



Application Site Address	The Old Toll House Abbey Crescent Torquay TQ2 5TS
Proposal	Demolition of part of existing building, extension, and change of use to cafe/bar (revised plans received 23/09/2019)
Application Number	P/2019/0316/PA
Applicant	The Venus Company
Agent	Mr Samuel Brackley – Absolute
Date Application Valid	10.06.2019
Decision Due date	05.08.2019
Extension of Time Date	29.11.2019
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	The application has been referred 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.
Planning Case Officer	Ross Wise



## **Site Details**

The application site is The Old Toll House Abbey Crescent, Torbay Road, Torquay.

The Toll House is a Grade II Listed Building located at the junction of Abbey Crescent with Rock Walk Gardens, a Grade II entry of the Register of Historic Parks and Gardens. The freehold of the site is Torbay Council-owned. It was formerly used as a toll house, gardener's cottage, beach manager's office and public toilets. It is in a poor state of repair. A mature and attractive Copper Beech is located immediately adjacent to the building within Rock Walk Gardens.

The site is also located within the:

- Belgravia Conservation Area (BCA).
- Torquay Town Centre Community Investment Area
- Harbourside, Waterfront And Belgrave Road Core Tourism Investment Area
- Princess and Royal Terrace Gardens Historic Park and Gardens
- Flood Zone 2/3

## **Description of Development**

The proposal seeks to demolish the more recent unattractive extensions to the Toll House and their replacement with more contemporary extensions to provide a 'café bar' use. The extensions are to be largely glazed, with white render and aluminium detailing. A very modern style was thought to be appropriate in order to create a clear contrast with the character of the Toll House. In order to be successful, it was considered vital that the size and form of the extension has to be subservient to, and not overwhelm, the Toll House.

## **Pre-Application Enquiry**

N/A

## **Relevant Planning Policy Context**

Development Plan

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

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which

it possesses. With regard to Conservation areas the Act requires that in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area

### **Relevant Planning History**

P/2004/1906/PA. Extension to form new bars; Change of use to Cafe Bar. Refused 06.01.2005

P/2004/1907/LB. Extension to form new bars; Change of use to Cafe bar. Refused 06.01.2005

P/2005/1368/PA. Demolition of part of existing building; Extension and change of use to Cafe Bar (Revised Scheme) (as revised by plans received 19 September 2005) Approved 26.09.2019

P/2005/1369/LB. Demolition of part of existing building; Extension and change of use to Cafe Bar (Revised Scheme) (as revised by plans received 19 September 2005) Approved 26.09.2019

P/2008/0980/PA. Formation of roof terrace; modifications to lift. Approved 29.07.2008.

P/2008/0981/LB. Formation of roof terrace; modifications to lift. Approved 29.07.2008.

P/2011/0799/PA. Extend time limit P/2008/0980- Formation of roof terrace, modifications to lift -. Appeal Allowed.

P/2011/0802/LB. Extend time limit (P/2008/0981) - Formation of roof terrace, modifications to lift - Appeal Allowed.

### **Summary of Representations**

16 objections have been received (of the 16 objections 13 were received from a single party). The main concerns are summaries as follows:-

- Impact on the listed building and its setting.
- Scale of development
- Impact on beech tree.
- Not in-keeping with local area
- Impact on the adjacent tree.

### **Summary of Consultation Responses**

**Historic England:** *Historic England commented on this proposal in June at which time we expressed concerns about the scale and massing of the proposed extension to this modest former toll house. We felt that the proposed new café building would entirely dominate this historic structure and we suggested that a more sensitive architectural solution was required in order to preserve the quality and special interest of this listed building and the character of the Conservation Area in which it sits. We also expressed regret that the building would be relegated to becoming a WC block.*

*We are pleased to see that the revised scheme has reduced the height of the part of the new building which sits directly behind the historic building. The chimneys will now*

*project above the level of the new building to the rear. However, it should be noted that in views along the seafront from the south east, the historic building will be more obscured, as the section of the new building to the south east is now entirely two storeys where the previous scheme was partially single storey with a roof terrace, thereby allowing at least the chimneys to project above the building line.*

*We note that historic images illustrate that at least one of the stone chimneys would have been of a tall, rather elegant design and suggest that any reinstatement should be carefully researched and designed so as not to diminish the quality of the remaining architecture. We concur with the Victorian Society's comments that a scholarly restoration rather than either a conjectural addition or notional reference to the original would be appropriate.*

*As stated previously, the NPPF advises in paragraphs 193-4 that any harm or loss to a designated asset should require a clear and convincing justification - unjustified harm is never acceptable, regardless of the public benefit it brings, if alternative and less harmful options exist. Before weighing up the harm against any public benefit associated with a proposal, it needs to be demonstrated that that harm cannot be avoided or reduced through amendments to the scheme, or offset by mitigation of the harm or enhancement of the asset. Historic England's Good Practice Advice Note 2: Managing Significance in Decision-Taking in the Historic Environment, sets out a clear process for making that assessment in paragraphs 6 and 25-26. It is for your Authority to be satisfied that that process has been rigorously applied and the tests of the NPPF have been met by the application.*

**The Victoria Society:** *The current proposal is an improvement on the previous with extensions being set back on the right-hand side, and significantly reduced to the rear. As stated in our previous letter (dated 1st July 2019) however, scale is a key element in the legibility of a toll house and extending it in any form will still lead to a degree of harm. If the application is to be acceptable the harm caused by the extension should be mitigated as far as possible by an exemplary, scholarly restoration of the building which will contribute towards its continued legibility as a toll house. Gabled porches for example were key elements of these buildings, and the illustration attached below shows that this toll house was no exception. Although demolished, this was clearly a characterful and prominent feature of the building which should be reinstated as part of the plans. This illustration moreover depicts tall stone chimneys which have now been truncated, and we would moreover consider the reinstatement of these features to be an important step towards mitigating the harm of the proposed development. Finally, the list description notes that the current windows are modern replacements, yet it is unlikely that historically they would have consisted of a single pane of glass and we would therefore suggest that further research is carried out to uncover the original design of the windows and this design reintroduced as well.*

*If the council feels that the scale of the extension is acceptable, we would urge them to enforce the conditions mentioned above as a way of mitigating the harm to this listed building.*

**County Archaeologist:**

*I defer to the advice of your specialist consultees (e.g. the Victorian Society and the TCCT) regarding the proposal's impacts on the built and natural environmental.*

*My advice remains the same, that if your authority is minded to grant consent for the development then there should be a programme of historic building recording.*

**Torbay Council Local Highways Authority:** *If the development is granted Permission the Applicant would need to Apply for a Pavement Café Licence and abide to the requirements within the Guidance of the Licence.*

*Highways do not want the extension of the footway, bollards, or the drop kerbs as it may encourage people to cross the road at this point rather than the signalised Crossing.*

*The location of the proposed Wheelchair access with dropped kerbs would be better behind the disabled bay next to the Double Yellow Lines, a vehicle Crossing licence would be required for these works.*

*The Traffic Regulation order will not be required to be altered and the restricted Zone still covers this area.*

*The Fire Exit Gate is not considered a Highway issue.*

**Torbay Council Strategic Appraisal Officer:**  
*Construction phase*

*Appropriate pollution control measures (for both water and air) should be applied in accordance with Defra guidelines (<https://www.gov.uk/guidance/pollution-prevention-for-businesses>) throughout the construction phase and where appropriate, method statements should be followed for high-risk activities, such as refuelling and use of concrete. With these measures in place, there would be no likely adverse effects on the SAC as a result of the potential spread of dust, sediments or other water or air borne pollutants.*

*Operation phase*

*The proposed surface water drainage system shows the rate of discharge will be limited close to greenfield rates up to a maximum of the 1 in 10-year event. This is compliant with the Local Plan Policy ER2 which states the following:*

*All development should seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will discharge to one of the following, listed in order of priority:*

- i) An adequate infiltration system... ..or where this is not practicable;*
- ii) A main river or water course, or where this is not practicable;*
- iii) A surface water sewer or highway drain, or in the last resort where none of the above are reasonably practicable;*
- iv) To a combined (foul and surface water) sewer, where the discharge is controlled to be at greenfield discharge rates.*

*No significant changes to the water quality of the surface water runoff are anticipated post construction, and therefore no likely significant effects on the Lyme Bay and Torbay SAC are predicted as a result of the construction or operation of the development.*

**Torbay Council Drainage Engineer:**

- *The development lies within Flood Zone 3. All developments located within Flood Zone 3 must be accompanied with a site specific flood risk assessment.*
  
- *The developer has submitted a site specific flood risk assessment in support of the planning application which includes the proposed surface water drainage design and drawings.*

*Providing the surface water drainage is constructed in accordance with the hydraulic design and drawings contained within the site specific flood risk assessment, I have no objections on drainage grounds to planning permission being granted for this development.*

**Torbay Council Tree and Landscape Officer:** *The update revision was based on the additional information gleaned as a result of carrying out a resistograph. The conclusion drawn from the detailed investigation was that the tree is in such a condition that it can be retained as part of the proposal, provided the works as described, are carried out to facilitate construction.*

*Recommendation - The development is sustainable from an arboricultural perspective.*

**Torbay Council Environmental Health:** *I write in reference to the above planning application. Although I do not have any objections to the above Planning Application, I have the following comments to make:-*

1. *You must have suitable refuse areas inside and outside the premises. Refuse must be deposited in closable containers which can be kept clean and disinfected. Refuse areas must be kept clean. Any other types of containers or system must be agreed by the Authority. This is a compact commercial area with limited areas for storage of waste with ongoing issues with adjoining neighbouring businesses and their commercial waste.*
  
2. *You must have a commercial waste contract for collection of your trade refuse. If bins are to put out on the Highway for collection, they must be put into storage as soon as collection is completed and, must not be stored on the Highway. See attached information sheet.*

**Environment Agency:** *It is apparent that the applicant has considered the risk of flooding at the site and has taken the necessary precautions to address this. As a result we are able to remove our objections to the proposal from a development and flood risk perspective.*

**Devon Gardens Trust:** *We have viewed the application documents on your web site and the Historic England Register map and entry. We have visited the site previously. On the basis of the information on your website, we do not wish to comment. We would emphasise that this does not in any way signify either our approval or disapproval of the proposals.*

**South West Water:** *No comment.*

**Natural England:** *No comments to make on this application.*

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

1. Principle of development.
2. Impact on visual amenity.
3. Impact on heritage assets.
4. Impact on residential amenity.
5. Impact on highways.
6. Trees and ecology.
7. Flooding and drainage.

### **Planning Officer Assessment**

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

The proposal is for the demolition of part of existing building, extension, and change of use to cafe/bar.

The site is located within the Harbourside, Waterfront and Belgrave Road Core Tourism Investment Area (CTIA) as defined by Policy TO1 of the Local Plan. Policy TO1 states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It is also stated that the Council wishes to see a wider range of new and refurbished facilities and services, with investment being focussed in CTIAs. Policy TS4 of the TNP supports brownfield development providing there are no significant adverse impacts. Policy TT2 of the TNP states that Within designated Conservation Areas or where Listed Buildings are involved, whether inside or outside of a CTIA, change of use from tourist accommodation and other development proposals requiring consent will be supported in principle (subject to other policies in the TNP) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

The proposed development seeks to demolish the unsympathetic extensions and construct new extensions to the existing building to create a two-storey café/restaurant. It is considered that the proposal would improve the appearance and condition of the existing, listed building (as discussed in detail in the accompanying officer report concerning the associated listed building consent application) and produce a high quality tourist facility that would assist in continuing the regeneration of the area. As such, the proposal complies with Policy TO1 of the Local Plan and Policy TS4 of the TNP.

As discussed, the proposal would retain and help to sustain a listed building; it would provide an enhanced restaurant use with benefits for the local economy, the Conservation Area and the CTIA.

The proposal is considered acceptable in principle, having regard to Policy TO1 of the Local Plan and Policies TS4 and TT2 of the TNP.

Policy SS4 of the Local Plan 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 in order to create new jobs, and it enables expansion and diversification of the economy of the Bay. The Local Plan seeks to promote growth in sectors that are particularly important in Torbay, including tourism, hotel and catering.

Policy SS11 of the Local Plan 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 of the Local Plan 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.

The proposal is considered to be consistent with the objectives of these policies.

## **2. Impact on Visual Amenity**

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, 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'. Policy DE1 Design 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 TH8 of the Torquay Neighbourhood Plan states that development must be of good quality design, respect the local character and reflect the identity of its surroundings.



The proposed demolition of the previous unsympathetic extensions of the Toll House is considered to result in an improvement in the character and appearance of the site and the wider area.

The revised design of the extension to the Old Toll House presents a contemporary approach that would contrast with the form and materials of the existing historic toll house structure. The proposed materials relate to the surrounding context, visually tying the proposal to others on Abbey Crescent. The amendment to the original design of the proposal has now reduced its visual appearance in relation to its scale and massing. The proposed extension would now introduce a two storey element beside the historic element of the Toll house but slightly set back from the public highway. To the rear of the site, between the Toll house and the rock face, is now proposed a first floor terrace area in the place of the previous enclosed extension. The proposed terrace area has removed the visible built form from behind the toll house allowing it to be legible as the principle structure. In addition, the reinstatement of the historic chimneys in line with the comments from the Victorian Society will further help to establish the toll house as the principle structure and restore much of its former appearance.

Details of the windows and doors have not been included within the submitted information. 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 Listed Building and the Belgravia Conservation Area and to ensure that the proposal complies with the requirements of the Planning (Listed Building & Conservation Area) Act 1990.

Subject to the conditions being met, the proposal is considered to be acceptable with regard to Policy DE1 of the Local Plan and TH8 of the Torquay Neighbourhood Plan.

### **3. Impact on Heritage Assets**

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 of the Torquay Neighbourhood Plan support alterations to listed buildings where they safeguard and enhance their historic qualities and elements according to their significance.

The application site envelops the Grade II Listed Toll House and its various extensions and sits at the edge of the Princess and Royal Terrace Historic Park and Gardens.

The Old Toll house is mentioned within the Belgravia Conservation Area Appraisal (BCAA) and describes its history of uses. The building has had various uses since it was built in 1841 at the same time as New/Torbay Road. Collecting tolls discontinued in 1848 and since then it has been used as the town gardeners' cottage (formerly known as Dyer's cottage), a beach manager's office and public conveniences.

The Old Toll House is described as being one of a limited number of buildings within the BCA being constructed of exposed stone. Predominantly the building material is white/colour-washed stucco or render.

The Old Toll House's overall significance is derived in the most part from its historic and architectural values. The building is tied directly to its location in local history, providing historical links to the creation of the New/Torbay Road and the toll required to utilise it. Its architectural value could be considered to result from its detailing and use of exposed local limestone. In terms of its evidential value, there is likely to be little due to the previous changes in its use. It is also noted that there are limited remaining examples of pre 1850s toll houses and that Historic England identifies them as serious candidates for listing.

The property has been vacant for some time and is becoming vulnerable to deteriorating beyond its current level. The proposal would restore much of the heritage asset and bring it into commercial use to be enjoyed by the public.

The application proposes both internal and external alterations to the building with the creation of a café/restaurant with seating spread across two floors. Internally, the proposal would involve the fairly limited interventions into the historic structure. A section of wall would be removed to provide access into the internal space within toll house where toilets would be located.

The external alterations would be the most evident, as the proposal would demolish the non-original extensions of the historic structure and replace them with a contemporary extension that would wrap around the Old Toll House, sitting between the rock face and the existing Birch tree.

It should be noted that during the course of the application the proposal has been modified to respond to the initial consultation responses. The proposal originally sought to construct a much larger extension of the Old Toll house that presented a two storey structure along the length of the site to the rear, with a single storey element sitting beside the Old Toll House on its Abbey Crescent elevation.

After negotiations, the plans have now been amended to omit the two storey element from behind the Toll House structure. The main massing of the proposal has been shifted South-Eastwards and presents a design that sits the main elements side-by-side. An outdoor terrace area would now be located to the North-West at first floor level in the place of the former enclosed first floor seating area.

The proposed revised design of the extension to the Old Toll House to provide a café/restaurant use would introduce a contrast to the existing structure that would emphasize the external materials and architectural style of the Old Toll House by presenting a contemporary design with a restricted palette of materials.

The Victorian Society and Historic England have commented that if a scholarly restoration of the Old Toll House is completed then the proposal could be considered

acceptable and could offset the implications of the scale and massing of the proposed extension. The suggested restorative works proposed by the Victorian Society will be implemented through planning conditions to ensure the proposal enhances the historic qualities of the building.

However, in particular, the reinstatement of the gabled porch to the south-West elevation is not considered to be appropriate by officers as the inclusion of this particular element could not be undertaken accurately, as gradually over time, the level of the surface in the area outside The Old Toll House has been raised. This is evident when viewing the South-West elevation and observing how the current paved surface intersects the courses of exterior limestone masonry. In this case, if the porch were to be re-instated it is unlikely to have its original intended appearance and it is therefore considered to be inappropriate.

The Devon County Archaeologist has advised that a Written Scheme of Investigation (WSI) should be submitted prior to development to which this permission relates to set out a programme of historic building recording work to be undertaken in mitigation for the impact upon the historic fabric and appearance of the proposal. This, like the aforementioned suggestions from the Victorian Society, will be sought through condition.

Where the proposal seeks to remove elements of the existing extensions to the Toll House building that are physically attached to it, all works should be undertaken sensitively to minimise any potential harm leading from their removal. A condition will be used to ensure the appropriate materials are used where any repairs are required.

To ensure the restoration works are completed in a timely manner, a condition will be used to ensure the restorative works are completed before the building's first use as a café/restaurant.

At the time drafting this report a further set of drawings are awaited that respond to the most recent comments from Historic England and the Victorian Society. An update of the information received will be presented to the Planning Committee.

Subject to acceptable further plans being received and the imposition of conditions, the proposal is considered to have an acceptable impact on the heritage assets as the proposal would restore and bring the building back into use, remove unsightly additions and use of high quality materials. As such the proposal is considered to be acceptable with regard to Policies SS10 and HE1 of the Local Plan and Policy TH10 of the Torquay Neighbourhood Plan.

#### **4. Impact on Highways.**

Policies TA2 and TA3 of the Local Plan establish criteria for the assessment of development proposals in relation to access arrangements and vehicle parking. (Policy TH9 of the Torquay Neighbourhood Plan states that all new housing development must meet the guideline parking requirements contained within 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). Policy THW5 of the Torquay Neighbourhood Plan supports new development proposals where they are located on or near to public transport routes wherever possible and appropriate. In this case the site is considered to be in a commercial area which is already well served by public car parks and therefore would not create significant additional demand. Furthermore the constraints of the site and listed building status means that it would be unsuitable to accommodate off street car parking.

The Local Highways Authority have advised that the applicant would need to apply for a pavement licence for the seating on the highway. They are also concerned with the extension of the footway, bollards and the dropped kerb as these may have highway safety implications.

As these seem to be minor technical issues, it is considered that they are resolvable through the receipt of revised plans and/or by a planning condition. An update of the information received will be presented to the Planning Committee.

Furthermore, a planning condition will also be used to secure details of the provision of cycle storage in accordance with Policy DE3 of the Local Plan and policy THW5 of the TNP.

Subject to the conditions being met, the proposal is considered to be acceptable with regard to Policies DE3, TA2 and TA3 of the Local Plan and Policy TH9 THW5 of the TNP

## **5. Trees and Ecology.**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy C4 of the Local Plan does not permit development when it would seriously harm, either directly or indirectly, protected or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value.

A mature and attractive Copper Beech tree is located immediately adjacent to the building within Rock Walk Gardens. During the course of the assessment of the application, additional information was submitted upon the request of the Council's Senior Tree and Landscape Officer to provide detail of the health of the tree and the proposal's impact upon it.

The Council's Senior Tree and Landscape Officer is satisfied that the proposed development is acceptable in terms of its impact upon the Birch tree adjacent to the site. It is noted that a further comment regarding the revised proposal has not yet been received.

An ecology report has not yet been received at the time of writing this report. However, it is understood that it will be submitted before the date of the Planning Committee and will be included within the update given to members of the Planning Committee before the application is presented. It is therefore suggested that conditions relating to the recommendations from the report could therefore be delegated to the Assistant Director of Planning and Transport.

As the site is close to the Marine Conservation Zone (MCZ), a planning condition will be required, requiring that prior to commencement a Construction Environmental Management Plan (CEMP) is submitted to the local planning authority ensure that biodiversity is not harmed by building operations or vegetation removal.

The Local Planning Authority has undertaken a screening of the proposal in accordance with the Habitats Regulations, which has concluded that the integrity of the Lyme Bay and Torbay Marine Special Area of Conservation would not be affected by the proposal.

Natural England has raised no objections to the proposal.

Subject to the proposed planning condition, the proposed development is considered acceptable with regard to Policies NC1 and C4 of the Local Plan and Policy TE5 and of the TNP.

## **6. Flood Risk and Drainage.**

Policy ER1 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.

As the site is located within Flood Zone 3, the application is required to be accompanied by a site specific flood risk assessment.

The Drainage Engineer has no objections providing the development is carried out in accordance with the details of the submitted site specific flood risk assessment. A planning condition will be employed to secure this.

Subject to the conditions being met, the proposal is considered to be acceptable with regards to Policies ER1 and ER2 of the Local Plan.

## **7. Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Policy TS1 of the TNP provides a framework which contributes to the achievement of sustainable development in Torquay. Development proposals should accord with the policies contained in the Torquay Neighbourhood Plan, where relevant, unless material planning considerations indicate otherwise.

The proposal is considered to make sustainable use of land by re-using an existing structure. This reduces the pressure to develop greenfield sites, and promotes urban regeneration. The site's central town centre location in itself promotes sustainable forms of transport as locally available services are within easy walking distance, removing the need for additional car journeys.

### **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:** Not applicable.

**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. An informative can be imposed, should consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

### **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.

### **Planning Balance**

The proposal is considered to represent an appropriate and beneficial use which will give both the listed building a sustainable future and therefore enhance the Conservation Area. The alterations in terms of design and heritage impact are considered to be acceptable. Whilst concern has been raised in respect of heritage

issues, these issues are addressed in the main body of the report and are not considered to be so significant as to warrant a refusal of planning permission.

### **Conclusions and Reasons for Decision**

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, heritage assets, or local amenity; and provide acceptable arrangements in relation to access flood risk, and ecological constraints. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

### **Officer Recommendation**

Delegate authority to the Assistant Director of Planning & Transport to grant Planning Permission on receipt of satisfactory revised plans, 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.

### **Conditions**

#### **Construction and Environmental Management Plan (CEMP)**

No development (including demolition and ground works) or vegetation clearance works shall take place [of any phase of the development] until a Construction and Environmental Management Plan (CEMP) [for that phase] has been submitted to and approved in writing by the Local Planning Authority. The CEMP[s] shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of “biodiversity protection zones”.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
- d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- e) Details of pollution control measures which should accord with the standard DEFRA guidelines (<https://www.gov.uk/guidance/pollution-prevention-for-businesses>) to prevent harmful substances entering the air, ground or water.
- f) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
- g) Responsible persons and lines of communication.
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP[s] shall be adhered to and implemented throughout the construction period [of the phase] of the development [that they relate to] strictly in accordance with the approved details.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF. These details are required pre-commencement as specified to ensure that biodiversity is not harmed by building operations or vegetation removal.

### **Construction Method Statement**

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement 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 used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- 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.

Reason:

This information is required prior to commencement to safeguard the amenity of the locality in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030

### **Materials**

Prior to the use of any building materials that would be used for the repair of the historic fabric or within the external appearance of the building, including cladding, stonework and mortar, the proposed materials (including samples where appropriate) 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: To ensure an acceptable form of development in the interests of the character and appearance of the heritage asset and the Belgravia Conservation Area in accordance with Policies DE1, HE1 and SS10 of the Adopted Torbay Local Plan 2012-2030.

### **Scholarly Restoration.**



Prior to development, details of the restorative works suggested by the Victorian Society, besides the re-instatement of the porch, to the original Toll House structure shall be submitted and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in strict accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the heritage asset and the Belgravia Conservation Area in accordance with Policies DE1, HE1 and SS10 of the Adopted Torbay Local Plan 2012-2030.

### **Restorative Works.**

Prior to the first use of the development hereby approved restorative works to the historic Toll House shall be completed in accordance with the details hereby approved and/or approved as details pursuant to conditions attached to this permission.

Reason: To secure improvements to the Toll House and an acceptable form of development within the Belgravia Conservation Area, in accordance with Policies SS10, and DE1 of the Torbay Local Plan 2012-2030, Policy TH10 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

### **Travel Plan**

Prior to the first occupation of the development hereby approved a simple and proportionate Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall outline measures to encourage non-car, sustainable forms of transportation, including a scheme of implementation. The approved measures shall be undertaken in accordance with the approved scheme of implementation.

Reason:

In the interests of sustainable development and in accordance with the guidance contained in the National Planning Policy Framework.

### **Bicycle storage**

Prior to the first occupation of the development hereby approved a details of the provision for the storage of bicycles shall be made 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.

### **Written Scheme of Investigation.**

No development to which this permission relates shall commence until an appropriate programme of historic building recording and analysis has been secured and implemented in accordance with a written scheme of investigation which has been submitted and approved in writing by the Local planning Authority.

The development shall be carried out at all times in strict accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of the historic building fabric that may be affected by the development.

### **Windows/Doors**

Prior to the installation of new 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 full accordance with the approved details and shall be retained as such thereafter.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the heritage asset and the Belgravia Conservation Area in accordance with Policies DE1, HE1 and SS10 of the Adopted Torbay Local Plan 2012-2030.

### **Informatives**

01. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
02. Responsibilities of the applicant / developer:

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). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. 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. 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.

04. 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**

TO1 – Tourism, Events and Culture.  
SS4 – The Economy and Employment.  
SS11 – Sustainable Communities.  
TC5 – Evening and Night time Economy.  
DE1 – Design.  
DE3 – Development Amenity.  
TA2 – Development Access.  
TA3 – Parking Requirements.  
ER1 – Flood Risk.  
ER2 – Water Management.  
NC1 – Biodiversity and Geodiversity.  
HE1 – Listed Buildings  
SS10 – Conservation and the Historic Environment.  
SS3 – Presumption in favour of Sustainable Development.  
C4 – Trees, hedgerows and natural landscape features.

TH8 – Established Architecture.

TH9 – Parking Facilities.

THW5 – Access to sustainable Transport.

TE5 – Protected species habitats and biodiversity.

TH10 – Protection of the Historic Built Environment.

TS1 – Sustainable Development.

TS4 – Support for Brownfield and Greenfield development.

TT2 – Change of use in Conservation Areas and Listed Buildings.