proposed guestrooms at the northern end of the building would not include any openings facing towards this neighbouring property. Seajay is located alongside Livermead Hill and so will already experience a degree of noise disturbance from the public highway. The proposed delivery bay would serve to create some additional disturbance, however, this element of the scheme will not be in constant use and a condition can be imposed to limit its use to more sociable hours of the day. It is considered that the proposal would not result in any unacceptable harm to Oversands or Rosaire, in terms of their outlook, access to light, or privacy, given their distance from the proposal and orientation, and the proposal's siting, scale, and design.

#### *Cromartie Point Flats*

The Cromartie Point flats are located between 30m and 40m from the rear of the main body of the proposed building, and its communal garden area would be located around 22m away at the nearest point. This building is located on higher ground than the proposal and, as such, whilst the proposal would be a taller structure, at its tallest point, it would only be around 3m higher than the top of this neighbouring building. This neighbouring building is orientated towards the east and, as such, the proposed hotel would be located within the line of sight of these flats, and it would obstruct views that this building's occupiers currently experience. However, the loss of private views is not a material planning consideration. Given the separation distances involved and the proposal's height relative to this neighbouring building, along with the other aspects of its design, it is considered that it would not result in unacceptable harm to the amenities of the occupiers of this building, in terms of their outlook, privacy, access to light, or in relation to general disturbance.

#### *Woodleys Meadow*

The nearest dwelling located at Woodleys Meadow would be located in excess of 32m to the south-west of the proposed building, with the nearest part of its rear garden being located around 19m away. The proposal would introduce a degree of overshadowing within the rear garden environment by introducing built

development in closer proximity than is currently the case. However, it is noted that this property occupies what is already a constrained site, with the Corbyn Apartments being located to the east, on the opposite side of the railway, and higher ground levels located to the north. In terms of this property's outlook, access to natural light, and privacy, it is considered that the proposal would not result in unacceptable harm to the amenities of this property's occupiers.

### *General Amenity Considerations*

The Council's Community Safety (environmental health) officers have raised no objections to the proposal, subject to the use of conditions: to limit noise from any proposed extractor equipment and roof-top plant; to secure a construction management plan to prevent unacceptable levels of nuisance during the demolition and construction phase of the development; and to limit the use of the roof-top terrace to certain times of the day. Conditions can also be imposed to ensure the installation of obscure glazing in relation to any windows directly facing the Corbyn Apartments and in relation to the roof-top bar where it would allow overlooking towards properties at Livermead Hill; to require the installation of a privacy screen on part of the roof-terrace; to limit the hours of use for the loading bay located along Livermead Hill; and to secure the details of boundary treatment and external lighting.

Subject to the use of these conditions, it is considered that the proposal, given its siting, scale, design, and relationship to neighbouring properties, would not result in unacceptable harm to the amenities of neighbours, in terms of their outlook, access to natural light, privacy, or other nuisances such as noise, dust-drift, or light-intrusion. As such, the proposal is in accordance with Policy DE3 of the Local Plan.

## **5. Ecology**

Policy NC1 seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of terrestrial and marine environments, and fauna and flora, commensurate to their importance. Policy TE5 of the Torquay Neighbourhood Plan states that, where appropriate, an assessment of impacts upon any existing protected species or habitats should be undertaken, and the use of necessary mitigating arrangements, in order to protect and enhance species and habitats, should be provided.

The site is comprised of hardstanding areas and the existing hotel building, and is of very limited ecological value.

A submitted bat and breeding bird survey has confirmed that the proposal would not result in significant harm to protected species, subject to the use of mitigation measures, and it is recommended that these be secured through the use of a planning condition. The construction phase would result in the loss of a number of

potential roost features which are present on the existing building, however as these features are only likely to support individual or low numbers of bats, the proposal is considered unlikely to significantly affect local bat populations. Suitable replacement roosts can be provided through the installation of five bat tubes (Schwegler 2F or similar approved) at a height of at least 5m on the south-eastern and south-western aspects of the new hotel. A condition can also be imposed to secure the installation of five bird boxes, as recommended by the submitted information.

Roosting, foraging and commuting bats could be affected by lighting on the exterior of the new hotel. In order to mitigate any potential negative effect, the proposed lighting design would need to avoid direct illumination of the locations of the bat tubes. A scheme of external lighting can be secured through the use of a planning condition.

The site is located alongside the railway, which is designated in the Local Plan as a County Wildlife Site. However, as the proposal would not involve works to the railway, and that measures will be secured through the use of planning conditions to prevent dust-drift and other effects on the railway during the demolition and construction process, it is considered unlikely that the proposal would result in unacceptable harm to the County Wildlife Site.

The Local Planning Authority has undertaken an appropriate assessment of the proposal in accordance with the Habitats Regulations, which has concluded that, considering the proposed mitigation measures, the integrity of the Lyme Bay and Torbay Marine Special Area of Conservation would not be affected by the proposal.

Natural England have raised no objections to the proposal.

In light of the foregoing, the proposal's ecological impacts are considered acceptable, having regard to Policy NC1 of the Torbay Local Plan, and Policy TE5 of the Torquay Neighbourhood Plan.

## **6. Flooding and Drainage**

Policy ER1 (Flood risk) states that development must be safe for its lifetime, taking account of its future use, function and government projections of how the risk of flooding may change in response to climate change. Development proposals will be expected to maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The Torquay Neighbourhood Plan Forum has referred to Policy TE7 of the Torquay Neighbourhood Plan, which concerns development proposals that are adjacent to the coastline. As the application site is not adjacent to the coastline, this policy is

not a material consideration in this case. The Forum has also questioned whether the proposal should be assessed against Marine Management Organisation (MMO) policies owing to the proposed discharge of surface water to the sea. MMO policies are not material in this case as the proposal would not involve any development within the relevant parts of the marine environment. As far as the discharge of surface water is concerned, it is noted that the Environment Agency and South West Water have not raised any objections.

Objectors have raised concerns about the potential for flooding at the site. The Environment Agency have not raised any objections to the proposal. South West Water have raised no objections to the proposal, providing that sewage would be disposed of through the mains sewer, and surface water drained to the sea. The proposal would comply with these requirements. The Council's Drainage Engineer has raised no objections to the proposal.

The guidance contained in the NPPF requires the Local Planning Authority to apply the Sequential Test to the proposal, where the objective is to direct development towards land at the lowest risk of flooding. The proposal would result in the replacement of an existing hotel building which is located within Flood Zone 3. It is considered that the proposal would result in public benefits with the site in question being used to provide an improved tourist facility within the Core Tourism Investment Area. Although a new hotel may be sited elsewhere, within areas at lower risk of flooding, in this case (i.e. replacing an existing hotel in a prominent location close to the seafront and within the Core Tourism Investment Area) there are not considered to be more appropriate sites within Flood Zones 1 or 2 that could accommodate the development, and it is therefore considered that it passes the Sequential Test.

According to the Planning Practice Guidance, the proposed less vulnerable and more vulnerable uses proposed are deemed to be appropriate uses within Flood Zone 3. The Exceptions Test requires the Council to consider whether there are wider sustainability benefits to the community of allowing the proposal, and whether it could be made sufficiently safe for its lifetime. As discussed, it is considered that the proposed development would result in wider sustainability benefits, by providing an improved, replacement hotel, with associated economic and regeneration benefits contributing to the vibrancy of the Core Tourism Investment Area. In terms of the proposal's safety, the submitted Flood Risk Assessment makes a number of recommendations intended to ensure this.

Subject to the use of the aforementioned condition, the proposal is considered to be acceptable, having regard to Policy ER1 of the Torbay Local Plan, the NPPF, and the PPG.

## **7. Highway Impact**

Policies TA2 (Development Access) states that all development proposals should

make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 (Parking Requirements) states that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Greater flexibility on levels of provision has been provided in town centres, where there is more opportunity to make journeys through walking and cycling. Appendix F provides figures on car parking requirements, for hotels this states that 1 space per guestroom plus appropriate provision for coaches is required; in instances where the location of the hotel and its setting may limit the parking available the availability of public spaces will be taken into account.

Policy TH9 of the Torquay Neighbourhood Plan states that new major developments must contribute to better pedestrian/cycle links where possible and encourage modal shift towards active travel. Policies THW1 (Travel Plans), THW5 (Access to Sustainable Transport), THW6 (Cycle Storage and changing facilities), and TTR2 (Sustainable Communities) are also of relevance.

Objections have been received in relation to the proposal's impact on access and parking arrangements, and likely impacts on highway safety, all of which were summarised earlier in this report.

The proposal would involve works within the public highway, to be secured through the completion of a Section 278 agreement, and these include the widening of the existing access at the southern end of the site, to serve as the site's vehicular entrance; the creation of a new egress point further to the north of this; improvements to part of the footpath located along Torbay Road; and the creation of a loading bay along Livermead Hill. The proposal would include 101 parking spaces (6 disabled spaces and 4 to include electric charging points), equating to two spaces per three guestrooms, which is comparable to the existing situation; temporary space to accommodate two coaches for the purposes of temporary dropping-off; along with bicycle storage and pedestrian access from both Torbay Road and Livermead Hill.

The Council's Structural Engineer has requested the use of a condition to secure details of the proposed demolition and construction works with a view to preventing any harm to the structural integrity of the public highway. This condition can be imposed should planning permission be granted.

The Council's Strategic Transport Officer is satisfied that the proposal would not result in unacceptable harm to pedestrian or road safety, taking into consideration the proposed access and egress arrangements along Torbay Road and the capacity of the proposed junctions; the proposed loading bay along Livermead Hill; and the proposed pedestrian arrangements, including the increased use of the bridge at Livermead Hill. However, this is subject to a road safety audit being secured by condition, which may result in measures such as new signage being introduced along Livermead Hill, and the completion of highway works to be

secured through a S278 agreement.

Overall, it is considered that the trip rates to be associated with the proposal are unlikely to result in unacceptable harm, given the availability of non-car modes of transportation, including public transport and pedestrian routes. A robust travel plan can be secured through the use of a planning condition, which would include a strategy for encouraging the use of sustainable forms of transport, with measures included for the monitoring, review and revision of the strategy over time. The appropriate number and type of bicycle storage spaces can also be secured through the use of a planning condition.

It is suggested that the ancillary elements of the proposal, such as the bar, restaurant, and spa facilities might be limited in some way to reduce the trips likely to arise from their use, such as by limiting the number of covers within the restaurant. However, whilst these elements would be open to the public, they are primarily intended for the use of hotel guests. Given the potential for Torbay residents and other non-guests to access the site relatively easily on foot from the town centre, or from the railway station, by bus, or using taxis, planning officers are satisfied that such limitations are not required. In terms of the proposal's effects in relation to parking demand, this is discussed below.

Devon and Cornwall Police have raised concerns about the number of parking spaces proposed and the potential for this to cause overspill parking and conflict.

In relation to the provision of car parking, the Council's Strategic Transport Officer states that:

*"... reading the transport policies collectively, it is possible to off-set the requirement for parking against other considerations and as such I find that any such resultant effect on the highway network would not be severe, and nor would it have a significant impact on safety. I accept the point raised by the Police in their representation that identifies potential conflicts with existing users of neighbouring streets but consider that from a transport perspective, on the basis that the NPPF clearly states that an application should only be refused on highway grounds where it is raises significant safety or severe highway network impacts, an objection on parking grounds in this case cannot be justified. Any considerations specifically for crime and disorder would be separate."*

Whilst the provision of parking spaces would fall short of the requirements of Policy TA3, the supporting text does explain that a site-specific approach will be taken. In this case the provision is consistent with that previously provided as a ratio and, in addition to the significant public transport availability and access to key pedestrian leisure routes, any potential impact on neighbouring streets or pedestrian safety in the vicinity of the site can be mitigated against. On balance therefore, it is considered that the proposal would not result in any unacceptable harm in relation to highway safety or amenity, subject to financial contributions

towards sustainable transport and local parking restrictions being secured, and conditions to secure a sustainable travel plan, a road safety audit, a car park management plan, and bicycle storage arrangements. The financial contributions would fund parking restrictions in nearby streets, including where the proposed loading bay would be sited, and railway improvements. The car park management plan would include measures to direct guests and other visitors towards alternative parking arrangements when spaces are unavailable at the site, including public car parks.

Concerns have been raised by residents about the proposed use of the loading bay to be located along Livermead Hill, particularly in relation to the types and sizes of vehicles that will use it, and the impact on highway safety. No loading bay is currently provided along this part of the public highway and refuse collections from the existing site result in lorries needing to stop in the highway. By providing a loading bay, it is considered that the proposal would be an improvement compared to the existing situation. The Council's Highways Engineers are satisfied that the loading bay can be designed in a manner that would not be harmful to highway safety, providing the vehicles using it do not exceed a certain size. Two-way traffic would continue along Livermead Hill whilst the loading bay is in use, and a pedestrian footpath would be provided alongside it. A condition is recommended to secure details of the proposed use and management of the loading bay to prevent it being used by unsuitably large vehicles.

The Council's Strategic Transport Officer raises no objections to the proposal, considering that it meets the requirements of the guidance contained in the NPPF, Policies TA1 and TA2 of the Local Plan, and relevant policies of the Torquay Neighbourhood Plan.

Subject to the use of the aforementioned conditions, the completion of a S106 legal agreement, and the provision of works to be secured through the completion of a Section 278 agreement, on balance, it is considered that the proposal would not result in unacceptable harm to highway safety or amenity, and that it would be in accordance with Policies TA1 and TA2 of the Local Plan, Policies TH9, THW5, THW6, and TTR2 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

## **8. S106**

The Council's Strategic Transport Officer has advised that a financial contribution towards sustainable transport, namely Torquay Railway Station, will be required given that the proposal will, to some extent, rely on the railway. A contribution will also be required towards the provision of parking restrictions in the surrounding area, including where the proposed loading bay would be sited. The extent of any parking controls to be undertaken by the Council would normally be the subject of a Traffic Regulation Order and this is a separate statutory process, which would involve public consultation.

## 9. Other Considerations

### *Designing-Out Crime*

The Police Designing-Out Crime Officer has raised concerns about the proposal in relation to its highways impact, and this is discussed above. Council officers are satisfied that, on balance, the proposal would not result in unacceptable harm to highway safety or amenity, subject to the use of conditions and the completion of a legal agreement. The potential for crime and disorder as a result of parking conflict is difficult to evidence; planning officers are satisfied that appropriate planning measures can be employed to reduce the potential for conflict as much as possible, bearing in mind that the site is located in a relatively accessible location with non-car options being available to future users. Ultimately, there is other legislation available to tackle anti-social behaviour.

Otherwise, no objections are raised subject to the use of a condition to secure a scheme of crime prevention measures, such as CCTV. It is recommended that this condition be imposed should planning permission be granted. Subject to the use of this condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan, and TH2 of the Torquay Neighbourhood Plan.

### *Railway Line*

Network Rail have raised no objections to the proposal subject to the use of conditions and informatives to ensure that the proposed development would not result in any harm to the safety, operation, or integrity of the railway. The conditions are recommended requiring the approval of details in relation to demolition, piling, excavation and earthworks, and drainage, and these can be imposed should planning permission be granted.

### *Ground Contamination and Stability*

The application is accompanied by a ground contamination report, with no contamination having been found. The Council's Community Safety officers have raised no objections to the proposal. Should planning permission be granted, a condition can be imposed requiring further action should contamination be found during the course of development. Subject to the use of this condition, the proposal is considered to be in accordance with Policy ER3 of the Local Plan.

The Council's Structural Engineer, and Network Rail, have requested details about the proposal's potential effects on the public highway and railway during the course of demolition and construction. Subject to the use of a suitable condition, the proposal is considered to be in accordance with Policy ER4 of the Local Plan.

### **Community Infrastructure Levy**

The proposal is for the addition to/improvement of an existing tourist facility, Torbay Council collect CIL payments for new dwellings and for larger out-of-town/district centre retail and food and drink developments. Therefore the proposal would not be liable for a CIL payment.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

**Equalities Act** - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **EIA**

Due to its scale, nature and location this development would not have significant effects on the environment and therefore is not considered to be EIA development.

### **Proactive Working**

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 positively with the applicant. The Council works with applicants/agents in a positive and proactive manner by:

- offering a pre-application advice service,
- as appropriate updating applications/agents of any issues that may arise in the processing of their application and where possible suggesting solutions.

In this case, concerns raised in relation to the proposal's overall scale and the adequate provision of parking spaces were addressed through revisions to the scheme, which reduced its overall size, and an increase in the number of parking spaces to be provided, which is complimented by proposed planning conditions and obligations seeking to enhance local access arrangements, encourage the use of sustainable means of transportation, and reduce the chances of overspill parking in the locality.

## **Conclusions**

The proposal would result in the modernisation of the existing site, with a significantly improved hotel and leisure facility. It is considered that the proposal would deliver visual, economic, and regeneration benefits in what is a Core Tourism Investment Area, and none of the harm identified is considered sufficient to outweigh these benefits. Even in the absence of the aforementioned benefits, none of the harm identified is considered sufficient to warrant the refusal of planning permission, given the mitigating factors discussed. The proposal is considered to be acceptable, having regard to the Local Plan, Torquay Neighbourhood Plan, and all other material considerations, subject to the completion of a legal agreement and the use of planning conditions.

## **Condition(s)/Reason(s)**

- 1) No development (including demolition and ground works) or vegetation clearance works shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
  - a) A demolition method statement;
  - b) Details of any excavation, earthworks, or piling works including the method and equipment to be used;
  - c) The parking of vehicles of site operatives and visitors;
  - d) Loading and unloading of plant and materials;
  - e) Storage of plant and materials used in constructing the development;
  - f) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
  - g) Wheel washing facilities;
  - h) Measures to control the emission of dust, litter and dirt during construction;
  - i) Measures to minimise noise nuisance to neighbours from plant and machinery;
  - j) Construction working hours being limited to 0800hrs to 1800hrs Monday to Friday, 0800hrs to 1300hrs on Saturdays, and at no time on Sundays, Bank or Public Holidays.

The approved Statement shall detail the ways in which harm to the safety, use, and integrity of the public highway and railway will be prevented, and shall be adhered to throughout the construction period of the development.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users, having regard to Policies DE3, ER3, ER4, and TA1 of the Torbay Local Plan. These details

are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users.

The use of a pre-commencement condition is considered appropriate in this case as environmental and highways controls, relating to the building phase of the development, need to be agreed before the construction process begins.

- 2) No development shall take place until a scheme of surface water drainage has been submitted to and approved in writing by the Local Planning Authority. The submitted details shall include measures to prevent interference with the safety, operation, and integrity of the railway. The development shall be undertaken in accordance with the approved details and shall be retained as such thereafter.

Reason: In the interests of sustainable drainage and in accordance with Policy ER1 of the Torbay Local Plan. These details are required pre-commencement as specified to prevent the installation of measures that might result in harm to the railway.

The use of a pre-commencement condition is considered appropriate in this case as surface water drainage measures may need to be incorporated into the development during the early stages of construction.

- 3) No development above damp proof course level shall take place until details of the proposed cladding materials (walls and roof) and openings have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development. All sections of new stone wall shall be constructed of natural stone laid on its natural bed and lime mortar. A sample panel shall be provided on site and agreed in writing by the Local Planning Authority prior to the construction of any new sections of wall.

Reason: To ensure a satisfactory form of development and to comply with Policy DE1 of the Torbay Local Plan, and Policy TH8 of the Torquay Neighbourhood Plan.

- 4) Prior to the first use of the development hereby approved, details of a lighting strategy relating to the illumination of the building, public realm and associated areas shall be submitted to and approved in writing by the Local Planning Authority. The submitted lighting strategy shall give particular consideration to preventing light intrusion at neighbouring properties, and in relation to bat habitats and flyways. The development shall thereafter be undertaken in accordance with the approved details and shall be retained as such indefinitely.

Reason: To ensure that the architectural quality of the building and its setting is highlighted through an appropriate scheme of lighting and to prevent harm to neighbouring occupiers and bats, and to comply with Policies DE1, DE3, and NC1 of the Adopted Local Plan, and Policy TE5 of the Torquay Neighbourhood Plan.

- 5) Prior to the first use of the development hereby approved, 5 Schwegler type 2F or similar bat tubes and 5 bird nesting boxes shall be installed (in accordance with manufacturer's instructions for correct siting and installation) on the new hotel and retained at all times thereafter, in-line with the mitigation measures outlined within the submitted Bat and Breeding Bird Survey.

Reason: To ensure that the development duly considers protected species and biodiversity, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030, and Policy TE5 of the Torquay Neighbourhood Plan.

- 6) Notwithstanding the submitted landscaping details, prior to the first use of the hotel hereby approved, details of all proposed hard and soft landscaping shall have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

- 7) Prior to the first use of the development hereby approved, a Travel Plan and Car Parking Management Strategy shall be submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall set out how at least 30% of the development's potential users can gain access by foot, cycle or public transport, and how this will be implemented and monitored including SMART targets and an annual review. The Travel Plan shall be continually monitored by a Travel Plan Coordinator (TPC) appointed to ensure that it meets its objectives and targets. In the event that the objectives and targets of the Travel Plan are not met, the Travel Plan shall be updated by the TPC setting out further measures in order to rectify this. A copy of the Travel Plan or updated Travel Plan, shall be made available to the Local Planning Authority upon request during normal business hours and the contact details of the TPC shall be provided in all iterations of the Travel Plan. The Car Parking Management Strategy shall include details of car parking allocation including

details of staff and visitor parking, along with the proposed measures for accommodating guest and visitor vehicles when the on-site car park is at full capacity. The development shall, at all times, be operated in accordance with the approved details.

Reason: In the interests of road safety and sustainability to encourage walking, cycling and public transport use by staff and visitors in accordance with policies TA1 and TA2 of the Torbay Local Plan 2012-2030, and Policy THW1 of the Torquay Neighbourhood Plan.

- 8) Prior to the first use of the development hereby approved, a road safety audit shall be submitted to and approved in writing by the Local Planning Authority, detailing the proposed measures for ensuring pedestrian and other road-user safety along the public highway around the site. The approved measures shall be implemented in full prior to the first use of the development.

Reason: To provide safe and sustainable highway arrangements in accordance with Policies TA1, TA2 and DE1 of the Torbay Local Plan.

- 9) Prior to the first use of the development hereby approved, the parking facilities, manoeuvring areas, and electric charging points shown on the approved plans shall be provided and thereafter permanently retained for the use of vehicles associated with the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with policy TA2 and TA3 (and associated appendix F) of the Torbay Local Plan 2012-2030.

- 10) The development hereby approved shall not be brought into use until a Section 278 Highways Agreement has been entered into in order to secure the necessary works to the public highway, as indicated on the approved plans. The development shall not be brought into use until the approved S278 works have been completed to the satisfaction of the Local Highway Authority.

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Torbay Local Plan.

- 11) Prior to the first use of the development hereby approved, details of signage in relation to the proposed access and egress arrangements shall be submitted to and approved in writing by the Local Planning Authority. The southern vehicular access point shall be used as an entrance only, and the northern egress point shall be used for exiting the site only. The approved signage shall be installed prior to the first use of the development, and shall be permanently retained thereafter.

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Torbay Local Plan.

- 12) Prior to the first use of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policy DE1 of the Adopted Torbay Local.

- 13) Prior to the first occupation of the development hereby approved, the refuse and recycling facilities shown on the approved plans shall be provided. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan.

- 14) The use of the proposed loading bay at Livermead Hill, including all deliveries and collections, shall be limited to the hours of 0800hrs to 1800hrs Monday to Friday, and 0800hrs to 1300hrs on Saturdays. No such deliveries or collections shall take place on Sundays, Bank, or Public Holidays.

Reason: To protect neighbouring occupiers from noise disturbance in accordance with Policy DE3 of the Torbay Local Plan.

- 15) The development hereby approved shall not be brought into use until details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including details of its method of construction, odour control measures, noise levels, its appearance and finish have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be installed before the use hereby permitted commences and thereafter shall be permanently retained.

Reason: To protect neighbouring occupiers from noise disturbance in accordance with Policy DE3 of the Torbay Local Plan.

- 16) The development hereby approved shall not be brought into use until an assessment to show that the rating level of any plant and equipment, to be installed as part of this development, will be at least 5 dB below the background level has been submitted to and approved in writing by the Local Planning Authority. The assessment must be carried out by a suitably qualified acoustic consultant/engineer and be in accordance with BS4142: 2014 (methods for

rating and assessing industrial and commercial sound). All plant installed shall be operated in accordance with the approved details for the life of the development.

Reason: To protect neighbouring occupiers from noise disturbance in accordance with Policy DE3 of the Torbay Local Plan.

- 17) Prior to the first use of the development hereby approved, a scheme of measures to protect the privacy of neighbouring occupiers shall be submitted to and approved in writing by the Local Planning Authority. The submitted measures shall include obscure glazing and privacy screens in relation to openings, balconies, and terraces that may permit overlooking towards neighbouring properties, particularly those located to the south and north. The approved measures shall be fully installed prior to the first use of the development and shall thereafter be retained for the life of the development.

Reason: To protect neighbouring occupiers from unacceptable levels of overlooking, in accordance with Policy DE3 of the Torbay Local Plan.

- 18) No access to the roof-top terrace shall be allowed between the hours of 2200hrs and 0800hrs daily, and no audio equipment shall be used in this outdoor area at any time.

Reason: To protect neighbouring occupiers from noise disturbance in accordance with Policy DE3 of the Torbay Local Plan.

- 19) Prior to the first use of the development hereby approved, a scheme of measures for designing-out crime shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be fully installed prior to the first use of the development and shall be permanently retained thereafter.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE1 and DE3 of the Torbay Local Plan and Policy TH2 of the Torquay Neighbourhood Plan.

- 20) Should any contamination be found during the course of the development, all construction works shall cease until such time as a scheme of remediation has been submitted to and approved in writing by the Local Planning Authority. The development shall then proceed in full accordance with the approved details.

Reason: In the interests of addressing potential contamination in accordance with Policy ER3 of the Torbay Local Plan.

- 21) Prior to the first use of the development hereby approved, a loading bay management strategy shall be submitted to and approved in writing by the

Local Planning Authority. The submitted strategy shall provide details of the vehicle types and sizes that will make use of the loading bay, and the proposed measures to prevent vehicles waiting in the highway. The loading bay shall thereafter be used in strict accordance with the approved details, for the life of the development.

Reason: In the interests of highways safety and amenity, and in accordance with Policies TA1 and TA2 of the Torbay Local Plan.

- 22) Prior to the first use of the development hereby approved, bicycle storage shall be provided in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The bicycle storage shall be retained for the life of the development.

Reason: In the interests of sustainable transport and in accordance with Policies TA1, TA2, and TA3 of the Torbay Local Plan, and Policy THW6 of the Torquay Neighbourhood Plan.

### **Informative(s)**

01. Town and Country Planning (General Development Procedure) (Amendment) Order 2003. The proposed development has been tested against the following policies of the Development Plan and, in the opinion of the Local Planning Authority, is not in conflict with the following policies:
02. All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.
03. Raliway

### **SAFETY**

Any works on this land will need to be undertaken following engagement with Asset Protection to determine the interface with Network Rail assets,

buried or otherwise and by entering into a Basis Asset Protection Agreement, if required, with a minimum of 3months notice before works start. [assetprotectionwestern@networkrail.co.uk](mailto:assetprotectionwestern@networkrail.co.uk)

## SITE LAYOUT

It is recommended that all buildings be situated at least 2 metres from the boundary fence, to allow construction and any future maintenance work to be carried out without involving entry onto Network Rail's infrastructure. Where trees exist on Network Rail land the design of foundations close to the boundary must take into account the effects of root penetration in accordance with the Building Research Establishment's guidelines.

## SIGNALLING

The proposal must not interfere with or obscure any signals that may be in the area.

## NOISE

Network Rail would remind the council and the applicant of the potential for any noise/ vibration impacts caused by the proximity between the proposed development and the existing railway, which must be assessed in the context of the National Planning Policy Framework (NPPF) and the local planning authority should use conditions as necessary.

The current level of railway usage may be subject to change at any time without prior notification including increased frequency of trains, night time train running and heavy freight trains.

There is also the potential for maintenance works to be carried out on trains, which is undertaken at night and means leaving the trains' motors running which can lead to increased levels of noise.

## LANDSCAPING

It is recommended no trees are planted closer than 1.5 times their mature height to the boundary fence. The developer should adhere to Network Rail's advice guide on acceptable tree/plant species. Any tree felling works where there is a risk of the trees or branches falling across the boundary fence will require railway supervision.

## PLANT, SCAFFOLDING AND CRANES

Any scaffold which is to be constructed adjacent to the railway must be erected in such a manner that, at no time will any poles or cranes over-sail

or fall onto the railway. All plant and scaffolding must be positioned, that in the event of failure, it will not fall on to Network Rail land.

## LIGHTING

Any lighting associated with the development (including vehicle lights) must not interfere with the sighting of signalling apparatus and/or train drivers vision on approaching trains. The location and colour of lights must not give rise to the potential for confusion with the signalling arrangements on the railway.

## SAFETY BARRIER

Where new roads, turning spaces or parking areas are to be situated adjacent to the railway; which is at or below the level of the development, suitable crash barriers or high kerbs should be provided to prevent vehicles accidentally driving or rolling onto the railway or damaging the lineside fencing.

## **Relevant Development Plan Policies**

### *Torbay Local Plan*

DE1 – Design  
ER1 – Flood Risk  
ER2 – Water Management  
NC1 - Protected sites - internationally import  
TO1 - Tourism, events and culture  
TA2 - Development access  
TA3 - Parking requirements  
DE4 - Building heights  
DE3 - Development Amenity  
C4 - Trees, hedgerows and natural landscape  
SS1 - Growth Strategy for a prosperous Torbay  
SS4 - The economy and employment  
SS11 – Sustainable Communities  
TC5 - Evening and night time economy

### *Torquay Neighbourhood Plan*

TS4 - Support for Brownfield and Greenfield development  
TH2 - Designing out crime  
TH8 - Established architecture  
TH9 - Parking facilities  
TE1 - Tourism accommodation on brownfield sites

TE5 - Protected species habitats and biodiversity  
TE7 – Marine Management Planning  
THW1 - Travel Plans  
THW5 - Access to sustainable transport  
THW6 - Cycle storage and changing facilities  
TTR2 - Sustainable Communities

### Objection from the Torquay Neighbourhood Plan Forum (TNPF) on the redevelopment of Corbyn Head Hotel P/2018/1086

The TNPF are not against the redevelopment of the site 'in principle' but the design that nominally doubles the height of the existing hotel and increases its bulk and size dramatically is absolutely contrary to the policy in our Neighbourhood Plan that was drafted to make sure new development fits with the surrounding area. We recognise the need for regeneration of this poor quality site and would support a modest design from a range of potential development types.

#### Development Plans

The Torquay Neighbourhood Plan having passed referendum is now (with the Local Plan) a Development Plan for Torquay and must be used to decide planning applications in Torquay. Any potential conflict with another Development Plan uses the latest Plan; in this case the Neighbourhood Plan takes precedence.

#### Neighbourhood Plan Policies

The application is contrary to Neighbourhood Plan Policy TH8

##### *Policy TH8 - Established architecture*

*Development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.*

I quote from the draft officer report (April 2019) that described the built environment in the surrounding area and is a crucial description that provides the evidence for interpreting the policy in the Neighbourhood Plan in terms of building height, scale and bulk.

*The existing building is a standalone structure, which is two to three storeys in height and is set within a curtilage area mostly comprised of a car park.*

*The locality is characterised by a range of building types including hotel buildings, apartment blocks, and houses. The neighbouring Corbyn Apartments is a four storey building with a mansard roof; to the west, and located on the hillside beyond the railway line, is the Cromartie Point Flats building, which is four storeys in height, and there are various other, similarly sized apartment buildings around the same location, off Livermead Hill. The three-storey Livermead Cliff Hotel is located on lower ground to the south-east.*

It is clear from this acknowledgement that the prevailing height in the surrounding area is a maximum 4 stories and typically 3 stories in the immediate area.

*The building would be up to 6 storeys tall at its highest point above ground level. The proposal would range from four storeys at its southern end, to six storeys in height at its northern end, above ground level, however, a sub-surface car park would also be provided at the building's southern end. The building would measure between approximately 15m (around 23m AOD) in height from the road level at the southern end of the building, and 21m (around 29m AOD) from road level at the northern end of the building. This compares to around 12m (around 20m AOD) in relation to the existing building. The proposed building would be tallest at its northern end and would step down towards its*

*southern end. The footprint of the building would measure approximately 104m in length, and would have an average depth of around 17m. The footprint of the building would measure 1657sqm, which compares to 1089sqm in relation to the existing building.*

This clearly shows the size and bulk is a substantial increase on the modest hotel existing on the site.

#### Marine Management Planning

##### ***Policy TE7 - Marine Management Planning***

*Development proposals on land adjacent to the coastline will be supported where do not have an adverse effect on a marine policy or management plan.*

We question whether the development should be assessed for compliance with the Marine Management Organisation policies as it discharges surface water to the marine environment.

#### Local Plan Parking Policies

The proposed development is contrary to policy DE4 in the Local Plan

##### *Local Plan Policy DE4*

*The height of new buildings should be appropriate to the location, historic character and the setting of the development.*

*New development should be constructed to the prevailing height (the most commonly occurring height) within the character area in which it is located, unless there are sound urban design or socio economic benefits to justify the deviation from this approach.*

The explanation in 6.4.2.27 goes on to limit tall buildings to 'town centres' and 'station character areas' and states that 'the remainder of the Bay outside these areas is unlikely to be acceptable for tall buildings in order to maintain existing low rise residential character, residential amenity, landscape character and green, uninterrupted hilltops.'

Although there are supported options these are not in compliance with the more recent Torquay Neighbourhood Plan that takes precedence under the law.

In any case the development does not increased the vitality of the area as apart from this one site the area is not run down; it might be argued that it contributes to the regeneration of Torbay but the redevelopment of the site is not in question so a more suitable and complaint development would be supported; it will not strengthen the character of the area, rather detracting from the modest 3/4 storey prevailing development; it will have a hugely negative visual impact both in the immediate area and from vistas further away; it will have little urban design benefit as designed, in fact it will be negative and any socio economic benefit is less than significant in the context of a replacement business of the same type; it will be a negative addition to the landscape overpowering the backdrop of modest residential developments, it will also block local and long distance views and key vistas because of its height particularly from the seafront and on Livermead hill behind.

### *Local Plan Policy TA3*

*The Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. The loss of on-street or public parking provision will be a material consideration in planning applications...Development proposals will be expected to meet the guideline requirements as set out in appendix F*

### *Appendix F Hotels and holiday developments*

*1 space per bedroom, plus appropriate provision for coaches. Provision for setting down and picking up guests by car or coach should also be provided.*

*In instances where the location of the hotel and its setting may limit the parking available, the availability of public spaces will be taken in to account.*

The designed parking provision is contrary to Policy TA3 in the Local Plan that requires 151 parking spaces (1 per room) and appropriate parking for coaches plus drop off/pickup by car and coach. Cycle space should be 1 per 2 employees which equates to approx. 50 spaces that should be covered and secure and integral to the development. The proposal is for 101 car parking spaces in total, equating to 2 spaces per 3 guestrooms, along with a temporary coach drop-off area capable of accommodating two coaches.

The exception is not appropriate as there are no public car parks within reasonable distance and any use of public highway parking will lead to antisocial parking in adjacent streets that will impact on the key designated diversion route for seafront road closures (via Wheatridge Lane/Underhill Road).

It is of note that the Police have objected to the inadequate parking provision.

### Highways

The proposal is for a substantial increase in vehicle usage from the almost 4 times increase in bedrooms (39 to 151) and the expectation of high occupancy (against a run down low occupancy hotel). Without a right turn refuge lane to service the development then significant additional congestion is highly likely during a significant part of the day and in particular during busy periods that will cause major issues for vehicular movements between Torquay and Paignton. Another development on the close by site at Hollicombe was mandated to provide a right turn refuge and the adjacent right turn to Cockington also has a refuge. The transport assessment does not provide evidence that entering or leaving the site will not cause disruption during the main summer season (it uses low season winter figures for traffic flows) or at peak times when vehicles are turning right and blocking the traffic from Torquay or vehicles are turning right towards Paignton. It is well known that the congestion is heavy during the very periods that hotel use is at a maximum.

The transport assessment does not consider the implications of the loading bay on the safety of traffic and pedestrians using Livermead Hill which is narrow and without pavements for pedestrians nor does it consider compensatory measures.

The transport assessment does not consider the impact of additional on road parking arising from the restricted onsite hotel parking on the main and critical diversion route along Wheatridge Lane/Underhill Road for traffic when the Torbay Road is closed due to flooding or accidents. It is of note that the Police have objected to the inadequate parking provision.

#### Local Plan Development Amenity Policy

##### *Local Plan Policy DE3 Development Amenity*

*All development should be designed.....not unduly impact upon the amenity of neighbouring and surrounding uses....*

- 1. The impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.*
- 2. Satisfactory provision for off-road motor vehicle parking..*

The development is contrary to this policy. It is just 30m from the nearest neighbour – Cromatie Point - and the height and scale will mean the rear facing bedrooms will directly look in to the 16 apartments in the block causing a significant loss of privacy and substantial overlooking; it will also be visually obtrusive being double in height to the existing.

#### The Torbay Design Review Panel

We strongly criticise the Torbay Design Review Panel for not undertaking a professional assessment of the proposal under the publicly available terms of reference. They failed to consider the overall design in relation to its impact on the local area and its compliance with the Local and Neighbourhood Plan policies. We also criticise the makeup of this Panel as not representing a truly independent panel of appropriately qualified professionals capable of assessing major developments of this sort.

Leon Butler

Chair Torquay Neighbourhood Plan Forum



Richard Maddock  
Kay Elliott Associates  
5-7 Meadfoot Road  
Torquay  
Devon  
TQ1 2JP

**Please reply to:**

Mr Scott Jones  
**PLACE and ENVIRONMENT**  
Spatial Planning, Torbay Council  
2<sup>nd</sup> Floor, Electric House, Castle Circus  
Torquay TQ1 3DR

**My Ref:** DE/2018/0030

**Your Ref:**

**Telephone:** 01803 207783

**E-mail:** [Planning@Torbay.Gov.Uk](mailto:Planning@Torbay.Gov.Uk)

**Date:** 10 May 2018

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Dear Richard,

**PRE APPLICATION ENQUIRY – DE/2018/0030 - THE CORBYN HEAD HOTEL**

Thank you for your enquiry, which concerns the demolition of an existing hotel, and its replacement with a new hotel comprising around 150 rooms, spa facilities, restaurant, bar, and associated development.

This advice is given in response to your request for pre-application advice for the above development proposal, and is based on the information submitted. Whilst Council officers endeavour to give the best advice, it should be recognized that all planning applications are the subject of formal consultation procedures to enable third parties and statutory consultees to make representations. This process may introduce new material considerations. Moreover, the policies and guidance against which planning applications are assessed may change over time. I therefore reserve the right to alter the opinion given should new material issues come to light in future. Moreover, the advice given in this letter is that of the named officer and does not bind the Council in determining any subsequent planning application that may be submitted.

Principle of Development

The site is located within a Core Tourism Investment Area (CTIA) and the creation of new, high quality tourism attractions and facilities is in accordance with Policy TO1 of the Torbay Local Plan. The proposal is also aligned with the strategic aims and objectives of Policy SS1 (Growth Strategy for a prosperous Torbay). The proposed replacement of a hotel with an enhanced hotel facility is considered to be acceptable in principle.

Urban Design / Visual Impact

We met earlier this week to discuss the proposal. Following the advice of the Torbay Design Review Panel (TDRP), particular attention was given to design. There is some difference of opinion regarding the correct approach to take in terms of the proposal's bulk, massing, and degree of visual separation, and you indicated that more work would be done ahead of the

next TDRP meeting. I will therefore refrain from providing more detailed design advice at this time.

I will however take the opportunity to refer you to the aspirations of Policies DE1 (Design) and DE4 (Building Heights) of the Torbay Local Plan. In particular, Policy DE1 requires that major development be informed by a townscape and/or landscape assessment, and discusses the importance of proposals relating to the surrounding built environment in terms of their scale, height, and massing. There is also a clear emphasis on high quality architecture, along with a distinctive, but also sensitive, palette in terms of materials. The proposal and supporting information should also address Policy DE4, which requires that development responds to the prevailing height (the most commonly occurring height) within a location, unless there are sound design or socio-economic reasons for a deviation. It is, in any case, recommended that the socio-economic benefits of the proposal be clearly explained to support a future planning application.

### Highways, Access, and Parking

In terms of visibility splays, for a strategic route, splays of 70m (with a 2.4m setback) should be achieved in both directions, and the Highway Authority argue that this standard ought to be achieved in this location. In relation to the proposed delivery access off Livermead Hill, the Highway Authority have raised some concerns in terms of visibility and traffic conflict, and recommend that other arrangements be explored. It is noted that, at present, there only appears to be a pedestrian access point in this location.

The principle of improved pedestrian movement around the Livermead Hill area is supported, particularly in light of the ambition to encourage walking and other sustainable modes of local travel, as outlined within Policy TA1 of the Local Plan. The implications of the proposals for the railway line should be robustly explored. Early consultation with Network Rail is recommended to ensure that issues and delays are unlikely to arise during the planning application process.

Policy TA3 (Parking requirements) and Appendix F of the Torbay Local Plan outline the expected levels of parking to support given types of development. Hotel development should be supported by 1 space per bedroom together with appropriate provision for coaches and for the setting down and picking up of guests. As the area is relatively remote from public parking, I would advise that measures to increase the provision of parking on site be given serious consideration. It may be challenging to secure the 1:1 policy position but measures to increase parking capacity within the development and thus limit the impact upon nearby residential streets should be fully exploited.

### Drainage

As Torbay is classified as a Critical Drainage Area, a site specific flood risk assessment will be needed to support any planning application.

Within the Torbay Local Plan (Policies ER1 and ER2) there is a hierarchy for dealing with surface water run-off, with infiltration techniques being the preferred method of surface water

drainage. As the site of the proposed development is unlikely to be suitable for infiltration drainage, a controlled discharge off site should be investigated. This should initially look at discharging flows to a watercourse/main river but if this is not possible, then discharge should be to a surface water drainage system, and only if no other system is available, a combined sewer system may be explored.

Alternatively, as the proposed development is located near to coastal waters you may wish to investigate the possibility of discharging surface water run-off directly to coastal waters. The discharge rate from the site to coastal waters may not need to be restricted, however, details of how you would remove contaminants prior to discharging to coastal waters will be required. In addition, it is likely that the Environment Agency would have to be consulted on any discharge to coastal waters.

The surface water discharge rate from the site to a watercourse, surface water system, or combined sewer must be limited to the Greenfield run off rate for the 1 in 10 year storm event with attenuation designed to ensure there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event, plus 40% for climate change. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec we would accept a discharge rate of 1.5l/sec.

As a final note on drainage, if it is proposed to use permeable paving on the site, the supporting documentation should confirm whether ground conditions are suitable to accommodate it. Infiltration testing in accordance with BRE365 must be undertaken at the proposed location of the permeable paving. In addition, the infiltration testing must be undertaken at the proposed formation level of permeable paving. A desk-based study of ground conditions will not be acceptable. If the ground conditions are suitable for permeable paving, this must be designed to demonstrate that there is no flood risk on or off the site for the critical 1 in 100 year storm event, plus 40% for climate change.

### Amenity

Policy DE3 (Development amenity) of the Torbay Local Plan seeks to ensure that all development be designed to provide a high level of amenity and that it should not unacceptably impact upon the amenities of neighbouring occupiers/uses. There appears to be sufficient distance across the railway line, to the rear of the site, to limit any likely material impacts on neighbours.

To the south, there is concern in terms of the likely impact of the proposal on the occupiers of The Corbyn Apartments. The original scheme showed a parking deck in close proximity to side windows, which could result in an unacceptable level of harm. However, the design is evolving and the relationship appears to be improving across the southern boundary to adjacent apartments. Careful consideration should be given to the potential impacts on the outlook, privacy, and access to light of neighbours.

### Arboriculture

There appears little arboricultural constraint at the site, with vegetation limited to the rear of the existing building, alongside the railway line. The landscaping potential of the site appears limited, and hence it will be necessary to make the most of the opportunities available to the front of the proposed building. This point was iterated within the TDRP comments.

### Protected Species

There appears little potential for ecological constraint at the site. A planning application would need to be supported by an up-to-date extended phase 1 habitat survey. There may be potential bat roosting opportunities within the building and/or trees that form part of the ecological corridor that is the railway line. Proposals should seek to provide opportunities for biodiversity enhancements, such as bat and bird boxes within the development, as per Policy NC1 (Biodiversity and Geodiversity) of the Torbay Local Plan.

The Council will also need to duly assess any individual or cumulative impact upon the Torbay Marine SAC, in-line with Policy ER2 (Water Management) and NC1 of the Torbay Local Plan.

I trust the above provides some clarity on a number of relevant issues. The Council looks forward to continued positive dialogue to help evolve what could be a very important regeneration scheme for Torbay.

Yours Sincerely

**Robert Brigden**

Senior Planning Officer

**Application Number**

P/2019/0265

**Site Address**

Land Off Martinique Grove  
Torquay  
TQ2 7GR

**Case Officer**

Mr Scott Jones

**Ward**

The Willows

**Executive Summary**

The site is a grazed, hedge-lined field that abuts the north-eastern edge of “The Willows” housing estate, north of Martinique Grove and east of Montserrat Rise.

The site is within the urban area and is identified as a Committed and Deliverable Site within the Development Plan (which reflects historic housing permissions over the land). It is not designated countryside or open green space within the Development Plan.

The proposal is to provide 5 detached dwellings set in a loose south-facing arc arrangement, to be accessed off the existing highway spur in Martinique Grove.

The dwellings are all pitched-roof bungalows finished in render with a section of timber boarding, each with an element of under-build that provides garage parking and a small storage area and lift.

The proposal is considered to present an acceptable form of residential development for the suburban / edge of settlement context, which would sit comfortably within the locality, that also presents an acceptable living environment for future occupiers, and would also have no undue impact upon existing occupiers when considering the scale and form of development and the separation distances that are proposed.

In regard to other matters, adequate parking is provided to serve the dwellings and the application is supported by ecological proposals that suitably manage and mitigate to ensure the development would not harm protected species, and seeks to promote biodiversity enhancement.

All matters considered, the proposal is considered to accord with the Development Plan and presents a sustainable form of development that would provide family sized homes and help meet local housing needs. The development will be CIL liable and is expected to trigger an obligation of approximately £38,000.

Notwithstanding the extent of public objection there are no material considerations indicating that planning permission should not be granted, considering the level of accordance with the Development Plan.

### **Recommendation**

Approval subject to conditions, with the final drafting of conditions and addressing any further material considerations that may come to light, to be delegated to the Assistant Director of Planning and Transport.

### **Statutory Determination Period**

8 weeks - 9th May 2019 - Extension of time agreed until 14<sup>th</sup> June 2019.

### **Site Details**

The site is a small field adjacent to the north-eastern edge of “The Willows” residential estate. There is modern suburban housing to the south (Martinique Grove) and to the west (Montserrat Rise), fields lie to the east and south-east, and woodland and a large order residential plot served off the Kingskerswell Road lie to the north.

The field sits as a slight bowl but generally rises from south to north. It is grazed with short grass largely evident and is hedge lined. It is noted that higher land which previously formed part of the field to the west is subject to some recently approved housebuilding development, accessed off Montserrat Rise.

In terms of relevant designations the site sits in the built up area and is not designated as countryside in the Torquay Local Plan. It is actually part of a larger identified site (that spreads east and then south), as a committed and deliverable development site, within the Local Plan and referenced in the Torquay Neighbourhood Plan (CDST3 – Scotts Bridge / Barton Remainder). To the north and north-east the higher land adjacent is designated as an Urban Landscape Protection Area within the Torbay Local Plan.

Date of Officer Site Visit: W/C 18<sup>th</sup> March 2019

### **Detailed Proposals**

The proposal is to provide 5 detached dwellings. The dwellings are all 3-bed bungalows with under-build garaging, which are arranged in a loose south facing arc with a vehicular access from the south off the existing highway network

(highway spur) set between No.5 and No.7 Martinique Grove.

The dwellings are all similar in scale and form with simple gable roofs with inset front-facing gable features. The elevation finish for each dwelling is largely render with the feature gables clad with cedar boarding. Roofs are finished with grey concrete tiles and windows are proposed in grey uPVC. All dwellings have parking for 2 cars split between a garage and private driveways that sit off a shared communal private drive. There is also cycle storage, waste storage and electric charging points at the lower parking level for each dwelling.

The proposal seeks to provide drainage via soakaways subject to infiltration testing, seeks to provide additional rear border planting to create a tree lined hedge boundary, and proposes planting to the south of the development between the proposed dwellings and the existing houses off Martinique Grove. Ecology proposals include hedgehog friendly fencing and bat and bird boxes being fitted to all dwellings, and badger management processes.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate Otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 (TLP)
- The Torquay Neighbourhood Plan (TNP)

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Summary of Consultation Responses**

#### Torquay Neighbourhood Plan Forum

No comments received.

Strategic Planning Team (incorporating Highway Authority comments):

Detailed comments awaited. Outline comments advise that 5 dwellings off a private drive is generally considered acceptable. Parking should be provided in-line with Policy TA3 and Appendix F of the Torbay Local Plan (2 per dwelling) along with appropriate electric charging points and cycle parking facilities.

Drainage Department:

Standing advice applies. As the site is within a Critical Drainage Area the applicant must demonstrate that the surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to the development for the critical 1 in 100 year storm event plus an allowance for climate change. Standing advice directs that this can be achieved by use of a Planning Condition.

**Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement

36 contributors have been received objecting to the scheme, a number of which state that the revised plans do not overcome their concerns. The key planning related issues are;

Issues raised include:

- o Overdevelopment
- o Impact on wildlife
- o Loss of a green field / natural habitat
- o Loss of privacy and overlooking
- o Flooding issues
- o Impact on parking in the area
- o Construction impacts
- o Out of character
- o No benefits for the community
- o Doesn't accord with local plan policies
- o Materials are inappropriate

**Relevant Planning History**

Land west of the site (and east of Montserrat Rise):

P/2018/0992: Formation of dwelling & garages: Approved 16.01.2019.

P/2016/0787: Erection of dwelling house with garage and drive: Approved 07.08.2017

P/2013/0462: Erection of two 2 storey detached dwelling houses with associated access and parking (integral garages) (in outline). Approved 07.03.2014. Subsequent Reserved Matters (P/2016/0181) Approved 15.02.2016.

## **Key Issues/Material Considerations**

### **1. Principle of residential development**

Policy H1 (Applications for new homes) of the Torbay Local Plan cites that proposals for new homes within the built up area will be supported subject to accordance with the other policies contained within the Local Plan. The site sits in the built up area and is not designated as countryside in the Torquay Local Plan. Notably it is identified as a committed and deliverable development site, which principally recognises historic planning consents over the land (CDST3).

Policy TS4 (Support for Brownfield and Greenfield development) of the Torquay Neighbourhood Plan cites that development proposals of greenfield sites can have an adverse impact through the loss of green space, so will be supported where this is an allocated site within the Plan or the loss is required to meet the strategic economic policies within the Local Plan. The site is referenced within the Torquay Neighbourhood Plan as a potential housing site where Policy TH1 (Housing Allocations) references committed and/or deliverable sites identified in the Local Plan. It is also pertinent to note that the site is not identified as a Local Green Space within the Torquay Neighbourhood Plan, which through Policy TE2 (Local Green Spaces) would present a different policy steer towards ruling out development other than in very special circumstances.

Policy THW2 (Change of use of allotments and retention of food production areas) of the Torquay Neighbourhood Plan is relevant in terms of considering the principle. The policy seeks to resist non-agricultural development on high quality agricultural land unless allocated. Although not “allocated” the Neighbourhood Plan identifies the site as a deliverable site for development and has re-emphasising the position of the Local Plan that some form of development is likely to come forward on the site. This supports the notion that the principle of development is acceptable. It is also relevant that the land is not considered “high quality” agricultural land and is rather lower quality and classified as “Poor”.

For the policy reasons above the principle of housing development is considered acceptable subject to accordance with other policies of the Development Plan, which will be discussed below.

### **2. Design and visual impact**

Policy DE1 (Design) of the Torbay Local Plan cites that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

Policy TH8 (Established architecture) of the Torquay Neighbourhood Plan cites that development should be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

The NPPF guides that decisions (amongst other things) should secure developments that are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (Para 127).

The proposals respect the domestic scale that prevails in the local area and presents individual buildings and a building group that sits comfortably in the context of the suburban / edge of settlement location. The general design and choice of materials is simple and modern, which also suitably reflects the suburban and edge of settlement location. The limited use of timber is considered acceptable in the context notwithstanding the principally rendered finish locally, when reflecting on the different pockets of housing designs that are evident through The Willows. It is welcomed that render remains the predominant material and the timber helps to soften the development and adds interest to the building form.

In terms of the layout the space afforded for gardens and landscaping is greater than that of the established suburban development to the south, and is considered an acceptable layout for development on the fringes of an existing settlement on this sloping greenfield site.

In terms of design for these reasons above the development is considered acceptable as there would be no adverse impact upon the character or visual amenities of the locality. The proposal is considered to be in accordance with Policies DE1 and DE4 and H1 of the Torbay Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and guidance contained within the NPPF.

### **3. Quality of the proposed residential environment**

Policy DE3 of the Torbay Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. This includes expectations in terms of internal and external spaces, and for habitable spaces to be provided with adequate outlooks and privacy. The Torquay Neighbourhood Plan is largely silent on accommodation requirements but it does cover expectations for outdoor space.

The dwellings are considered to provide a good standard of living accommodation and outdoor amenity space. The internal environment is suitably scaled and

accords with the internal space standards cited within the Torbay Local Plan. The outlooks are considered to be good and there is acceptable natural lighting to key habitable spaces. The revised plans have sought to improve the relationship to the east for Plots 1 and 2 by reducing how direct the building lines relate to the higher properties to be built off Montserrat Rise, whilst also bolstering the proposed tree planting along the rear boundary to further reduce potential downward views into the proposed properties and gardens. In terms of outdoor space the gardens far exceed the 20sqm expected within the Torquay Neighbourhood Plan and also exceed the 55sqm expected within the Torbay Local Plan. The garden sizes also reflect the local area and are not cramped in terms of local character, but rather generous.

The proposal, for the reasons above, is considered to provide a good standard of living accommodation for future occupiers, in accordance with Policy DE3 of the Torbay Local Plan and Policy THW4 of the Torquay Neighbourhood Plan.

#### **4. Impact upon the amenity of neighbouring occupiers**

Policy DE3 of the Torbay Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Torquay Neighbourhood Plan is silent on the matter of amenity.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction parking impacts through the use of a planning condition.

In terms of the finished development the residential use aligns with the prevailing character of the area and the additional dwellings would not result in undue noise or general disturbance.

The scale and massing of the dwellings are limited (individual bungalows with partial underbuilds) and each dwelling will sit some distance away from the existing properties set to the south and west. When considering the proposed scale and the separation distances the development will not be overbearing or cause any undue loss of light or outlook for existing occupiers of these dwellings.

In terms of privacy, inter-looking and overlooking although there is no definitive guidance within the Development Plan it is generally accepted that a distance of 20/21m back-to-back between properties is acceptable, but that it may be necessary for greater separation distances for taller buildings or for development on sloping land. Although the relationship is front-to-back it is reasonable to consider it in a similar context to back-to-back relationship in terms of sensitivity. The development proposes a minimum separation distance of 26m for Plot 1 and this distance is an oblique relationship, which is less sensitive to potential inter-looking and loss of privacy. Moving through the development the separation

distances rise to around 31m-36m for Plots 2 to 5, and again there is an oblique nature to some of the relationships to existing properties to the south. When considering the distances involved, and taking into account the topography, the relationships to the south are considered acceptable in terms of the impact of the development upon existing occupiers. It is noted that the proposed landscaping seeks to retain the existing southern border and provides a number of feature trees between the proposed properties and the existing properties to the south. The landscaping will help lessen the perceived impact in terms of overlooking and can be secured through a landscape planning condition. It is noted that the separation distances appear greater than the prevailing space afforded between properties throughout various streets within the existing development to the south, which adds some further evidence that the relationships are acceptable.

In terms of amenity for the reasons above the proposal is considered to comply with Policy DE3 of the Torbay Local Plan as it would not unduly impact the amenities afforded neighbouring occupiers.

## **5. Highway Safety and Parking**

Policy TA3 and Appendix F of the Torbay Local Plan provides key policy guidance and for dwellings there is an expected requirement of 2 spaces per dwelling, although there is appreciation that this standard can be reduced in locations such as towns centres.

Policy TH9 of the Torquay Neighbourhood Plan cites that all housing developments must meet the guideline parking requirements contained in the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or, the development is within the town centre and an easy walk of a public car park which will be available to residents for the foreseeable future.

The development is supported by on-plot parking and meets the expected requirements for vehicular parking. There is also designated cycle parking for each dwelling contained within the under-croft off the garage. There is also electric charging points proposed within each garage. This presents a rounded parking provision that adequately provides for cars but also promotes more sustainable choices of transport in-line with policy objectives.

In terms of the wider highway arrangement the access is proposed to be off the adopted network via a link to the existing spur within Martinique Grove. Beyond this spur the road is proposed to be a private driveway which features a turning area and waste storage area for collection days.

Highway comments are awaited however it is noted that the Torbay Highway Design Guide accepts the notion of private drives where they serve up to 5

dwellings and indicates a drive of this length should have a turning point, which is provided within the design.

Subject to matters that may be raised by the Highway Authority the proposal is considered acceptable in accordance with Policies DE1 and TA3 of the Torbay Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

## **6. Drainage and flood risk**

Policy ER1 of the Torbay Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within Flood Zone 1 (Low Risk) and is within a wider designated Critical Drainage Area.

The proposal is supported by a Site Specific Flood Risk Assessment which states that surface water will be managed by sustainable infiltration using a soakaway or other sustainable draining system design in accordance with the appropriate standards.

The proposal summarised above is in accordance with the Council's Draining Department's Standing Advice, as for a development of this scale it is accepted that the detailed design solution can be secured and reviewed through the use of a planning condition.

Subject to the proposed conditions re surface water management the proposal is considered to be acceptable in accordance with Policies ER1 and ER2 of the Torbay Local Plan.

## **7. Ecology**

In regard to the Development Plan Policy NC1 (Biodiversity and geodiversity) of the Torbay Local Plan confirms the Local Plan seeks that development in all areas should conserve or enhance Torbay's biodiversity and geodiversity. It further outlines expectations for internationally, nationally and locally important sites and species.

In regard to the Torquay Neighbourhood Plan Policy TE4 (Green Corridors) identifies that greenfield development should where possible support the provision and/or enhancement of green infrastructure and Policy TE5 (Protected species habitats and biodiversity) identifies that development of new homes on an unallocated site that could have an impact on a protected species or habitat must provide, as appropriate, an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats.

In terms of ecology the site has no formal wildlife designation but it is a greenfield site that presents a context that could give rise to potential impacts upon wildlife. The application is supported by an ecology report and the key conclusions are summarised below.

The development is unlikely to cause disturbance to bats, affect the distribution or abundance of local populations and will not disturb any roosts. Mitigation is not considered necessary however enhancement is proposed through the provision of bat tubes being included in the designs for the new houses.

The development has the potential to disturb nesting birds through the removal of a section of hedge to create the access road if works are carried out during the nesting season. Mitigation measures are proposed in terms of clearance being restricted to being outside of the nesting season unless done under a watching brief. Enhancement is proposed through the provision of nesting boxes.

The development is unlikely to kill or injure reptiles and / or amphibians as the field is heavily grazed but the borders provide some habitat that may be used. The supporting information recommends a precautionary approach to scrub removal including graduated clearance.

In terms of badgers it confirms that there is badger activity (sett entrances and runs) recorded in the hedge along the east side of the field and the accompanying Badger Report proposes development management measures to secure development that would not contravene wildlife legislation. The report highlights that, depending on the results of a pre-works survey, it may be necessary to apply for a Badger Licence (via Natural England) to damage / destroy a sett, and / or cause disturbance to badgers, but that the presence of badgers is not in itself a reason for the planning application to be refused. The report confirms that with a licence in place (if the setts are found to be occupied), the proposed development could be carried out without committing any offences.

In terms of further ecology considerations the proposed development will not result in the removal of or disturbance to any potential dormouse habitat; and will not disturb or injure dormice, that there is the possible presence of hedgehogs, and precautionary measures recommended when any scrub is cleared and enhancement measures have been included.

In light of the above and subject to the management and mitigation within the submitted ecology report being secured (by planning condition) the proposal is considered acceptable on ecology and biodiversity grounds, being in accordance with Policy NC1 of the Torbay Local Plan, TE4 and TE5 of the Torquay Neighbourhood Plan, and the NPPF.

## **8. Other Considerations**

## **Housing Supply**

The Council has between around 3.8- 4.5 years' housing supply based on an assessment at December 2018, which is below the 5 year supply sought by government. The proposal will help with the delivery of housing with a form of development that is considered to accord with the Development Plan.

Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

## **S106/CIL and Affordable Housing -**

### Affordable Housing:

The Development Plan cites an affordable housing provision/contribution is required from this development in accordance with Policy H2 of the Torbay Local Plan 2012-2030. For a scheme of 5 dwellings within a greenfield site the Local Plan Policy H2 indicates a 10% affordable housing target, which would normally be off-site via a commuted sum.

Notwithstanding this Para 63 of the NPPF (2019) cites that the provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). As detailed the site is not designated countryside and hence as a "non-major" the guidance is that affordable housing should not be sought in this instance.

### S106:

Sustainable Development S106 contributions are not required from this development in accordance with Policy SS5/SS6/SS7/SS9/SS11/H2/Planning Contribution and Affordable Housing SPD.

### CIL:

The application is for residential development in Zone 2 where the Community Infrastructure Levy (CIL) is £70 per square metre of additional gross internal floor area created.

The CIL Liability will be established through the due process however as an indication to Members each dwelling, is circa 109sqm of CIL liable floor-space (including the garage) and hence the total CIL liable floor-space for the development is expected to be 545sqm. This equates to an expected CIL payment of £38,150.00

## **EIA/HRA**

### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **HRA:**

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC. The proposed development is unlikely to have a significant effect on the South Hams SAC.

Due to the distance to the coast the proposal is unlikely to have a significant effect on the Lyme Bay and Torbay SAC.

### **Human Rights and Equalities Issues -**

**Human Rights Act:** The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

**Equalities Act:** In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Proactive Working**

In accordance with paragraph 38 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission.

The applicant has during the consideration process submitted revised plans that seek to improve the general arrangement with properties to the south and west, which includes additional landscape planting, and has agreed an extension of time to permit the Authority to consider these and progress the application to

Committee.

## **Conclusions**

For the reasons stated within this report the proposal is considered acceptable, having regard to the Development Plan, the NPPF and all other material considerations.

In-line with Paragraph 11 of the NPPF decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date Development Plan without delay.

## **Condition(s)/Reason(s)**

01. Prior to the commencement of development all necessary highway agreements shall be entered into to deliver an acceptable access to the development from the public highway for both the construction phase and for the future occupation of the dwellings hereby approved. The development shall proceed in full accordance with the highway agreements.

Reason: To secure an acceptable access to the site from the public highway, in accordance with Policy TA2 of the Torbay Local Plan 2012-2030.

This pre-commencement condition is necessary to ensure an appropriate and safe form of access during the course of construction works and beyond.

02. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015 Order (or any Order revoking or re-enacting that Order with or without modification), Article 3, Schedule 2, Part 1, Classes A to E, no enlargements, improvements or other alterations shall take place to the proposed dwellings, and no outbuildings or other means of enclosure shall be erected within their garden areas (with the exception of one ancillary structure each up to 10 cubic metres in volume), unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and in accordance with Policies DE1 and DE3 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

03. The development hereby approved shall not be used/occupied until the

garages, car parking, and turning area shown on the approved plans have been provided and made available for use. The car parking facilities shall be kept permanently available for parking and manoeuvring purposes to serve the development at all times thereafter.

Reason: To ensure that adequate off-street parking is provided, in accordance with policy TA3 of the Torbay Local Plan 2012-2030 and TH9 of the Torquay Neighbourhood Plan.

04. The development shall proceed in full accordance with the ecological management recommendations and mitigation proposals detailed within the submitted and approved ecology report (Butler Ecology, 6<sup>th</sup> March 2019) including the appended Badger Report (EPS Ecology February 2019).

All mitigation measures shall be provided within each plot/building prior to its first occupancy and shall be maintained at all times thereafter for the benefit of wildlife.

Reason: To secure biodiversity enhancements in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

05. The approved soft landscaping works shall be undertaken in the first available planting season following the first use or occupation of the development. The development shall proceed in full accordance with the approved landscape management procedures.

All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.

The approved hard landscaping details and boundary treatments shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and amenity in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

06. In accordance with the submitted flood risk assessment surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by

the Local Planning Authority prior to the commencement of development.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 and ER2 of the Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

07. Prior to the first occupation of the development hereby approved, the “collection day” fenced waste storage area shall be provided in full and made available for the purpose identified. The facility shall then be retained for these purposes at all times thereafter.

Reason: To protect the amenities of the area in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

08. No development shall take place, including any groundworks, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction. The CMS shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials.
- d) Measures to limit dirt / materials on the highway
- e) Measures to control dust and dirt during construction.
- f) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved CMS shall be adhered to throughout the construction phase.

Reason: To ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users. These details are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users, in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

A pre-commencement condition is necessary to ensure that the construction phase of the development does not result in unacceptable levels of nuisance.

## **Relevant Development Plan Policies**

SS1 - Growth Strategy for a prosperous Torbay

SS3 - Presumption in favour of sustainable dev

SS8 - Natural Environment

SS11 - Sustainable Communities Strategy

SS12 - Housing

SS13 - Five Year Housing Land Supply

SDT1 - Torquay

TA1 - Transport and accessibility

TA2 - Development access

TA3 - Parking requirements

C4 - Trees, hedgerows and natural landscape

H1LFS - Applications for new homes\_

H2LFS - Affordable Housing\_

DE1 - Design

DE3 - Development Amenity

ER1 - Flood Risk

ER2 - Water Management

W1 - Waste management facilities

TS1 – Sustainable Development

TS4 - Support for Brownfield and Greenfield development

TH1 - Housing Allocations

TH8 - Established architecture

TH9 - Parking facilities

TE2 - Local Green Spaces

TE4 - Green Corridors

TE5 - Protected species habitats and biodiversity

THW2: Change of use of allotments and retention of food production areas

THW4: Outside space provision

THW5: Access to sustainable transport

THW6: Cycle storage and changing facilities

TTR2 - Sustainable Communities

**Application Number**

P/2019/0291

**Site Address**

Land Off Luscombe Road  
Paignton

**Case Officer**

Mr Alexis Moran

**Ward**

Blatchcombe

**Executive Summary**

This is a Reserved Matters application relating to the proposed appearance, landscaping, layout and scale of seven dwellings, resulting in a change to their previously approved siting.

On balance, the proposal is considered to be appropriate for conditional reserved matters approval.

**Reason for Referral to Planning Committee**

The proposal relates to part of a major development previously approved by Members.

**Recommendation**

Conditional approval with final drafting of conditions and the resolution of any additional material considerations that may come to light, to be delegated to the Assistant Director of Planning and Transport.

**Site Details**

The wider 1.5 hectare site was allocated for housing in the previous Torbay Local Plan (H1.13) and is identified as a potential site for allocation for the Paignton Neighbourhood Plan (Policy SDP 3) in the adopted Local Plan. It is located to the east of Luscombe Road and to the north of its junction with Queen Elizabeth Drive. Two dwellings originally occupied the north-west corner of the site (one of these has been demolished) and the balance of the site is rough pasture but was previously used for camping. It falls within an established residential area.

This Reserved Matters application relates to a section of the site which is approximately 0.3 hectares in area towards the northern end of the site.

A South West Water main runs north to south across the site (and to the south of the area which is the subject of this application) and requires a substantial 6 metre easement to be retained free of development. The site is located within Flood zone 1.

The site occupies part of the south eastern slope of a valley and it slopes quite steeply from north east to south west across the site. The site is bounded to the

west by the Luscombe Road designated cycle route and the boundary is defined by a mature hedgerow of 'important' ecological value. A number of trees occupy the site; those within the main body of the site identified as being of arboricultural value have recently been subject to a TPO. The trees on the east and west boundary of arboricultural merit are also protected by a TPO.

The site is, apart from the hedgerow and trees, of limited ecological value comprising predominantly horse-grazed pasture. The existing vehicular access to the site is from Luscombe Road. This is a designated cycle route and it provides a safe walking route to school to Kings Ash Academy.

### **Detailed Proposals**

This is a Reserved Matters application relating to appearance, landscaping, layout and scale in relation to seven of the previously approved dwellings. Effectively this proposal entails a slight amendment to the Reserved Matters approval referenced P/2018/0522 (approved 12.12.2018). The previously approved Reserved Matters application (P/2018/0522) gave permission for the appearance, landscaping, layout and scale of 68 dwellings. It is necessary to relocate seven of the units (Nos. 1, 15 and 64-68 inclusive) due to the location of the South West Water main on the site, the location of which had previously been mis-surveyed.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- Torbay Local Plan ("The Local Plan")
- Paignton Neighbourhood Plan

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Summary Of Consultation Responses**

Paignton Neighbourhood Forum: No comments received.

Natural England: No comments received

Environment Agency: No comments received

Drainage: Drainage details were requested via a condition on the outline permission P/2014/0938 and are required prior to commencement.

South West Water: The only comment SWW has relates to the surface water drainage which if this is discharged to a pond as stated in the 2018 FRA this cannot be subsequently discharged to the public sewer.

Highways: No objection

Arboricultural Officer: No comments received at the time of writing this report, however the alterations to the layout are unlikely to alter the previous recommendation, which was:

Approval subject to conditions

1. Submission of revised tree protection plan prior to work commencing.
2. Submission of an arboricultural method statement prior to works commencing.

Architectural Liaison Officer: no comment

### **Summary of Representations**

One letter of objection to the scheme had been received at the point at which this report was written. The concerns raised are as follows.

1. Drainage.
2. Impact on amenity in relation to loss of privacy and overlooking.

### **Relevant Planning History**

P/2018/0522 - Reserved matters application relating to outline application P/2014/0938 (formation of up to 68 dwellings with associated road and landscaping). Approved 12.12.2018.

P/2014/0938 - Formation of up to 68 dwellings with associated road and landscaping; Approved 14.05.2018

### **Key Issues/Material Considerations**

The principle of residential development of this site is long established through the previous allocation in the Local Plan and the granting of outline planning permission and Reserved Matters for up to 68 dwellings.

The key issues relate to the appearance, landscaping, layout and scale of development being proposed.

The matters for consideration are:

1. The character of the scheme.
2. The impact on the surrounding properties in terms of amenity.
3. Proposed Landscaping, impact on trees and ecology.
4. Flooding and drainage.
5. Impact on Highway network and traffic related concerns.
6. CIL

Each will be addressed in turn.

#### **1. The character of the scheme.**

An indicative layout was provided as part of the outline application, this was subsequently included in condition 1 of the outline permission P/2014/0938. This condition states that the submitted reserved matters shall be based on the approved Master Plan as shown in Plan No.3528 (12) 03 rev P1 and the design concepts outlined within the associated Design and Access Statement dated July 2014.

The layout submitted is broadly based on the Master Plan approved by outline permission P/2014/0938. The amendment to the locations of the seven dwellings under consideration, particularly Nos. 64-68, will result in a change to the character of the public amenity area towards the northern end of the site which was previously approved by reserved matters consent P/2018/0522.

The public amenity area would be partially shifted to the south of its previous location to accommodate an additional cul-de-sac road and the parking for ten vehicles. This is due to the requirement to move 3 dwellings further north from their previously approved location as a result of the position of the existing South West Water main.

The proposal includes a similar area of public amenity space as provided by the previously approved reserved matters application. It is noted that the public amenity space is somewhat more broken up in this current scheme by the addition of the road to service units 64-68. However the proposed space is considered to be acceptable and still provides a good quality public space.

The proposed dwellings would be finished predominantly with red brick with render used to establish focal buildings through the site and to provide a different texture to corner buildings. Interconnecting concrete pan tiles would be used on the roofs of the buildings.

The proposed development seeks to respect the existing character of the area in terms of design and with regard to the palette of materials proposed this is in accordance with Paignton Neighbourhood Plan Policy PNP 1 (c) (Design Principles) which seeks to strengthen local identity by respecting the scale, design, height and density of a developments surroundings. The proposal is also deemed to comply with Policy DE1 of the Local Plan which, among other things,

requires development to be uncluttered and attractive, acknowledge local character and develop distinctive character in townscape and landscape terms, relate to the surrounding built environment in terms of scale, height and massing and have a clear urban structure and grain that integrates with the surrounding context.

## **2. The impact on Amenity**

Policy PNP1(c) iv) of the Paignton Neighbourhood Plan requires new development to protect residential amenity in terms of noise, air or light pollution; Policy DE3 of the Local Plan requires that all development should provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring or surrounding uses.

The separation distances between the properties on Kings Ash road and the units 1 and 64-68 is a minimum of approximately 50m which is considered sufficient to prevent any unacceptable impacts with regards to loss of privacy/overlooking.

The distance between the side elevations of the 4 storey apartment blocks to the north of the site and the rear elevations of Unit 1 is acceptable and it is not deemed that this would result in an unacceptable level of overlooking/loss of privacy.

Turning to the relationship internally, between the proposed dwellings, the layout is such that there are minimal conflicts in terms of overlooking/loss of privacy and outlook. Consequently the relationship is deemed to be acceptable in terms of the requirements of Policy DE3.

The gardens of the seven amended properties and the internal floor areas meet the standards set out in the local plan relating to policy DE3. As previously noted, alterations to some of the parking areas have been requested to improve the relationships between vehicles and dwellings.

There is a slight concern with regard to the rear gardens of units 64-66 where, based on the submitted plans, there appears to be overhanging tree limbs which may result in dark rear gardens and pressures to fell the trees to the rear of these properties in future. Although the rear gardens of units 64-66 provide suitable amenity spaces in terms of size standards there is potential for them to have limited light, and to suffer from tree debris and sap fall. Although it is not considered that this would lead to unacceptable levels of light into habitable areas, the quality of the amenity spaces would be somewhat reduced. However the relationship between the rear amenity areas and the units 64-66 is not dissimilar to that of the previously approved Reserved Matters application at the site (P/2018/0522).

Overall however the concerns in relation to the trees and units 64-66 are considered insufficient to warrant the refusal of the application and the arboricultural officer has not raised an objection on this point.

Tree details were conditioned as part of the outline permission where an Arboricultural Implications Study is required prior to the commencement of development.

Given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of existing occupiers, and that it would provide an adequate standard of living accommodation for the enjoyment of the proposal's future occupiers. In these respects, the proposal is considered to be in accordance with Policy PNP1(c) iv) of the Paignton Neighbourhood Plan and Policy DE3 of the Torbay Local Plan.

### **3. Landscaping, Trees, and Ecology**

Policy C4 states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features, particularly where they serve an important biodiversity role. The development proposed under this application would not cause significant harm to existing trees and hedgerows and represents only a minor revision from the layout approved by the reserved matters consent P/2018/0522.

Policy PNP1 (a) b) of the Paignton Neighbourhood Plan states that development should increase biodiversity and ecological networks and Policy NC1 of the Local Plan requires development to conserve and enhance Torbay's biodiversity through the protection and improvement of fauna and flora. In terms of the ecological value of the site, an Ecological Impact Assessment has been submitted following a Phase 1 Habitat Survey. This identifies broad mitigation and enhancement proposals pre and post construction, and seeks to ensure that the most important ecological features of the site are protected and indeed improved.

A summary of the impact assessment, mitigation and residual effects was provided in Table 3 and Figure 1 of the Ecology Update Report. This included a number of measures to mitigate for any potential effects on local habitats, amphibians, badger, bats, nesting birds, invertebrates and reptiles.

The submitted ecological impact assessment notes that bats use the lane for commuting purposes. A Habitat Regulation Assessment (HRA) was undertaken as part of reserved matters application P/2018/0522, which concluded that the development would not have a Likely Significant Effect on the integrity of the South Hams Greater Horseshoe Bat Special Area of Conservation (SAC). The only plot which may impact on the lane, as part of this Reserved Matters application is No. 15, as it has moved approximately 9m to the north and no closer to the lane, it is not considered that this insignificant difference is sufficient

to require a revised HRA or that the impact on the South Hams Greater Horseshoe Bat Special Area of Conservation would be affected any further.

The Council's ecology consultant has no objection to the scheme subject to the proposals within Table 3 and Figure 1 (Ecological Constraints & Opportunities Plan) of the Ecology Update Report being implemented and it is considered that a condition requiring the implementation of the mitigation measures in the Ecology Update Report can be requested by condition.

The Outline permission also required the submission of an external lighting strategy prior to the occupation of any of the units. This is to ensure the lighting from roads and footpaths has a minimal impact on bats in the area.

Subject to the aforementioned condition and further discharge of condition information in relation to the outline consent, the proposal is deemed to comply with Policies C4 and NC1 of the Torbay Local Plan.

#### **4. Flooding and Drainage**

Comments from South West Water are noted, however a condition relating to the submission of drainage details prior to the commencement of development was added to the outline permission P/2014/0938. As such these details will be provided to the Council as part of a separate assessment exercise.

#### **5. Highway Impact**

These details were determined at the outline stage with conditions added to P/2014/0938 accordingly. The Council's Highways Department has confirmed that the road layout is acceptable and is of a standard which is adoptable. This accords with the requirements of the outline permission. The proposed layout includes parking spaces for 14 cars, or 2 per dwelling, which complies with the Council's parking standards.

The proposal is deemed to comply with Policies TA2 & TA3 of the Local Plan.

#### **6. Community Infrastructure Levy**

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm. An exemption applies for the affordable housing. An informative can be imposed, should consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

#### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and

expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **EIA**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Proactive Working**

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 positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

### **Conclusions**

The proposed layout, scale, appearance, and landscaping are considered to be acceptable, subject to the use of conditions. As such, the proposal is considered to be in accordance with the Torbay Local Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

01. Prior to development above damp proof course level details of the proposed cladding (walls and roof), openings, retaining walls and hard landscaping materials shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030

02. Prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in

writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development. The scheme shall include details of boundary treatment between the boundaries of the dwellings and the existing hedge on the west boundary which shall prevent future occupiers from damaging the hedge.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1, DE3, NC1 & C4 of the Torbay Local Plan 2012-2030.

03. All planting, seeding or turfing comprised within the landscaping scheme hereby approved shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within three months of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policies DE1 & C4 of the Adopted Torbay Local Plan 2012-2030.

04. The dwellings hereby approved shall not be occupied or brought into use until the associated parking spaces and manoeuvring areas detailed on the approved plans have been completed. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030.

05. Prior to the first occupation of each dwelling hereby permitted, provision shall be made for its refuse and bicycle storage according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030

06. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no enlargements, improvements or other alteration shall take place to either the proposed or existing dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, with the

exception of one ancillary structure each up to 10 cubic metres in volume, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

07. The development shall proceed fully in accordance with the mitigation recommendations within Table 3 and Figure 1 (Ecological Constraints & Opportunities Plan) of the Ecology Update Report. These measures shall be retained as such for the life of the development.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Torbay Local Plan.

08. Prior to the construction of any retaining walls at the rears of Plots 64-68, a geotechnical engineering assessment of the stability of the retained soils with regard to any potential destabilising effects brought about by construction and/or in-service conditions shall be submitted to the Local Authority for its approval in writing. The retaining wall shall be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure a safe and satisfactory development and in accordance with Policy ER4 of the Torbay Local Plan.

### **Relevant Policies**

PNP1 - Area Wide  
PNP1A - Rural Character Area  
PNP1C - Design Principles  
PNP1D - Residential Development  
ER4 - Ground Stability 1  
DE1 - Design  
DE3 - Development Amenity  
H1LFS - Applications for new homes\_  
TA2 - Development access  
TA3 - Parking requirements  
C4 - Trees, hedgerows and natural landscape  
NC1LFS - Biodiversity and Geodiversity\_  
SS11 - Sustainable Communities Strategy

**Application Number**

P/2018/0962

**Site Address**

213 St Marychurch Road  
Torquay  
TQ1 3JT

**Case Officer**

Mr Alexis Moran

**Ward**

St Marychurch

**Description**

Demolition of existing building to form 17 apartments & parking. (Revised plans received 6/3/19)

**Update Report**

At the 8<sup>th</sup> April Planning Committee meeting, this application for the demolition of the existing building and the formation of a new building of seventeen apartments and associated development, was recommended by officers for approval. Members of the Planning Committee resolved to defer the application in order for the Case Officer to negotiate minor alterations to the scheme relating to the design of the roof-scape, the siting and materials used in the construction of the bin store area, and to secure additional landscaping along the eastern and western boundaries of the site.

**Consultations**

**Historic England** – No response received at the time of writing this report, any further comments received will be reported to Members at the Planning Committee

**Interim Conservation Officer** - *The officer recommendation for the original scheme was one of approval, although Members deferred to take the opportunity to explore further improvements to the design of the proposal. The amended plans represent a slight improvement in that the inclusion of two stacks add a little more interest to the roofscape and as such the overall scheme is as a consequence slightly better and remains acceptable. In terms of the context of the Conservation Area the articulation of the roofscape including chimney stacks is a particularly important characteristic.*

*The way that the elevational drawings are presented probably don't do the revisions justice as the inclusion of the two stacks should appear more attractive in the street scene view. The details of the stacks are not particularly well defined on the submitted plans and would benefit from a corbel feature to help add a little more interest and this might also help to have a better visual link to the architectural style of the main building. The corbel feature is characteristic of the locality. I appreciate it might seem like a small detail but these can contribute*

*to the visual quality of the resultant development.*

As a result of these comments revised plans which show a better representation of the chimneys on the elevations have been submitted.

### **Key Considerations**

At the planning committee meeting of 8<sup>th</sup> April, it was determined to defer the application so that amendments could be made, these related to the design of the roofscape; the siting and materials to be used in the construction of the bin store area; and to secure additional landscaping along the eastern and western boundaries of the site.

### **Roofscape design**

The Council's Interim Conservation Officer has advised that the amended plans represent an improvement to the previous roofscape and that the overall scheme remains acceptable. It is noted that these comments state that a corbel feature would help to improve the visual link to the architectural style of the main building and that the corbel feature is characteristic of the locality.

The relevant Torquay Neighbourhood Plan policy relating to this aspect of the application is Policy TH8 (Established Architecture). This policy requires development to be of good quality design and reflect the identity of its surroundings. Policy DE1 of the Torbay Local Plan also requires development to be of a good quality design and relate to the surrounding built environment. Notwithstanding the lack of corbel features on the proposed chimneys, it is considered that the roofscape of the development is of a good quality design and complies with Policy TH8 of the Torquay Neighbourhood Plan and Policy DE1 of the Torbay Local Plan 2012-2030.

### **Bin store**

The applicant has amended the siting of the bin store area with the construction now being of stone rather than timber fencing, and a new access is provided in the boundary wall with St. Marychurch Road which includes a gate and a characteristic brick arch. The addition of the gate would reduce the time it would take for refuse lorries to load the bins thus reducing issues with traffic flow. It is also noted that the previous use of the building as a care home would have encountered similar problems and the proposed method of waste collection is considered to be an improvement compared to the existing situation.

Policy TH10 of the Torquay Neighbourhood Plan and Policy SS10 of the Torbay Local Plan, require development to conserve the character of the conservation area. The additional opening in the stone wall with a gated access to the bin store area is deemed to be acceptable in terms of the character and appearance of the conservation area and wider streetscene and would comply with Policy TH10 of the Torquay Neighbourhood Plan and Policies DE1 & SS10 of the Local Plan 2012-2030.

### **Landscaping**

Additional planting has been proposed along the eastern and western site boundaries where this would appear to have limited conflict with existing planting, giving it optimal chance of establishing itself. Full details of this will be submitted as part of a landscaping scheme condition. This will require any of the planting which dies, is removed, becomes seriously damaged or diseased to be replaced in the next available planting season with others of a similar size and same species, for the first 5 years from the completion of the development. The additional planting is considered to comply with Policy C4 of the Local Plan.

### **Conclusion**

Bearing the above points in mind the revised plans are considered to overcome the issues previously raised in the committee meeting of 08.04.2019 and it is deemed that, subject to the completion of a legal agreement to review the financial liability of the development, the proposal is appropriate for conditional approval, having regard to all national, local and neighbourhood planning policies and all other relevant material considerations.

### **Updated Recommendation**

Conditional approval with final drafting of conditions delegated to the Assistant Director of Planning and Transport and the completion of legal agreement to allow for a review of the financial viability of the development.

### **Previous Officer report to Planning Committee on 08.04.2019**

#### **Executive Summary/Key Outcomes**

The existing building is 3 stories in height with flat roofs, a number of unsympathetic extensions over the years have resulted in very little of the original villa still being visible. It has most recently been used as a care home but shut down in 2017 and is currently vacant. The site is within the St. Marychurch Conservation Area, it is not Listed nor is it a key building.

The application proposes the demolition of the existing building and to redevelop the site to provide seventeen apartments within a four storey building. The proposal includes the provision of seventeen car parking spaces.

The proposed building would have an appearance derived from the principle of a modern take on a Victorian villa one which is not uncommon in Torbay and within the immediate vicinity. The building has rendered elevations with vertical fenestration to pick up the architectural language of the building which would have originally occupied the site.

The building has been reduced in scale during the application process with the fourth storey being made more recessive and 15% smaller, the overall

development is 10% smaller than when first submitted. The overall scale and height of the proposed development is considered to be acceptable and is deemed to retain the character of the Conservation Area.

Neighbour amenity to the north, east and south is adequately protected given the distances between the site and its residential neighbours. The impact on the privacy and amenity of the neighbours to the west can be mitigated by a condition requesting details of a scheme of obscure glazing and by reducing the useable space of the fourth floor terrace.

The demolition of the existing building is acceptable as the building is not listed and has a negative impact on the character of the Conservation Area.

### **Recommendation**

Conditional approval with the final drafting of conditions delegated to the Assistant Director of Planning and Transport and a s.106 agreement to allow for a review of the financial viability of the development.

### **Site Details**

The site, 213 St. Marychurch Road, Torquay, has most recently been used as a care home but shut down in 2017 and is currently vacant. The original property was one of the villas which made up part of the mid 19th century development. The site is within the St. Marychurch Conservation Area, it is not Listed nor is it a key building. The existing building is 3 stories in height with flat roofs, a number of unsympathetic extensions over the years have resulted in very little of the original villa still being visible.

The site is approximately 0.2ha in area and is screened to its east, south and west elevations by trees.

There is a single vehicular access off St Marychurch Road with parking for four cars. The site lies just outside of the St. Marychurch district centre and within close proximity to a bus stop.

### **Detailed Proposals**

The proposal is to demolish the existing building on the site and replace it with a modern, four storey building to provide seventeen apartments. The proposal includes seventeen parking spaces, two of which have electrical charging points and seventeen cycle spaces.

The design of the building is a modern interpretation of the villa typology which is found within the conservation area. The elevations are to be largely white render on the ground, first and second floors with black render on the third floor which is a recessed level. The elevations are vertically proportioned and heavily glazed. Natural stone walling is proposed adjacent to the new building and the boundary with Broadhurst Court.

There are four floors of accommodation with four units provided on the ground floor, five units on the first floor, five on the second floor and three units on the recessed third floor.

The units provide a range of accommodation with the smallest providing a 55m<sup>2</sup> one bed apartment and the largest a two bed apartment of 83.7m<sup>2</sup>.

The access is off of St. Marychurch Road with thirteen parking spaces to the north of the proposed building and four in an undercroft parking area at ground floor level on the principal elevation.

A communal garden is proposed to the rear of the building which is approximately 680m<sup>2</sup>, apartment 1 has a private garden to the west of the proposed building which is 36m<sup>2</sup>. Apartment 2 also has a private garden to the west of the proposed building which is approximately 60m<sup>2</sup>. Apartments 3 and 4 both have small terrace areas leading out to the communal garden.

At first floor level four of the apartments have terrace/balcony areas, two to the north elevation and two to the south elevation, this is mirrored at second floor level. At third floor area there is a larger terrace area which covers the area recessed at this level, the largest section of which is to the west elevation.

Waste storage is also provided for within a small bin store area to the south of the parking area and east of the new building.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")

#### Material Considerations

- Emerging Torquay Neighbourhood Plan
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

## **Summary Of Consultation Responses**

### Historic England

The proposed new building will be a bulky, and incongruous form when seen in the context of the elegance of the Victorian villas which populate so much of this part of Torquay. Whilst many have been insensitively altered in recent decades, the predominant architectural idiom is clear and defines the character of the area - graceful, stuccoed buildings with pitched slate roofs set at an oblique angle in spacious plots - the proposed replacement building would be an inharmonious addition to the street scape, neither referencing the surrounding buildings in scale or form nor as a piece of complementary and dignified design in its own right. As a result, Historic England does not accept that this revised proposal will either conserve or enhance the character of the Conservation Area and we maintain that a more contextual response should be sought.

While Historic England does not wish to question the principle of some development at this location, we believe a more sensitive architectural solution is required in order to preserve the character and appearance of the surrounding conservation area. We therefore encourage your authority to seek significant design modifications.

### Conservation and Design Team

An 'on balance' consideration should be given as the existing building could be regarded as a negative contributor to the conservation area. Because of the lack of overall quality of the existing building and some of the positives of the proposed design elements of the new building a case could be made on balance to suggest that the scheme represents less than substantial harm to the designated heritage asset in which case para 196 of NPPF should be applied.

### Drainage Engineer

Providing the surface water drainage is constructed in accordance with the submitted documents there is no objection on drainage grounds to planning permission being granted.

### South West Water

No objection

### Highways / Strategic Transport

From the layout Drawing they have shown they are widening the entrance, and as there is a white "T" bar road marking across the access which allows a vehicle to exit carefully into the road, this gives them the required visibility if there were no parked vehicles each side of the access.

A previous planning application at almost the same location had taken speed readings and the outcome was the average speed in both directions was 20 mph, therefore I don't think there is a requirement for any loss of on street parking.

The parking space dimensions are correct. The Local Plan states one parking space per flat, on each application, not based on the number of rooms or adjacent developments in the area. Because of one hour on street parking and being close to a local centre, visitor parking is not essential on this site. There are two electric charging bays, but no disabled bays.

#### Arboriculture Officer

There is an Area TPO 1973.22 and Conservation Area covering the entire site. The submitted tree survey report shows the intended removal of 13 trees of mixed species (including ash, cherry, sycamore) to make way for the new building and to remove tall trees along the boundary of Manor Road due to them being generally of poor quality. These trees have been assessed as being of moderate and low quality, categorised according to BSS5837:2012 Trees in relation to design, demolition and construction. There are also tall neighbouring trees close to the proposals.

It is proposed to plant 5 new trees along the boundary of Manor Road (tall growing species including Turkish hazel, lime and Dawn Redwood). No further landscaping details have been submitted.

#### Police Designing out Crime Officer

The Police have no particular concerns with regard to the design of the proposed development

#### Affordable Housing

An Independent Viability Assessment has been provided which confirms that affordable housing is not viable on this site.

#### Waste management

The location of the bin store is within the 25m from the nearest collection point on the highway, although it would be essential to ensure that access to the bin store was not blocked for the collection crew emptying the bins and that flat, level access could be guaranteed, to facilitate collections. In order to help to ensure this and to reduce the amount of time that the collection vehicles spend parked up outside the property, it might be prudent to locate the bin store closer to the highway.

#### **Summary Of Representations**

Seventeen representations objecting to the scheme. A summary of the main planning related concerns are detailed below.

- Overdevelopment
- impact on infrastructure
- poor design and harmful visual impact
- impact upon the conservation area
- impact upon the character of the existing villa
- too large/tall

- out of character
- loss of outlook
- loss of light
- loss of privacy and overlooking
- noise and disturbance
- lack of parking & traffic congestion
- access issues
- drainage

### **Relevant Planning History**

DE/2018/0062 - Demolition of existing building and formation of 17 Apartments; the general design proposal for a modern building was supported, it was suggested that further information regarding the fourth storey were submitted 06.11.2018

P/2003/1244 - renewal of P/1998/0844; approved 28.08.2003

P/1998/0844 - Alterations and erection of ground floor extension to provide 4 bedrooms and WCs to existing residents lounge; approved 27.07.1998

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. The principle of the development
2. Visual impact, including the setting of the St Marychurch Conservation Area
3. Impact upon the residential amenity of adjacent occupiers
4. The quality of the proposed residential environments
5. Highway, parking and movement impacts
6. Flood risk and drainage impact
7. Ecological impact
8. Arboricultural impact

#### **1. The principle of the development.**

The existing building is not Listed however it is within a Conservation Area and is therefore afforded some protection as an undesignated heritage asset. Any protection afforded to the building is because of its location within the Conservation Area and not because of its current architectural quality. It is evident that the original villa character of the building has been lost through the addition of a number of unsympathetic extensions over the years. The result of this is that little of the original villa is now visible and the building is of very poor architectural character/quality. Policy SS10 refers to conservation and the historic environment, this policy advises that all heritage assets will be protected, proportionate to their importance. In this instance the existing building is of no historical or visual importance and in fact has a detrimental impact on the character and appearance of the Conservation Area. The loss of the existing building is not a central issue to consider in this context and would be hard to resist in planning terms.

Policy H6 (Housing for people in need of care) states that proposals involving the

loss of existing care facilities will be supported where the facilities are no longer needed. The policy goes on to say that where a change of use from a care home is agreed, the creation of family homes will be encouraged. The care home closed down in 2017 and has not been in use since. Although the proposals may not necessarily consist of family homes, they do provide well-proportioned accommodation in a very sustainable location and will make a useful contribution to the housing stock in the area, as such they are deemed to comply with Policy H6 of the Local Plan.

The principle of residential apartments on the site is considered acceptable as it would reflect and sit comfortably with the predominant residential character of the area. The location is considered to be well suited for a residential use as the site is in a sustainable central location close to shops, social and recreational infrastructure and transport links.

The principle of providing a larger building on the site is generally supported in Local Plan policy guidance and in the NPPF, with the notion clear that development should seek to maximise the re-use of urban brownfield land, subject to other considerations. In further policy terms the provision of seventeen units on the site will also aid the delivery of new homes and the Council's 5 year housing supply.

In summary, in terms of planning policy and principle the demolition of the building is accepted. The site provides a good location for a residential use as there is a residential character to the area and the site is close to services and facilities and presents the efficient use of brownfield land that would help meet housing need and the Council's 5 year housing supply. This presents general accordance with the aims and objectives of Policies H1 (Applications for new homes), SS11 (Sustainable communities), SS12 (Housing) and SS13 (Five year housing supply) of the Local Plan.

## **2. Visual impact, including the setting of the St Marychurch Conservation Area.**

The demolition of the existing building has previously been discussed, the current building has a detrimental impact on the character and appearance of the Conservation Area. As so little of the original villa remains it would not be possible to remove the unsympathetic additions

The site is located in a reasonably prominent roadside position within the St. Marychurch Conservation Area. It is therefore important to consider whether the scale and form of the proposed buildings fits with the overall grain of the area and does not adversely affect the character and appearance of the conservation area.

The modern design proposed under this development is comparable with other replacement villas in Torbay and there are examples of similarly designed

building within the area. The recent development at South Devon Hotel, 10 St Margarets Road (P/2017/0888) which is some 160m to the north-west of the application site and 178 St Marychurch Road (P/2009/0333) are examples of recent modern designed buildings to the St Marychurch area which resulted in higher density developments, making efficient use of brownfield sites. These buildings, and the proposed development, are responsive to the context of the area which is that of large detached villas and apartments.

The design has been revised during the application stage with the fourth floor being 15% smaller, the design now has more vertically proportioned openings, rendered white elevations, natural stone walling and a single principal projecting bay with open corners. The elevations have become simpler and more successful, and the fenestration clearly expresses a vertical emphasis to the openings, which reflects the Victorian properties that it seeks to reference. The applicant has followed advice from the Council's Historic Environment Officer in providing a modern design approach rather than a pastiche building. Although it is noted that Historic England appear not to favour this design form there are examples of this modern form within Conservation Areas and within former villa plots in Torbay. The modern design is deemed to be responsive to the Conservation Area and the concept of such a form of development is deemed to comply with Policy DE1.

As previously stated the proposal has been amended during the application stage with the fourth floor made more recessive and reduced in overall area by 15% with the overall proposal being reduced in width resulting in a 10% reduction to the size of the development overall.

The proposed building is a storey higher than the existing however it is set back from the road by a further 10m than the existing building which reduces its apparent size when viewed in the immediate context. This along with the recessed fourth storey reduces the size of the building when viewed from the wider Conservation Area. The information submitted by the applicant identifies a number of 3-5 storeys buildings in the surrounding area although the immediate context is that of two-three storey villas.

Policy DE4 (Building heights) states that new development should be constructed to the prevailing height within its location. However the introduction of buildings higher than the prevailing building height will be supported where they;

- o Enhance the vitality of the area
- o Strengthen the character of the area
- o Are appropriate in terms of their visual impact
- o Make a positive addition to the built form

In this instance the proposal would replace an existing building of poor design which is currently vacant and replacing it with a taller building of a good quality design which would contribute towards Torbay's 5 year housing land supply.

The general scale of development is considered commensurate with the locality having regard to the surrounding density and character. Examples of more recent development that has been built have sought the efficient use of land and often resulted in an increase in building heights whilst still being in-keeping within the existing townscape.

The development, on balance, is deemed to lead to less than substantial harm to the significance of the Conservation Area and would provide a public benefit through the addition of a new, good quality building which would provide much needed housing. The proposal is deemed to comply with paragraph 196 of the NPPF and Policy SS10 of the Local Plan which requires development to conserve or enhance the character and appearance of Conservation Areas.

The orientation of the building, which is parallel to its boundaries, is considered to be suitable and picks up the historical context of the building layouts of neighbouring plots. The footprint of the building is modestly increased from 465m<sup>2</sup> to 503m<sup>2</sup> which is an increase in the built area of the site from 27.1% to 29.3%. Bearing this in mind the proposal is not considered to be an overdevelopment of the site and would comply with Policies DE1 & H1 of the Local Plan.

There is a Grade II Listed Building 30m to the north known as Alderbourne on Greenway Road, Policy HE1 states that development proposals should preserve any listed building and its setting. The proposal is considered to preserve the setting of the listed building and therefore complies with Policy HE1.

### **3. Impact upon the residential amenity of adjacent occupiers.**

The existing properties to the east, the closest of which is Chilcote House is approximately 35m away. Although the proposed development will be taller than the existing building on the site, the distance between the existing properties to the east and the proposal is considered to be sufficient enough to have a limited impact on the privacy and amenity of the occupiers of these properties.

To the south the properties of 19-25 Manor Road are approximately 25m away and the southern boundary is well screened by existing mature trees. The proposed building is taller than the existing and includes balconies/terraces on its southern boundary however the distance between the properties and the existing boundary screening result in an acceptable level of overlooking/intervisibility.

The proposed building is set off of the west boundary by 4m and is 6m from the closest point of Sandhurst Court. The realignment of the building and the increase in height which will result in a development 2.2m higher than the highest point of the existing would inevitably result in a more dominant building when viewed from Sandhurst Court the built form would however be sited further off of the boundary than is currently the case and the fourth storey would be recessed

to the extent that the increase in height would have limited impact in terms of overdominance. However the building would be bulkier in terms of its height in relation to the boundary and in terms of the extent to which it protrudes further to the rear than the existing.

On balance the increase in bulk of the building is considered to be a suitable distance from the boundary and from the neighbouring property to the west for the relationship to be acceptable in terms of overdominance/overbearing impact. The increase in height and reorientation of the building would not cause an unacceptable increase in loss of light to habitable windows in Sandhurst Court given its location away from this boundary.

When considering overlooking/intervisibility between the proposed dwellings and the property to the west, Sandhurst Court, which is 6m at its nearest point, it is noted that there are more windows than in the existing building on the west elevation of the proposed building at first, second and third floor level (including the third floor terrace area). Subsequently there is likely to be more opportunity for overlooking and loss of privacy between the two buildings. Privacy could be protected by requiring a scheme of obscure glazing on the west elevation and a method of reducing overlooking from the west elevation of the third floor terrace by a planning condition.

On balance and subject to the addition of a condition regarding a scheme of obscure glazing, the proposal is considered acceptable in terms of its impact on residential amenity and compliance with policy DE3 of the Local Plan.

#### **4. The quality of the proposed residential environments.**

The individual apartments are all relatively large and are in excess of the minimum space standards laid out in the local plan.

The supporting text to policy DE3 of the Local Plan seeks to achieve a minimum size for dwellings and gardens and better designed homes. The unit sizes are consistent with the suggested standards as is the amount of communal garden space.

The units are all acceptable in terms of outlook, amenity and design and are considered compliant with the relevant paragraphs of the National Planning Policy Framework which refer to creating good quality living environments and policy DE3 of the New Local Plan.

#### **5. Highway, parking and movement impacts**

The scheme presents a widened and improved access point to the current arrangement this is supported by the Council's Highway Engineers as this is likely to present a safer entry and exit point with improved visibility.

The scheme proposes a parking ratio of 1:1 which is in accordance with the

parking level required by Policy TA3 for apartment schemes outside of town centres. It is noted that parking pressures have been raised as a concern in representations. The Highways Officer has advised that the parking provision is acceptable and because of one hour on street parking and being close to a local centre, visitor parking is not essential on this site. The garage spaces, which were below the size standards in the Local Plan have been replaced by undercroft parking.

There is an absence of disabled parking and the layout should accord for one space being at least 3.6m wide. The addition of one disabled parking space to the layout will be requested by condition.

Cycle parking has been engrained within the scheme in the undercroft area, further details of the siting of these spaces will be requested by condition. The provision is considered acceptable and these should be achieved by condition citing the provision prior to occupation and retention for such purposes at all times thereafter.

With an improved and safer access secured, together with adequate parking and cycle store provision, the proposal is considered acceptable on highway, movement and parking grounds and in accordance with the aims and objectives of Policies TA2 (Development access), TA3 (Parking requirements) and Appendix F (Car parking requirements) of the Local Plan.

#### **6. Flood risk and drainage impact.**

Torbay has been designated a critical drainage area (CDA) with a more rigorous surface water disposal strategy required in order to ensure that brownfield sites achieve much reduced rates of surface water runoff.

The developer has demonstrated that the use of infiltration drainage at this site is not feasible and he has therefore proposed a controlled discharge to the combined sewer system.

The proposed drainage strategy complies with the requirements of the Torbay Critical Drainage Area with surface water discharging to the culverted watercourse at a controlled discharge rate limited to 1.5l/sec. The developer has submitted calculations showing how the 1 in 10 year Greenfield run-off rate has been calculated.

Hydraulic calculations have been submitted to demonstrate that the surface water drainage for this development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change.

The proposal therefore complies with the requirements of Policies ER1 and ER2

of the Local Plan.

### **7. Ecological impact.**

The existing building has been surveyed for bats and no evidence of any current or recent bat use was found and the building was considered to have a low level of potential for roosting bats. No evidence of nesting birds was found within the roof or eaves of the building however the mature trees and shrubs in the garden offer suitable features for nesting birds and foraging bats.

The submitted Preliminary Ecological Appraisal states that the rear garden is likely to support slow worms. Subsequently recommendations during the construction phase have been identified within the accompanying ecological report to avoid disturbance to slow worms. The recommendations within the ecological report will be achieved with the addition of a planning condition. A condition regarding works during the bird nesting season is also considered necessary.

National and local guidance outlines that development proposals should take opportunities available to enhance biodiversity in order to respond to guidance within the NPPF and Policy NC1 (Biodiversity and geodiversity) of the Local Plan. A detailed landscape plan is considered through planning condition.

### **8. Arboricultural impact.**

All trees on site are protected by virtue of being within a Conservation Area. The submitted Arboricultural Impact Assessment (AIA) states that the arboricultural impact of the development are generally low. The scale of tree loss (13) required to develop the site is low and the trees proposed for removal are all of low value and poor quality. The key trees will be retained within the proposed scheme. The retention of the key trees will screen the loss of the proposed vegetation that will be removed.

Although the building will be within shading influence of the trees to the south. The design incorporates window layout and design that maximises daylight and sunlight penetration, therefore shading from the trees is considered to be of limited concern.

The AIA is accompanied by a Tree Protection Plan, the recommendations in the AIA provide a mitigation strategy and measures to protect trees during the construction phase. Conditions ensuring the mitigation strategy and measures to protect trees on site is implemented are deemed necessary. A detailed landscape scheme is also deemed necessary through condition.

S106/CIL

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm. If the application is deemed to be acceptable, an informative can be imposed, should

consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

With regards to affordable housing, Policy H2 (Affordable housing) states that the affordable housing requirement for a scheme of 15-19 dwellings on brownfield land is 15%. The applicant has submitted an Independent Viability Assessment which has been independently verified and confirmation has been received that the scheme would not be viable if affordable housing was provided. In accordance with the provisions of the Council's Planning Contributions and Affordable Housing SPD, a s.106 agreement will be required to ensure that the viability of the scheme is reviewed and a contribution towards affordable housing is paid if the scheme turns out to be more profitable than originally anticipated.

#### Neighbourhood Plan

The Torquay Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post examination draft neighbourhood development plan, so far as material to the application. The relevant policy for this application is Policy TH8 (Established Architecture). This policy requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings. Policy TH9 (Parking Facilities) requires that all housing developments meet the guideline parking requirements. Policy TH10 - Protection of the Historic Built Environment, requires development to conserve the character of the conservation area. The proposal is considered to be in accordance with the Torquay Neighbourhood Plan.

Statement on Human Rights and Equalities Issues Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

EIA - Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

Proactive Working - 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 positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

### **Conclusions**

Bearing the above points in mind it is deemed that the proposal is appropriate for conditional approval, having regard to all national and local planning policies and all other relevant material considerations.

### **Condition(s)/Reason(s)**

01. No development (including demolition and ground works) or vegetation clearance works shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
  - a) A demolition method statement
  - b) The parking of vehicles of site operatives and visitors.
  - c) Loading and unloading of plant and materials.
  - d) Storage of plant and materials used in constructing the development.
  - e) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
  - f) Wheel washing facilities.
  - g) Measures to control the emission of dust and dirt during construction.
  - h) Measures to minimise noise nuisance to neighbours from plant and machinery.
  - i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

The approved statement shall be adhered to throughout the construction period of the development.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring

uses and in the interests of the convenience of highway users. These details are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users.

02. No development, other than demolition, shall take place until details of the proposed cladding materials (walls and roofs), boundary materials and openings have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policy DE1 & SS10 of the Adopted Torbay Local Plan 2012-2030.

03. Prior to the first occupation of the development hereby permitted, the cycle storage and area for the storage of refuse and recycling, awaiting collection, shall be provided in accordance with the approved plans and shall be retained as such for the life of the development.

Reason: In interests of visual amenity and in accordance with Policies DE1 & TA3 of the Torbay Local Plan 2012-2030.

04. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 2, the erection, construction, or alteration of a gate, fence, wall or other means of enclosure shall not take place within the application site unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual amenity and in the interests of protected species in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

05. Notwithstanding the submitted landscaping details, prior to the first occupation of the development hereby approved, details of all proposed hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.

Reason: In the interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

06. Prior to any works above damp proof course level, details of a scheme of obscure glazing in relation to the windows on the western elevation and restricted use of the third floor terraced area shall be submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall detail how overlooking into the windows of Sandhurst Court will be minimised. The approved obscure glazing and restrictions shall be implemented in full prior to the first use of the associated dwellings, and shall be retained as such at all times thereafter.

Reason: In the interests of residential amenity and in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

07. The development shall be undertaken in strict accordance with the measures in the tree protection plan and those within the mitigation strategy and conclusions within the Arboricultural Impact Assessment Report.

Reason: To ensure trees are protected in the interests of biodiversity and visual amenity in accordance with policies SS10, NC1 and C4 of the Torbay Local Plan 2012-2030 and are required to be in place prior to commencement to duly protect the identified trees.

08. The development shall proceed fully in accordance with the assessment, conclusion/ recommendations detailed on page 7-8 of the Preliminary Ecological Appraisal (reference P2018-0962-2 received 19.09.2018) hereby approved.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Torbay Local Plan.

09. The development shall be undertaken in strict accordance with the submitted drainage details and retained as such at all times thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and advice within the NPPF

10. The development hereby approved shall be constructed in strict accordance with finished floor and ridge levels in relation to an agreed fixed point or O.S. datum which shall be submitted to the Local Planning Authority prior to any development other than demolition.

Reason: To ensure a satisfactory form of development that is in keeping

with the area and does not impact upon the neighbouring existing dwellings, and to ensure that the proposal accords with DE1 of the Torbay Local Plan 2012 to 2030.

11. Prior to the first occupation of any of the dwellings hereby approved, the parking facilities, electric charging points and works to the access shall be provided and thereafter permanently retained for the parking of vehicles in accordance with plans to be submitted to and approved in writing by the Local Planning Authority.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with policy TA2 and TA3 (and associated appendix F) of the Torbay Local Plan 2012-2030.

12. Prior to the first occupation of the development hereby permitted, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

### **Informative(s)**

01. All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.
02. Community Infrastructure Levy (CIL) This development is liable for contributions under the CIL regulations to provide essential infrastructure to support development in the Borough. CIL next steps required under the CIL Regulations 2010 (as amended): Where planning permission has been granted for development, the Council (as the collecting authority) requires

the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form. The Council, as the collecting authority, will then as soon as reasonably practicable, issue a Liability Notice to the applicant, the developer, and/or whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure. Any claims for exemption or relief can only be considered from parties who have already assumed liability, prior to commencement of development. The relevant liable person(s) must then submit a notice to the Council setting out when development is going to start - a Commencement Notice. The Commencement Notice must be submitted to the Council for their written acknowledgement at least 48 hours prior to the start of any development on the site. No development must commence without written acknowledgement of receipt of a Commencement Notice. The Council will then issue a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. On receipt of the demand notice and commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure. Failure to inform the Council of Commencement or to follow the CIL process and payment procedure correctly may result in the addition of surcharges and/or late payment interest. It must be noted that it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (Regulation 110 as amended by the 2011 Regulations). Further CIL information and Forms can be found at <https://www.gov.uk/guidance/community-infrastructure-levy#forms-and-template-notices>

### **Relevant Policies**

- TH8 - Established Architecture
- TH9 - Parking Facilities
- TH10 - Protection of the Historic Built Environment
- DE1 - Design
- DE3 - Development Amenity
- TA2 - Development access
- TA3 - Parking requirements
- C4 - Trees, hedgerows and natural landscape
- NC1 - Protected sites - internationally import
- HE1 - Listed Buildings
- H1 - New housing on identified sites
- H6 - Affordable housing on unidentified sites
- DE4 - Building heights
- ER1 - Flood Risk
- ER2 - Water Management

**Application Number**

P/2018/1274

**Site Address**

Waldon Point  
St Lukes Road South  
Torquay  
TQ2 5YE

**Case Officer**

Miss Emily Elliott

**Ward**

Tormohun

**Executive Summary/Key Outcomes**

This planning application is for the installation of 12 no. telecommunications apertures, antennas, raised working platforms, cabinets, dishes and ancillary works on the roof of Waldon Point, which is a multi-storey apartment building. The proposal also includes the removal of redundant equipment.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, residential amenity and flood risk. It is considered that the proposal is in accordance with the Torbay Local Plan and the Torquay Neighbourhood Plan..

**Recommendation**

That planning permission is granted. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

The application has been referred to Planning Committee due to the number of objections that have been received.

**Statutory Determination Period**

4th March 2019. Extension of time agreed until 12<sup>th</sup> June 2019.

**Site Details**

The application relates to Waldon Point, St. Lukes Road, Torquay, which is an apartment complex located within the Belgravia Conservation Area.

**Detailed Proposals**

This planning application proposes the installation of 12 no. telecommunications apertures, antennas, raised working platforms, cabinets, dishes and ancillary works. The proposal also includes the removal of redundant equipment.

**Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary of Consultation Responses**

#### Interim Heritage Advisor

*The site is located within the designated Belgravia Conservation Area the character and appearance of which should be protected from harm as detailed by the Planning (Listed Building and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. The special character of the Belgravia conservation area is detailed by the Conservation Area Character Appraisal. The site in question falls within the St Luke's and Waldon Hill character area which is described as follows:-*

*On Waldon Hill, the first roads were laid out in the 1840s, largely following the contours. These then became the focus of the early villa development, although it is probable that where, for example, Warren Road faces across the bay from an elevated position, some villas undoubtedly soon started to adapt their accommodation to the visitor trade. The hill is now a mixture of small to medium-sized hotels and retirement homes, and also a number of surviving 19th century villas in private, individual or multiple ownership. On the crown of the hill, are extensive blocks of flats dating from the 1960s to the 1980s, most notably Lytton House, which dominate the skyline.*

*The buildings are interspersed with street trees which are largely deciduous, whilst the trees within the landscaped grounds of the villas remain the planted evergreens. At Rock Walk there are some fine individual specimens providing a luxuriant landscape setting to the prominent hotels and villas on the skyline above.*

*The building itself is of a more modern style with a concrete and grey brick style clad exterior and as such is not identified of any particular architectural or historic merit in the context of the Conservation Area. The surrounding trees/ hedgerow is identified as an important features but are not directly affected by the proposal. Whilst the appraisal identifies important viewpoints (enclosed and open) such viewpoints do not include the building in question, as they tend to relate to sea or town views. To the north and west of the application site are buildings identified 'Important building groups, normally of a similar date, or character of frontage detail'. However the proposal does not directly impact upon the specific value of these buildings.*

*Due to the height and design of Waldon Point, the existing telecommunications infrastructure on the building, and existing vegetation, especially mature trees, the impact of the proposed structures from the public realm in relatively close proximity to the site will be limited. From more distant public views that the structures will become slightly more apparent however the existing telecommunication structures are already visible and whilst the new apparatus will add to the impact, the views concerned are generally long range and development proposed should not significantly impact upon the special character of the Conservation Area.*

*I am mindful of the setting of listed buildings in the area, especially the church, however contextual views between the application site and listed buildings are considered to suitably divorced that there is no significant impact.*

*In conclusion, whilst the proposal will lead to some limited change and the introduction of what may be regarded as additional visual clutter, I consider that in terms of the impact upon the heritage assets the proposal will lead to limited harm and that this falls within the category of less than substantial harm to the significance of a designated heritage asset, therefore this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.*

#### Torquay Neighbourhood Plan Forum

No comments received.

#### **Summary Of Representations**

The application was publicised through a site notice and neighbour notification letters. Fifty-five neighbour notification letters were sent to those neighbours which the development could affect. Nineteen letters of objection have been received. Concerns given by objectors relate to visual impact, impact on the local area, residential amenity, along with non-planning matters relating to the structural stability of the building and income.

#### **Relevant Planning History**

P/2013/1285: Notification of intention to install electronic communications. Approved 16/12/2013.

P/2011/0696: Removal of 3 existing Antenna and Replace with 6 new Antenna 2 of which will be located on a new pole mount located on plant room roof. 24/08/2011.

P/2010/0804: Installation of aerial on roof. 15/11/2010.

P/2008/1349: Telecommunications application - installation of 1 number Sira antenna to replace 4 existing log periodic antennas. 19/11/2008.

P/2006/1339: Telecommunications Apparatus To Add 3 Existing Antennas With 3 Antennas And Installation Of An Additional Cabinet On Roof. 10/10/2006.

P/2006/0956: Telecommunications Application To Form Additional 3 Cabinets To Be Mounted On Roof. Approved 18/07/2006.

P/2005/0410: Telecommunications Apparatus To Replace 3 Existing Antennae And Associated Works. Approved 11/04/2005.

P/2004/1650: Telecommunications Apparatus Of 3 Additional Antennas To Be Added To Existing. Approved 25/11/2004.

P/2002/0849: Installation Of Telecommunications Apparatus On Roof Top Comprising 3 Antennae, One Microwave Dish And Equipment Cabinet. Approved 22/07/2002.

P/2001/0083: Installation Of Replacement Telecommunications Apparatus And Additional Dish Added To Existing Antenna Pole. (Representations To Be Received By 21.02.2001). Approved 05/03/2001.

P/1999/1189: Installation Of Telecommunications Apparatus (Representations To Be Received By 1.9.99). Approved 08/09/1999.

P/1999/1127: Alterations To Existing Vodafone Rooftop, Installation To Allow Co-Location With Cellnet. Erection Of Brick Built Tiled Roof Equipment Cabin On North Side Of Building. Approved 06/09/1999.

P/1996/0601: Installation Of Telecommunications Apparatus (Representations To Be Received By 21/6/96). Approved 24/06/1996.

P/1995/1211: Installation Of Telecommunications Apparatus/Base Station (Representations To Be Received By 30/10/95). 01/11/1995.

P/1995/0604: Installation Of Telecommunications Apparatus (Representations To Be Received By 15th June 1995). Approved 23/06/1995.

P/1995/0457: Installation Of Telecommunications Apparatus (Representations To Be Received By 8th May 1995). Approved 09/05/1995.

P/1984/3167: T.V.Relay Station And Mast. Approved 24/12/1984.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of Development
2. Visual Impact
3. Development Amenity
4. Flood Risk

#### **1. Principle of Development**

Policy IF1 of the Local Plan supports, in principle, the introduction and installation of the most up to date and fastest telecom and other Information and Communications Technology (ICT).

The site is within a Community Investment Area, Policy SS11 of the Local Plan states that within these areas development which leads to the improvement of social and economic conditions in Torbay will be supported in principle. The proposal seeks to upgrade the existing site to facilitate additional coverage and capacity requirements, incorporating both 4G and 5G technology.

Paragraph 112 of the NPPF states that 'advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being', and that 'planning policies and decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G)'. The NPPF states that the use of existing masts and buildings for new electronic communications capability should be encouraged.

The proposed development is considered acceptable in principle.

## **2. Visual Impact**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. Policy TH8 of the Torquay Neighbourhood Plan requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings.

The site, Waldon Point, has existing telecommunications infrastructure on the rooftop of the building. Objectors have raised concerns with regards to the visual impact of the proposal and the impact the proposal will have on the local area and the Belgravia Conservation Area. The Council's Interim Heritage Advisor has stated that Waldon Point is of a more modern style with a concrete and grey brick style clad exterior and as such is not identified as being of any particular architectural or historic merit in the context of the Belgravia Conservation Area.

The proposal is to accommodate apparatus on an existing structure, and the proposed apparatus and structures have been sited and designed to minimise the proposal's visual impact. Due to the height of Waldon Point, from close views the apparatus and associated structures are not visible, however from Town Centre and sea views the proposal is marginally visible but it is considered that the proposal would have a minimal visual impact due to the existing telecommunications equipment on site.

The surrounding trees/ hedgerow are identified as an important features but are not directly affected by the proposal. To the north and west of the application site are buildings identified as 'important building groups, normally of a similar date, or character of frontage detail'. The Council's Interim Heritage Advisor states that the proposal does not directly impact upon the specific value of these buildings. When considering the setting of listed buildings in the area, the Council's Interim Heritage Advisor considers that the contextual views between the application site and listed buildings are suitably divorced that there is no significant impact.

The Council's Interim Heritage Advisor has stated that due to the height and design of Waldon Point, the existing telecommunications infrastructure on the building, and existing vegetation, especially mature trees, the impact of the proposed structures from the public realm in relatively close proximity to the site will be limited. From more distant public views the structures would become slightly more apparent, however the existing telecommunication structures are already visible and whilst the new apparatus will add to the impact, the views concerned are generally long range and the development proposed should not significantly impact upon the special character of the Belgravia Conservation Area.

The Council's Interim Heritage Advisor concludes that whilst the proposal will lead to some limited change and the introduction of what may be regarded as additional visual clutter, it is considered that in terms of the impact upon the heritage assets the proposal will lead to limited harm and that this falls within the category of less than substantial harm to the significance of a designated heritage asset, therefore this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. It is noted that the proposal would support the aforementioned policy objectives of enhancing local communications infrastructure and provision. It is considered that there are public benefits in this case that outweigh the less than substantial harm identified in relation to heritage assets.

Given the existing situation on site with the existing telecommunications apparatus, it is considered that given the proposal's siting, scale, and design, that it would not result in unacceptable harm to the character or visual amenities of the locality. Policy IF1 of the Local Plan states that a planning condition will be employed with a planning consent to ensure that any telecommunication

apparatus and associated structures that subsequently become redundant will be permanently removed from the site.

Subject to the use of this condition, the proposal is considered to comply Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained in the NPPF.

### **3. Development Amenity**

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

The proposed development would be sited on the rooftop of Waldon Point. Objectors have raised concerns regarding residential amenity. The application is supported by an ICNIRP (The International Commission of Non-Ionizing Radiation Protection) certificate.

Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, access to light, or in terms of disturbance.

The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

### **4. Flood risk**

Policy ER1 Flood Risk of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to

the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Adopted Torbay Local Plan 2012-2030, the Paignton Neighbourhood Plan, and all other material considerations.

### **Conditions**

Any of the approved telecommunications equipment which becomes redundant and ceases to be used for a period in excess of six months shall be permanently removed within a further period of three months.

Reason: In the interests of visual amenity and protecting the Belgravia Conservation Area, and in accordance with Policies DE1 and SS10 of the Torbay Local Plan, and Policy TH8 of the Torquay Neighbourhood Plan.

### **Relevant Policies**

DE1 - Design

DE3 - Development Amenity

SS10 - Conservation and Historic Environment

ER1 - Flood Risk

SS11 - Sustainable Communities

IF1 - Information and Communications Technology

TH8 – Established Architecture

**Application Number**

P/2019/0152

**Site Address**

133-135 Winner Street  
Paignton  
TQ3 3BP

**Case Officer**

Miss Emily Elliott

**Ward**

Roundham with Hyde

**Executive Summary/Key Outcomes**

The application proposes the material change of use of the ground floor of 133-135 Winner Street, Paignton, from a retail unit to a one-bedroom apartment.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, impacts on residential amenity, highways and flood risk. The proposal meets the requirements of the Torbay Local Plan and the Paignton Neighbourhood Plan..

**Recommendation**

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

As the proposed development is on land owned by a Councillor, the Council's constitution requires that the application be referred to the Planning Committee for determination.

**Statutory Determination Period**

3<sup>rd</sup> April 2019. Extension of time agreed until 14<sup>th</sup> June 2019.

**Site Details**

The application site comprises an end of terrace two-storey building, located on Winner Street, Paignton. The application site is currently a retail unit, which comprises a mid-twentieth century shopfront. The terrace of buildings is stepped back from the building line of the street frontage.

The site is located within the designated Old Paignton Conservation Area. There are a number of Grade II Listed Buildings within the immediate vicinity of the site. The site is not located within Paignton Town Centre, however it is in close proximity.

**Detailed Proposals**

The application proposes a change of use on the ground floor of 133-135 Winner Street, Paignton, from a retail unit to a one-bedroom residential apartment. The proposal includes a bedroom, a bathroom, a utility room and open kitchen/lounge/dining area. The proposal also includes external alterations to the building.

The external alterations include the removal of the shop frontage which serves as the retail unit, to be replaced with two windows and a door to serve the apartment. Further external alterations include the insertion of two windows to the southern side elevation and the insertion of a roof light to the rear existing flat roofed extension of the building.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Paignton Neighbourhood Plan

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary Of Consultation Responses**

Interim Heritage Advisor: *I am also mindful that a very similar scheme was approved at 141-143 Winner Street where no heritage objections were raised. The building has a relatively modern utilitarian appearance and forms part of a short terrace of shops which includes 141-143) at the fringe of the shopping area. The shop front is reasonably well proportioned but of no particular architectural or historic merit. The proposal to remove the shop front and insert windows and a new door is generally sensitively handled and appropriately retains the feature brick work whilst aligning the new ground floor with that above.*

*It would however be desirable to seek more traditional sliding sash windows on the ground floor (although I have no objection to the use of UPVC in this particular context). The access and design statement suggests that the new ground floor windows will match those at first floor but as these appear to be designed to allow the bottom section to tilt out this doesn't either appear to be a*

*visually attractive or indeed practical solution given that the windows adjoin a pavement. The new windows should be recessed at least to the same extent as the upper floor windows. Similar I would suggest that the new window and door details should be conditioned to ensure that it is of a quality appropriate to the Conservation Area.*

*Subject to the observations regarding the windows and door being resolved in my view the development will not harm the special character or appearance of the architectural and historic merit conservation area (i.e. will in effect preserve the overall special character and appearance ) and therefore will comply with requirements of the Planning (Listed Building & Conservation Area) Act 1990.*

Drainage Engineer: The development is located in Flood Zone 1, is not in an area susceptible to surface water flooding and relates only to a change of use, I have no objections on drainage grounds to planning permission being granted.

Highways Engineer: No objections.

Paignton Neighbourhood Forum: No comments received.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Twenty eight neighbour notification letters were sent to those neighbours which the development could affect. One letter of objection has been received. Concerns raised relate to access with regards to the shared footway between 131 Winner Street and the site.

### **Relevant Planning History**

No previous relevant planning history associated with the site.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Highways
5. Flood risk

#### **1. Principle of development**

The proposal is for a change of use on the ground floor from a retail unit to a one bedroom apartment. Being located within the built up area, a dwelling is considered to be in accordance with Policy H1 of the Local Plan, and acceptable is in principle.

Policy TC4 states that residential use of ground floor units in peripheral parts of

the town centres, which are not subject to a primary or secondary frontage designation, will be permitted as long as these do not undermine the role or vitality of town centres, for example by creating inactive frontages. Furthermore, outside of town, district, local or neighbourhood centres proposals for the change of use of corner shops, village shops and other isolated shops will only be permitted where this would not result in the significant loss of facilities serving the day to day needs of local communities. The site is not within one of the centres listed in Policy TC2 of the Local Plan and when considering its proximity to Paignton Town Centre is not considered to be required to serve the day to day needs of local communities.

The site is currently being utilised as a retail unit. Whilst it may be preferable to continue a retail use which features an active frontage, it is considered that the proposal would help to improve the appearance of the building.

The site is within a Community Investment Area, Policy SS11 of the Local Plan states that within these areas development which meet the needs of residents, in terms of providing small to medium sized homes will be supported in principle.

The principle of the change of use is therefore considered acceptable.

## **2. Visual amenity**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy PNP1(c) Design Principles of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the proposal to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

The proposal seeks to replace the mid-twentieth century shop frontage with a new entrance door and two windows to the principal elevation, two windows to the southern side elevation and a roof light to flat roofed extension to the rear of the building. Given the proposal's siting, scale, and design it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality.

Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. The Council's Interim Heritage Advisor

has stated that the building has a relatively modern utilitarian appearance and that the existing shop front is reasonably well proportioned but of no particular architectural or historic merit. Therefore, the proposal to remove the shop front and insert windows and a new door is generally sensitively handled and appropriately retains the feature brick work whilst aligning the new ground floor with that above. The Council's Interim Heritage Advisor has stated that the new windows should be recessed to the same extent as the first floor windows.

A planning condition will be employed to secure details of the proposed windows and door details prior to their installation to ensure that the materials enhance and conserve the Old Paignton Conservation Area and to ensure that the proposal complies with the requirements of the Planning (Listed Building & Conservation Area) Act 1990.

Policy PNP11 of the Paignton Neighbourhood Plan states that subject to other policies of the Neighbourhood Plan, improvements of the area will be supported that better the function, amenity and public enjoyment by design detail that will retain shop and building fronts of importance to the area. Policy PNP11 goes on to state that where possible historic features such as building lines, window patterns and material should be reinstated. It is considered that the existing shop frontage and retail unit is not of importance to the area as it is a later addition to the streetscene. The proposal seeks to remove the shop frontage and propose fenestrations which will provide uniformity to No.133-135 Winner Street. A planning condition will be employed to secure details of the materials used to reinstate the principal elevation of the building, including appropriate opening types.

Subject to the planning conditions mentioned, the proposal is considered to comply Policies DE1 and SS10 of the Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan and the guidance contained in the NPPF.

### **3. Residential amenity**

Policy DE3 Development Amenity of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

The proposed one bedroom apartment has an internal floor area of approximately 87 square metres. It includes a bedroom, a bathroom, a utility room and open kitchen/lounge/dining area. Table 23 of the Local Plan sets the dwelling space standards for Torbay which are taken from the Government's Nationally Described Space Standard. For a one-bedroom apartment, the minimum gross internal floorspace area is 39 square metres where there is a bath instead of a shower in the bathroom. The proposed one bedroom apartment exceeds the required minimum gross internal area and therefore complies with this criterion of Policy DE3.. Policy DE3 of the Local Plan also states that apartments should provide 10 square metres of outdoor amenity space and the proposal includes approximately 13 square metres of outdoor amenity space. A

planning condition will be included to provide details regarding the boundary treatments for the site.

The plans for the proposal have been revised a number of times to overcome officer concerns in relation to the internal environment for the future occupiers with particular regard to the outlook and level of natural light the proposal offers. The proposed apartment is now considered to provide an adequate and suitable environment for future occupiers.

Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours in terms of their outlook, privacy, or access to natural light.

The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

#### **4. Highways**

Policy DE3 Development Amenity of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 Parking Requirements of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development.

The proposal would not include any parking spaces but is located in relatively close proximity to good public transportation links, central car park, and local amenities. The site is deemed to be in a sustainable location and therefore does not require a parking space. An objector has raised concerns with regards to the access of the alleyway to the southern boundary of the site, the proposed floorplan shows that there is shared access for the adjacent building No.131 Winner Street and the application site. The access route in question becomes exclusive to the proposed dwelling approximately halfway along the southern boundary of the site, which then provides a small courtyard and storage area for the proposed apartment. This arrangement is considered adequate to allow a safe and usable access for the proposal's future occupiers. The proposed waste storage and bicycle storage is not particularly clearly detailed on the proposed floorplans. In light of this, a planning condition has been included to require the submission of details relating to waste and bicycle storage.

Subject to the aforementioned planning conditions, the proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan.

#### **5. Flood risk**

Policy ER1 Flood Risk of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy PNP1(i) Surface Water of the Paignton Neighbourhood Plan states that developments will be required to comply with all relevant drainage and flood risk policy.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan and Policy PNP(i) of the Paignton Neighbourhood Plan.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Adopted Torbay Local Plan 2012-2030, the Paignton Neighbourhood Plan, and all other material considerations.

### **Condition(s)/Reason(s)**

#### **Window and Door Details**

Prior to the installation of the windows and doors the following shall be submitted to and approved in writing by the Local Planning Authority, which seek to respond to the positive aspects of the local prevailing character of the area:

- Sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10

The development shall then proceed in accordance with the approved details and shall be carried out in full prior to the first occupation of the apartment.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Old Paignton Conservation Area in accordance with Policies DE1 Design and SS10 Conservation and the Historic Environment of the Adopted Torbay Local Plan 2012-2030.

#### **Bin Storage**

Prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 Design of the Adopted Torbay Local Plan 2012-2030.

#### **Bicycle Storage**

Prior to the first occupation of the development hereby permitted, provision shall be made for the storage of bicycles according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the

development in accordance with Policies TA2 Development Access and TA3 Parking Requirements of the Adopted Torbay Local Plan 2012-2030.

### **Boundary Treatment**

Prior to the first occupation of the development hereby permitted, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

### **Materials**

Prior to the first occupation of the development hereby approved, proposed cladding materials relating to the principal elevation of the building shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030.

### **Relevant Policies**

DE1 - Design  
DE3 - Development Amenity  
SS10 - Conservation and Historic Environment  
ER1 - Flood Risk  
TA2 - Development Access  
TA3 - Parking Requirements

PNP1(c) – Design Principles  
PNP1(d) – Residential Development  
PNP1(i) – Surface Water  
PNP11 – Old Town

**Application Number**

P/2019/0268

**Site Address**

Café Cockington Court  
Cockington Lane  
Torquay  
TQ2 6XA

**Case Officer**

Ross Wise

**Ward**

Cockington With Chelston

**Executive Summary/Key Outcomes**

This application is for listed building consent only. Listed building consent is required for all works of demolition, alteration or extension to a listed building that affect its character as a building of special architectural or historic interest.

This application proposes the redecoration of an existing café dining space and to provide a new serving counter. The proposal will also seek to install parasols in the external courtyard to provide shelter for customers.

The proposal is considered to be in accordance with Policies DE1, HE1 and SS10 of the adopted Torbay Local Plan, along with Policies TH8 and TH10 of the Torquay Neighbourhood Plan, and is recommended for approval.

**Recommendation**

Approval, with the final drafting of any conditions and resolution of any outstanding matters to be delegated to the Assistant Director for Planning and Transport.

**Reason for Referral to Planning Committee**

As the proposed development is on land that is registered as a Torbay Council asset and an objection has been received, the Council's constitution requires that the application be referred to the Planning Committee for determination.

**Statutory Determination Period**

The eight week target date for determination of this application was the 13<sup>th</sup> May 2019. An extension of time to 10<sup>th</sup> June 2019 has been agreed.

**Site Details**

The site is the Café at Cockington Court, Cockington Lane, Torquay. The building is a Grade II\* listed manor house, located within the Cockington Conservation Area. The café occupies part of the ground floor of the manor house.

The house as it looks now is very different from when it was first constructed. Over various points in time extensions and remodelling have taken place that have

concealed much of the building's historic fabric and original layout. Many of the date stones seen throughout the house are physical evidence of this. Consequently the internal detailing will have met a similar fate and has been altered or lost throughout various stages of remodelling and reconstruction.

The wider site houses a craft centre with creative businesses and shops

### **Detailed Proposals**

The application proposes to internally refurbish the existing café rooms including a 100mm service hole through an internal wall to allow for a waste water connection. New furniture and a serving counter are also proposed. Existing features are to be retained and refurbished where necessary. Externally, within the courtyard, parasols are proposed to provide shelter for customers.

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- Torquay Neighbourhood Plan (TNP).

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary Of Consultation Responses**

Torquay Neighbourhood Plan Forum: No comments received.

Historic England: On the basis of the information available to date, we do not wish to offer any comments. We suggest that you seek the views of your specialist conservation and archaeological advisers, as relevant.

Conservation Advisor: No objections.

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advert  
1 objection have been received. Issues raised:

- Permanence of the large parasols and their effect on the principle elevation.

### **Relevant Planning History**

P/2010/0022 Formation of craft workshops and resource building, car parking, access road and paths, legibility interventions and commissioned works of art. Works to create additional car parking adjacent to Cockington church through introduction of geogrid mat and alterations to the church steps to create level access. Removal of and work to various trees. Approved 30/03/2010

P/2010/0023 Formation of craft workshops and resource building, car parking, access road and paths, legibility interventions and commissioned works of art. Withdrawn 25/03/2010

P/2011/0058 formation of bridge to cross stream in the water meadows form footpath to old carriage drive. Approved 10/03/2011

P/2011/0059 Formation of four temporary replacement car parking spaces. Approved 11/03/2011

P/2011/0060 Formation of four temporary replacement car parking spaces. Withdrawn 14/02/2011

P/2011/0369 Formation of replacement bridge. Approved 19/05/2011

P/2011/0370 Formation of replacement bridge. Approved 19/05/2011

P/2014/0441 Certificate of lawfulness for proposed development; repair and maintenance to existing ponds and pathways. Approved 08/07/2014

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

#### **Impact on heritage asset**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy SS10 states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Policy HE1 states that development proposals should have special regard to the

desirability of preserving any listed building and its setting, or any features of special architectural or historic interest which it possesses. Policy TH10 (protection of the historic built environment) of the Torquay Neighbourhood Plan notes that alterations to Listed Buildings will be supported where they safeguard and enhance their historic qualities and elements according to their significance.

This application is for listed building consent only. Listed building consent is required for all works of demolition, alteration or extension to a listed building that affect its character as a building of special architectural or historic interest.

In terms of visual appearance, the internal appearance will remain much as it exists. The internal decoration, proposed lighting, and new service counter and shelving are the only visible changes. The location of the proposed section of wall to be drilled through has been carefully selected so as to minimise any potential impact. After inspection it was discovered that a section of the panelling could be removed to allow for a service void to be drilled from a section of wall. As such, the proposal aims to remove the section of panelling to facilitate the drilling of the service void and retain the section of panelling in perpetuity, should it need to be replaced subject to the service void becoming no longer required. Much of the proposed redecoration is considered de minimis and hence does not require planning or listed building consent, but has been included as part of the application to create an accurate record of work.

Externally, whilst free standing larger parasols are indicated on the submitted plans in the existing external seating area, these elements are not considered to require listed building consent.

The previously mentioned refurbishment of the café and associated works are considered to result in an improved visual appearance and an enhancement to the Grade II\* listed building and the Cockington Conservation Area. The historic fabric and character of the Grade II\* listed building will therefore be preserved. The proposal is therefore considered to accord with Policies DE1, SS10 and HE1 of the Torbay Local Plan, Policies TH8 and TH10 of the Torquay Neighbourhood Plan and guidance contained within the NPPF.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article

8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposed development is considered acceptable, having regard to the adopted Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

### **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 positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for listed building consent.

### **Relevant Policies**

DE1 - Design

SS10 - Conservation and Historic Environment

HE1 - Listed Buildings

TH8 – Established Architecture

TH10 - Protection of the Historic Built Environment

**Application Number**

P/2019/0301

**Site Address**

Old Maids Perch  
Shedden Hill Road  
Torquay  
TQ2 5HD

**Case Officer**

Miss Emily Elliott

**Ward**

Tormohun

**Executive Summary/Key Outcomes**

The application proposes a variation of condition relating to application P/2014/0198 at Old Maids Perch, Shedden Hill Road, Torquay, which is in use as an outdoor seating area relating to a restaurant. The application seeks to vary condition 2, which states that the use permitted shall be discontinued on or before 1<sup>st</sup> May 2019. The variation sought is to allow the use to continue up until 1<sup>st</sup> May 2029.

The proposal is considered to be acceptable in terms of the principle of development, visual impact, residential amenity and highways. Consequently, the proposal meets the requirements of the Torbay Local Plan and the Torquay Neighbourhood Plan.

**Recommendation**

That planning permission is granted, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning and Transport.

**Reason for Referral to Planning Committee**

As the proposed development is on land owned by Torbay Council and the application has received objections, the Council's constitution requires that the application be referred to the Planning Committee for determination.

**Statutory Determination Period**

22<sup>nd</sup> May 2019. Extension of time agreed until 14<sup>th</sup> June 2019.

**Site Details**

The application site, Old Maids Perch, comprises a raised terraced area above a covered public shelter which fronts Torbay Road and backs onto Shedden Hill Road. The site has previously benefitted from a five year temporary permission to use the site in relation to the restaurant 'Le Bistrot Pierre' as an al fresco dining area. To the rear of the site is a raised landscaped bank which includes public seating.

The site is located within the designated Belgravia Conservation Area. The site is located within the Harbourside, Waterfront and Belgrave Road Core Tourism Investment Area as defined by Policy TO1 and is within the Torquay Town Centre Community Investment Area as defined by Policy SS11.

### **Detailed Proposals**

The application proposes a variation of condition relating to the planning application P/2014/0198 at Old Maids Perch, Shedden Hill Road, Torquay. The application seeks to vary condition 2 to allow for the continued use of the site as an al fresco dining area until 1<sup>st</sup> May 2029.

It should be noted that when the variation of condition application was originally submitted, condition 2 was going to be varied to permit the use of the site in perpetuity. However, due to initial policy concerns, particularly regarding the site's designation as a Local Green Space under Policy TE2 of the Torquay Neighbourhood Plan, the applicant has chosen to revise the proposal and seek a further temporary permission of ten years.

The lease between the Council and the restaurant states that the restaurant have to maintain, at their cost, all the planting and keep the area clean, tidy and weed free up to the end of the junction of Shedden Hill. The lease excludes the public right of way and the memorial benches, the shelter and the clock which remain the responsibility of the Council. These benches, the shelter and the footpath must remain accessible to the public at all times

### **Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Torquay Neighbourhood Plan

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:

### **Summary Of Consultation Responses**

Torquay Neighbourhood Forum: No objections, subject to the use of a condition limiting the period of the planning permission.

Interim Heritage Advisor: *Verbally confirmed that the development will not harm the special character or appearance of the architectural and historic merit of the Belgravia Conservation Area and therefore the proposal complies with requirements of the Planning (Listed Building & Conservation Area) Act 1990.*

Planning Policy Officer: *Torquay Neighbourhood Plan designates the area as a Local Green Space (LGS), TLGST5. Policy TE2 of the approved Neighbourhood Plan rules out development other than in very special circumstances. It allows within these very special circumstance. "...development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation".*

*The area is also within a Core Tourism Investment Area and Policy TO1 of the Local Plan seeks to improve tourist facilities in the area. The redevelopment of the former Palm Court site has been a very successful regeneration of this part of Torquay Waterfront which has provided a range of tourism related uses. The use of "Old Maids Perch" on a temporary basis under permission P/2014/0198 appears to have been part of the successful regeneration of this area.*

*The Neighbourhood Forum has made a helpful response on the application, where they agree to a further 5 year extension subject to a personal permission with the current operator. The applicant is seeking a ten years lease, which is longer than the 5 year period initially agreed by the Neighbourhood Forum, but nevertheless does not privatise the area in perpetuity.*

*At present there is public access through the area, with a number of memorial benches that appear to be available for the public to sit on. So long as public access through the area is maintained, and Pierre Bistro continue to maintain the green area as per Boyer Planning's letter of 1<sup>st</sup> May 2019; then it would appear to me that a 10 year renewal would appropriately balance the open space and tourism/economic development considerations relating to the application. I note that you have spoken to the Chair of Torquay Neighbourhood Forum and agreed a ten year period would be considered acceptable subject to the employment of a planning condition.*

*The layout Plan 1069-PL-014 appears to indicate the pathway through the site being decked and some of the benches being replaced by planters. In light of the LGS designation, the layout of the area should be kept as it currently is and the benches/access retained; and it would be worth clarifying this in the decision notice.*

*For completeness, I am aware the government guidance indicates that temporary permission should not be renewed repeatedly. However, I consider that it is*

*appropriate in this instance because of the very special circumstance of retaining the long term purpose of the LGS whilst supporting economic development. Because of the special circumstances, it is appropriate to make the permission personal to Le Bistro Pierre, to ensure the maintenance and retention of public access and management of the area.*

Highways Engineer: *The concrete steps were constructed under a S278. However, Highways would not want to adopt the decking connecting the steps due to the maintenance burden this would place on the Highways budget.*

### **Summary of Representations**

The application was publicised through a site notice, no neighbour notification letters were sent. Thirteen letters of objection and six letters of support have been received.

Concerns raised in objection include:

- Privatisation of public open space.
- Time scale (in perpetuity).
- Designated as a local green space.
- Sets precedent.
- Impact on local area.
- Not in keeping with local area.
- Residential amenity.

Comments raised in support include:

- Provides facilities.
- Makes tourist facilities better.
- Provides/retains jobs.
- It removes an eyesore.
- Impact on local area.

### **Relevant Planning History**

P/2014/0198: Change of use from public open space to restaurant seating area to serve adjacent A3 restaurant use, maintaining existing public rights of way, and in association with external works as shown. Approved 15/04/2014.

### **Key Issues/Material Considerations**

The key issues to consider in relation to this application are:

1. Principle of development
2. Visual amenity
3. Residential amenity
4. Highways

#### **1. Principle of development**

The site is a designated Local Green Space under Policy TE2 of the Torquay Neighbourhood Plan. Objectors have raised concerns regarding the privatisation of public open space, the designation of the site as a Local Green Space as defined by the Torquay Neighbourhood Plan, it would set a precedent and the timescale proposed with the initial submission of the application.

Policy TE2 states that development is ruled out other than in very special circumstances. The policy goes on to state that very special circumstances may include development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation. The Torquay Neighbourhood Forum initially commented on the application stating that they would agree to a further five year extension subject to a personal permission with the current operator. The initial submission sought to vary the condition from a temporary permission to a permanent permission. However, due to policy concerns and a departure from the Torquay Neighbourhood Plan, the applicant revised the variation to seek a further temporary permission for a ten year period, which is longer than the five year period initially agreed by the Neighbourhood Forum, but nevertheless would ensure that the space is not used as proposed in perpetuity.

The Council's Planning Policy Officer has stated that as long as public access through the site is maintained, and 'Le Bistrot Pierre' continue to maintain the green area as per the planning agent (Boyer) letter dated 1<sup>st</sup> May 2019; then the ten year temporary permission would appropriately balance the open space and tourism/economic development considerations relating to the application. It should be noted that the Chair of the Torquay Neighbourhood Forum initially objected to the proposal when the application was initially submitted for a variation to seek in perpetuity use of the site, however the revision of the variation for a further temporary permission is welcomed by subsequent representations made by the Torquay Neighbourhood Plan Forum, subject to the employment of a planning condition to secure a temporary consent. The proposal therefore complies with Policy TE2 of the Torquay Neighbourhood Plan.

Government guidance indicates that temporary permission should not be renewed repeatedly. The Council's Planning Policy Officer considers that it is appropriate in this instance because of the very special circumstance of retaining the long term purpose of the local green space whilst supporting economic development. Due to the policy implications, it is considered appropriate to make the permission personal to 'Le Bistrot Pierre', to ensure the maintenance and retention of public access and management of the area.

The site is also designated within the Harbourside, Waterfront and Belgrave Road Core Tourism Investment Area (CTIA) under Policy TO1 Culture of the Local Plan. Policy TO1 states the importance of retaining and improving the high quality tourism facilities in sustainable and accessible locations with a particular focus on CTIAs to attract new visitors and increase overall spend for Torbay.

Supporters have raised comments regarding that the proposal makes tourist facilities better and provides facilities for the general public. It is considered that the proposal assists supporting the local tourism offer in the area. The redevelopment of the former Palm Court site has been a very successful regeneration of this part of the Torquay Waterfront which provides a range of tourism related uses. The use of "Old Maids Perch" on a temporary basis under permission P/2014/0198 appears to have been part of the successful regeneration of this area. Therefore, the proposal complies with Policy TO1 of the Local Plan.

The site is within a Community Investment Area, Policy SS11 Sustainable Communities of the Local Plan states that within such areas development that regenerates or leads to the improvement of social and economic conditions in Torbay will be supported in principle. The proposal will provide additional seating for 'Le Bistrot Pierre' which has an active and vibrant use and revitalises the site for residents and visitors of Torbay. The proposal complements the facilities offered by the Abbey Sands development and provides an important addition to the tourist economy by permitting al fresco dining.

Policy TC5 of the Local Plan states that development that helps create a vibrant, diverse evening and night time economy along the seafront of Torbay will be supported in principle. Supporters have stated that the proposal provides and retains job, which assists the local economy. The proposal would result in a temporary loss of a section of public open space which would be used informally and periodically - weather dependant, to enable more individuals to use an established restaurant, which would assist Torquay's evening and night time economy.

Therefore, the principle of the use is considered to be an acceptable temporary use when considering the Local Plan and the Torquay Neighbourhood Plan, subject to the aforementioned planning condition being employed.

## **2. Visual amenity**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. Policy TH8 of the Torquay Neighbourhood Plan requires development to be of good quality design and to respect the local

character in terms of height, scale and bulk and reflect the identity of its surroundings.

The variation of condition seeks a further temporary consent to continue the use of the site as an al fresco dining area for the restaurant 'Le Bistrot Pierre'. Both objectors and supporters have raised that the proposal will have an impact on the local area. Objectors have also stated that the proposal is not in keeping with the local area, whereas supporters have stated that the proposal removes an eyesore as public spaces can attract anti-social behaviour. It is noted that the proposal would continue the existing situation, which has been in situ for around five years. Given the siting, scale, and design of the proposal, as it does not alter from the previously approved plans relating to the previous permission (P/2014/0198), it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality.

The Council's Interim Heritage Advisor has stated that the development will not harm the special character or appearance of the architectural and historic merit of the Belgravia Conservation Area and therefore the proposal complies with requirements of the Planning (Listed Building & Conservation Area) Act 1990.

The proposal is therefore considered to comply Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained in the NPPF.

### **3. Residential amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity.

Objectors have raised concerns that the proposal would have a negative impact on residential amenity in terms of outlook from public vantage points. Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours in terms of privacy or noise. Planning officers are not aware of any disturbance related complaints from local occupiers and this has been evidenced by Environmental Health's records of the site.

Subject to a planning condition to restrict the hours of use of the site, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

### **4. Highways**

Policy TA2 Development Access of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development.

The proposal involves temporarily using a section of designated Local Green

Space which is sited adjacent to public footways which are a public right of way. The Council's Highways Engineer has stated that the concrete steps were constructed under a Section 278. The Local Highways Authority would not want to adopt the decking connecting the steps due to the maintenance burden this would place on the Local Highways Authority budget. The proposed layout does not differ from the previously approved plans relating to the previous temporary permission. The proposal will maintain the existing public right of way.

The proposal is considered to be in accordance with Policy TA2 of the Local Plan.

### **Statement on Human Rights and Equalities Issues**

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

#### **S106/CIL -**

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development.

### **Conclusions**

The proposal is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

## **Condition(s)/Reason(s)**

### **Temporary Permission**

The use hereby permitted shall be discontinued and the associated structures and equipment removed and the land restored to its former condition (as indicated on the existing survey drawing numbers '1069-PL-013' and '1069-PL-016' (received 5<sup>th</sup> March 2014)) on or before 1st May 2029 or when 'Le Bistrot Pierre' cease to occupy the land, whichever is the sooner.

Reason: To maintain control over a temporary form of development and in order that the Local Planning Authority can assess the impact of the development and protect the designated Local Green Space, in accordance with Policy TE2 of the Adopted Torquay Neighbourhood Plan 2012-2030.

### **Hours of Use**

The use of the outdoor seating area to be used in conjunction with 'Le Bistrot Pierre' indicated on the approved drawing plan reference '1069-PL-014-2' (received 5<sup>th</sup> March 2014) shall only take place between the hours of 7am and 11pm, Monday to Sunday..

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 Development Amenity of the Adopted Torbay Local Plan 2012-2030.

### **Relevant Policies**

DE1 - Design  
DE3 - Development Amenity  
SS10 - Conservation and Historic Environment  
SS11 - Sustainable Communities  
TO1 - Tourism, Events and Culture  
TA2 - Development Access  
  
TE2 - Local Green Spaces  
TH8 - Established Architecture