

Friday, 29 May 2020

**PLANNING COMMITTEE**

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

**Monday, 8 June 2020**

commencing at **5.30 pm**

The meeting will be held remotely via Zoom (the links to the meeting are set out below)

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**Members of the Committee**

Councillor Pentney (Chairman)

Councillor Brown

Councillor Barbara Lewis

Councillor Dart

Councillor Manning

Councillor Dudley

Councillor Jacqueline Thomas

Councillor Hill

Councillor Barnby

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**Amanda Coote, Town Hall, Castle Circus, Torquay, TQ1 3DR**

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# PLANNING COMMITTEE AGENDA

## 1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

## 2. **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.)

## 3. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

## 4. **Land North Of Totnes Road, Collaton St Mary, Paignton (P/2019/0281)**

(Pages 6 - 51)

Outline application: Development of up to 100 dwellings, including affordable and market housing. Associated landscaping, open space, drainage and highways infrastructure at Land North of Totnes Road together with new access onto Totnes Road.

## 5. **1 Seaton Close, Torquay, TQ1 3UH (P/2020/0228)**

(Pages 52 - 60)

Single storey extension to the north east (side) elevation and the extension of the existing balcony along the south east (front) elevation together with changes to fenestration.

## 6. **Bishops Court Hotel, Lower Warberry Road, Torquay (P/2019/1274)**

(Pages 61 - 84)

Conversion and refurbishment of mansion to form 5 apartments. Removal of redundant leisure complex and construction of 11 new houses within grounds. Conversion and refurbishment of 14 existing

curtilage apartments to form 4 houses, and construction of 8 radial garages and 2 detached garages to replace surface parking.

**7. Bishops Court Hotel, Lower Warberry Road, (P/2019/1262)**

(Pages 85 - 97)

Listed building consent for conversion and refurbishment of mansion to form 5 apartments. Removal of redundant leisure complex and construction of 11 new houses within grounds. Conversion and refurbishment of 14 existing curtilage apartments to form 4 houses, and construction of 8 radial garages and 2 detached garages to replace surface parking.

**8. 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.

**Instructions for the press and public for joining the meeting**

If you are using an iPad you will need to install Zoom which can be found in the App Store. You do not need to register for an account just install the software. You only need to install the software once. For other devices you should just be taken direct to the meeting.

**Joining a meeting**

Click on the link provided on the agenda above and follow the instructions on screen. If you are using a telephone, dial the Zoom number provided above and follow the instructions. (**Note:** if you are using a landline the call will cost up to 13p per minute and from a mobile between 3p and 55p if the number is not covered by your inclusive minutes.)

You will be placed in a waiting room, when the meeting starts the meeting Host will admit you. Please note if there are technical issues this might not be at the start time given on the agenda.

Upon entry you will be muted and your video switched off so that only the meeting participants can be seen. When you join the meeting the Host will unmute your microphone, ask you to confirm your name and update your name as either public or press. Select gallery view if you want see all the participants.

If you have joined the meeting via telephone, your telephone number will appear on screen and will be displayed for all to see until the Host has confirmed your name and then they will rename your telephone number to either public or press.

## **Speaking at a Meeting**

If you are registered to speak at the meeting and when it is your turn to address the Meeting, the Chairman will invite you to speak giving the Host the instruction to unmute your microphone and switch your video on (where appropriate) therefore please pause for a couple of seconds to ensure your microphone is on.

Upon the conclusion of your speech/time limit, the Host will mute your microphone and turn off your video.

### **Meeting Etiquette for Registered Speakers – things to consider when speaking at public meetings on video:**

- Background – the meeting is public and people will be able to see what is behind you therefore consider what you will have on display behind you.
- Camera angle – sit front on, upright with the device in front of you.
- Who else is in the room – make sure you are in a position where nobody will enter the camera shot who doesn't want to appear in the public meeting.
- Background noise – try where possible to minimise background noise.
- Aim to join the meeting 15 minutes before it is due to start.



Application Site Address	Land North Of Totnes Road, Collaton St Mary Paignton
Proposal	Outline application: Development of up to 100 dwellings, including affordable and market housing. Associated landscaping, open space, drainage and highways infrastructure at Land North of Totnes Road together with new access onto Totnes Road.
Application Number	P/2019/0281
Applicant	Bloor Homes (South West) Ltd
Agent	Boyer Planning
Date Application Valid	08.04.2019
Decision Due date	08.07.2019
Extension of Time Date	20.02.2020
Recommendation	Approval: Subject to planning conditions as outlined within the report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency and; the completion of a S106 Legal Agreement to secure Affordable Housing and other identified obligations, to include the provisions outlined within the report.
Reason for Referral to Planning Committee	Major Development
Planning Case Officer	Scott Jones

## Location Plan



## **Site Details**

### **Description**

The application site sits to the north of the Totnes Road (A385) and encompasses approximately 18 hectares of what is largely fields, but includes an element of previously developed (brownfield) land of approximately 1 hectare that holds two existing buildings and areas of hardstand. The field system within the site boundary is broken down into 9 fields of varying size. The western part of the site sits behind residential properties along Totnes Road, where 5 fields rise to north towards a hedge and tree lined hilltop. Although largely contained behind the existing frontage development there is a section of the site that fronts directly onto the Totnes Road, comprises a hedge-lined frontage of approximately 64 metres forming a gap between existing residential plots. There is also an access to the existing developed area within the site further east, close to the brow of the hill and the junction with Borough Road. The eastern part of the site (comprising the remaining 4 fields) lies to the north of Borough Park Road, a residential cul-de-sac, culminating to the east where it borders Kings Ash Road. The topography within the eastern part of the site rises from east to west towards the aforementioned hilltop.

### **Local Character & Services**

The existing field system is largely laid to pasture with hedge borders and the occasional small copse. The site is quite steep in places and there is an overall rise of approximately 55 metres from the low points adjacent to the Totnes Road and Kings Ash Road to the hilltop at the northern border of the site.

Across the Totnes Road, to the south there is a public house and to the west there is a parish church and a primary school. Within the wider area there is a secondary school, numerous food retail outlets and a trading estate within relatively close proximity, on the outskirts of Paignton. The general character is a transitional one from an edge of town, residential character to the east to a rural character with more intermittent development (largely residential ribbon development and holiday parks) to the west.

### **Heritage**

There are a number of designated heritage assets nearby and immediately to the south of the site across the Totnes Road lies the Grade 2 listed Collaton Farm building and (converted) barns. To the west, off Blagdon Road there is the Grade 2\* listed Church of St Mary, Grade 2 Old School House and Old Vicarage, and a further four Grade 2 listed properties, 391-397 Totnes Road.

### **Development Plan**

In terms of the Local Plan the site is identified as part of the wider Collaton St Mary (Paignton North and West Area) Future Growth Area and is also a site identified for housing within the Collaton St Mary Masterplan, which is an adopted Supplementary Planning Document for the area (adopted February 2016). The Paignton Neighbourhood Plan does not allocate housing sites and hence is silent in terms of

designation, however Policy PNP24 does cite that within Collaton St Mary further development beyond the currently developed areas will be supported where the proposals are in accordance with the adopted masterplan for the area. In terms of other relevant context the valley floor to the south of the site is a linear area with an identified risk of flooding, and the site sits in the Sustainance and Landscape Connectivity zones associated with the South Hams Special Area of Conservation (SAC)(Greater Horseshoe Bat).

### **Description of Development**

The application seeks outline planning permission for up to 100 dwellings with all matters reserved except for access.

### **Access Proposals**

The current access proposal is for the creation of a single vehicular access off the Totnes Road, which is to be located to the east of the existing zebra crossing. The design provides a 6m wide carriageway into the site flanked either side with footways (2m footway one side and a 3m foot/cycleway to one side). Due to the land levels the proposed access would be cut into the land slightly with graded embankments to either side as it heads northwards into the site. The existing pedestrian zebra crossing is to be removed and replaced with a light controlled crossing east of the new junction, 30 metres from the current crossing location. The existing public highway will be treated with anti-skid surfacing to either side of the pedestrian crossing and the final section of the existing foot/cycle way on the southern side of the Totnes Road will be re-marked as for cycles only. In addition, revised plans propose to introduce a 'smart' sign on the brow of the hill to the east to act as a warning of potential queuing to outbound traffic heading from the Tweenaway junction, as there is no designated right hand turn lane proposed into the site. A pedestrian access into the site is proposed at the south-west corner of the site to provide a link to the area around the church and the primary school.

### **Indicative Detail**

The indicative detail submitted to support the proposal seeks to demonstrate that the quantum of development proposed may be appropriately achieved on the site, and includes a masterplan layout, a landscape masterplan layout, sectional drawings and accompanying assessments. The masterplan shows a potential residential layout set around the lower slopes adjacent to the Totnes Road, with the upper slopes and the eastern portion of site proposed for public open space (including allotments) and retained for agriculture respectively. The proposed area for development is approximately 4 hectares of the 18 hectare site, with approximately 7 hectares proposed for open space (including allotments) and approximately 7 hectares retained for agriculture. This presents a proposed density of approximately 23 dwellings per hectare for the developed area. Indicative detail suggests a mixture of detached and semi-detached properties, principally one and two storey in height, with pitched roofs and an expected architectural design informed by the character assessment carried out of the surrounding context. This has highlighted the expected use of brick and render dwellings, with window styles being plain casement with a number of windows featuring horizontal bars, with a roof palette of reconstituted slate and red/brown

profiled tile. The indicative residential layout shows two principal east-west roads running across the contour of the hill, parallel to the Totnes Road, with three shorter north-south roads connecting. The upper extent of the development is defined by a road, which is broadly aligned with the rear boundary line of the residential plots to the east, off Borough Park Road. The indicative landscape masterplan suggests a new field boundary to define the edge of the developed area, with the suggested public open space and allotments to the adjacent upper slopes. The masterplan also suggests a local play area to the west, close to the church and school, along with a suggested pedestrian link at the south western corner of the site. The eastern part of the site, i.e. the 4 fields to the north of Borough Park Road, are to be maintained for agricultural use. The detail summarised above is all indicative and a future reserved matters will resolve all matters except for access.

### **Pre-Application Enquiry**

N/A.

### **Relevant Planning 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 Paignton Neighbourhood Plan (PNP)

#### Material Considerations

- The adopted Collaton St Mary Masterplan
- National Planning Policy Framework (NPPF)
- Planning Practice 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.

### **Relevant Planning History**

None.

### **Summary of Representations**

82 public representations received, 79 objections and 3 letters of support. The following provides a summary of the main planning issues identified and where appropriate a summary response is provided by the planning officer. Where appropriate the issues raised are discussed further in the Key Issues / Material Considerations section of this report.

The concerns raised in the objections are as follows:

- Highway safety



- Increased flood risk
- Loss of farmland
- No capacity at the school
- Impact on the health service
- Impact on the sewer system
- Overdevelopment
- Impact on wildlife
- Contrary to the Neighbourhood Plan
- No need for the housing
- Impact on occupiers of properties fronting Totnes Road
- Light pollution
- Noise pollution
- Impact upon bats
- Raises the same issues as previous schemes that have been rejected
- Inconsistent with the Local Plan
- Inconsistent with the Neighbourhood Plan
- Impact on the health service without financial mitigation (NHS Foundation Trust)
- Impact on private views (not a planning issue)
- Impact on house prices (not a planning issue)

Supporting comments include:

- Provides houses
- Provides facilities

## **Summary of Consultation Responses**

### **Paignton Neighbourhood Forum:**

The Forum objects to the application. The proposal should be refused for the following reasons:

- i. Unsatisfactory access: The site access and assumptions made about the impact it would have on additional turning movements and capacity of Totnes Road as a principal highway take insufficient account of the congestion and accident record that already affects the highway. The volume of turning movements into and out of the site at such a dangerous point will be to the detriment of traffic movement and safety to highway users along this important artery from Torbay to Totnes and beyond. The proposal to move the existing pedestrian crossing further away from the village centre is also totally against the longer term objective of encouraging sustainable growth at the heart of the village to the west. The impact of the application submitted conflicts directly with Local Plan Policy TA1/TA2 Transport, accessibility and development access), the adopted Collaton St Mary Masterplan SPD that shows no access onto Totnes Road and Policy PNP24 (Collaton St. Mary Village) of the Paignton Neighbourhood Plan that expressly requires proposals to be in accordance with the adopted Masterplan for the area having been tested at Independent Examination.
- ii. Overdevelopment: The scale of development proposed of up to 100 dwellings and conversion of farm land adjoining into a large area of public

open space conflicts directly with the adopted Collaton St Mary Masterplan and approved Paignton Neighbourhood Plan which indicate a capacity of 70 dwellings having regard to the importance of landscape, biodiversity and infrastructure constraints that apply. The resulting breach of the Development Plan boundary is unjustified and contrary to the adopted Collaton St Mary Masterplan and Policy PNP1 (Area wide), and Policy PNP19 (Rural Character Area) and Policy PNP24 (Collaton St Mary) of the approved Paignton Neighbourhood Plan.

- iii. Biodiversity: The Ecology Assessment and Shadow HRA submitted with the application refers to baseline documents and that it is not appropriate to use to assess the impact of the proposal in this instance. Namely, the Torbay Local Plan Proposed Submission Plan HRA of 2014 and Draft South Hams SPD of 2018. The former was replaced by the post Examination in Public (EiP) Torbay Local Plan HRA of December 2015 and the latter draft SPD did not progress further due to challenge made during the consultation period involved. Paragraph 3.2.5 of the assessment submitted with the application notes the site falls within the protected Greater Horseshoe Bat 'Sustenance Zone' and two 'Strategic Flyways'. At paragraph 3.2.23 the submitted conclusions state the results of the Bat surveys indicate features present support a 'high' to 'high to moderate' level of Greater Horseshoe Bat activity. At paragraphs 3.4.1 and 3.5.1 the application concludes there will be a likely significant effect on the protected species from the development proposal alone or in combination with other proposals or projects. The assessment made of the 'in-combination' effect fails to include survey of the other 'project' sites in Collaton St Mary as required and therefore fails to meet the test of the 'in combination' effect that would result. As a consequence, the 'mitigation' proposals do not take properly into account the 'mitigation' requirement resulting from the 'in-combination' effect of the other 'project' sites contrary to the requirement of Local Plan Policy SS2 (Future Growth Areas - SDP3.3 Totnes Road/Collaton St Mary) which expressly requires a 'bespoke Greater Horseshoe Bat mitigation plan for all development within the area to be submitted and approved before planning permission will be granted. As the assessment is incomplete, it conflicts also with Local Plan Policy NC1 (Biodiversity and geodiversity), and Policy PNP1 (Area wide) of the approved Paignton Neighbourhood Plan which expressly states at (f) that development will not be supported that would result in an adverse impact on a European protected site.
- iv. Impact on drainage and flooding: The application fails to demonstrate sufficient regard has been given to flash flooding that occurs in the lower area south west of the site which results in ground water and surface water entering the water course breaching its banks and combining with foul water to the detriment of the area. This occurred even during the dry summer of 2018. As determined by the Supreme Court in December 2009, where such situations exist, they need to be examined and resolved at the planning application stage, not by the assumption that they can be deferred to the consideration of the relevant utility provider. Inadequate information has been provided that demonstrates the proposed SUDS soakaway solution and subsequent system management arrangement meet the requirement

of Local Plan Policy ER1/ER2 (Flood Risk and water management) and Policy W5 (Waste water disposal) of the adopted Local Plan and Policy PNP1 (Area wide – f) of the approved Paignton Neighbourhood Plan which expressly states the information is required when such applications are first submitted and will not be dealt with subsequently by conditions.

- v. Lack of job provision: Support for further housing provision in the adopted Local Plan between 2012 and 2030 is subject to the accompanying strategic policy of securing a net increase in the number of jobs in the Bay of at least 275-300 per annum. Since the adopted Local Plan commencement date of 2012, there has been no increase in the net number of jobs in Torbay from the base of 59,000 in 2012 as confirmed by the Job Density information published by the Office of National Statistics (ONS). Examination in Public of the Local Plan in 2014 by the Inspector appointed by the Secretary of State concluded that if the net growth in jobs failed to materialise it would be appropriate to reduce the number of additional dwellings proposed. The application submitted will not result in a net increase in the provision of permanent jobs and will add further to the need for jobs to be found outside of Torbay contrary to achieving sustainable development sought by the National Planning Policy Framework (NPPF), adopted Local Plan Policy SS1 (Growth Strategy for a prosperous Torbay) and Policy PNP1 (Area wide (i)) of the approved Neighbourhood Plan.
- vi. In conclusion: There are no benefits or other material considerations in the proposal that either alone or taken together would outweigh the harm that would result. On the contrary, the proposal fails to make provision for a balance of jobs and homes, and provision for sustainable development contrary to the National Planning Policy Framework and key purpose of the adopted Local Plan, Collaton St Mary Masterplan and Paignton Neighbourhood Plan.

### **Joint Neighbourhood Forums:**

A joint response from all 3 Neighbourhood Plan Forums expresses their views as to why they consider there is already a supply of housing land in excess of the NPPF and adopted Local Plan requirement.

The Neighbourhood Forums find the draft land supply statement published by Council officers does not take sufficiently into account the following:

- The assessment finds a not less than 3 year supply to be identified against the 5 year requirement given the 100% coverage of Torbay by the Neighbourhood Plans recently approved.
- The supply of deliverable dwellings exceeds 3.28 years shown in the draft.
- Review of the Local Plan housing trajectory is about to formally commence.

In conclusion, the Forums' finding is that more than a sufficient supply exists until the required Local Plan Review has been completed. They conclude that continued use of the existing Local Plan housing trajectory is no longer justifiable. A supply of at least 3 years exists that meets the requirement of NPPF14 for the purpose of decision taking as allowed for by the NPPF pending the Local Plan Review that is about to commence.

### **Torbay Council Strategic Planning (Policy) - updated:**

The Development Plan for the area comprises of the adopted Local Plan and the adopted Paignton Neighbourhood Plan. In addition the Collaton St Mary Masterplan was adopted as SPD in 2016 and is a material consideration, along with the explanatory and justification text in the Local Plan and Paignton Neighbourhood Plan policy documents.

The site is part of a wider strategic allocation within the Local Plan and Policy PNP24 of the Paignton Neighbourhood Plan sets out that development is “supported where the proposals are in accordance with the adopted Masterplan for the area”. There are additional caveats and requirements across the Development Plan policies to consider, particularly in relation to the detail.

The current proposal does appear to be fairly consistent with the adopted Masterplan proposal. It is however noted that the suggested housing layout extends northwards beyond the boundary of the development area indicated in the masterplan area (although still within the overall Future Growth Area). This brings it into conflict with Policies PNP1(a), PNP19, and PNP24(b) of the Neighbourhood Plan. The weight given to this requires a planning judgement about the significance of the additional landscape impact, and incursion into the Rural Character Area (in the PNP). However, in the context of the above the harm would need to be significant and demonstrable in order to justify a refusal.

In regard to objections on the grounds of need it is argued within representations that the Local Plan’s level of growth is not justified. Such matters would need to be considered through the upcoming review of the Local Plan and it is not appropriate to consider these through a planning application on a strategically allocated site such as this. The Neighbourhood Plan has been through independent examination and Council approval process very recently which confirmed that it met the Basic Conditions including not revising strategic growth figures or undermining strategic policies. As set out above, the Neighbourhood Plan supports the growth set out in the Local Plan. If the Local Plan was considered to be out of date (as argued in the representations), then the Presumption in Favour of Sustainable Development in paragraph 14 of the NPPF is triggered.

In regard to objections re phasing it is not considered that the phasing in part 8 (and Table 8.1) of the Paignton Neighbourhood Plan can be taken as a phasing policy as it is not upper case policy. It is therefore to be considered as a material consideration. Treating it as a “phasing lock” policy would be tantamount to promoting less development than the Local Plan, contrary to the basic conditions governing neighbourhood plans and the guidance on Neighbourhood Plans in the NPPF which, by virtue of being adopted, the Neighbourhood Plan has been agreed by the Council not to do.

With regards to housing supply, we recently published our initial assessment that showed there was currently less than 5 years’ housing supply in Torbay, which does trigger the presumption in favour of sustainable development, particularly against the Local Plan policies. A consultation has been undertaken and a range of responses received. It is not likely that the final outcome will increase the housing supply above

5 years. Officer advice is that the additional protection provided to Neighbourhood Plans by paragraph 14 of the NPPF is not triggered in relation to Paignton, since the PNP does not contain policies and allocations to meet its identified housing requirement.

Objectors have raised a number of concerns about details of the applications, but the level of conflict would need to be “significant and demonstrable” given the tilted balance in favour of granting planning permission. As discussed the site is allocated for development in the Development Plan, and can therefore be considered broadly in accordance with the Development Plan taken as a whole. As stated, Policies SS2 and SDP3 are strategic policies, and Policy PNP24 seeks to tie in development with the Masterplan principles.

Residents have reasonably been very concerned about surface water flooding and sewer overflows arising from storm water. The proposals will need to ensure that they do not worsen the situation either through surface water run off or placing additional pressure on the shared sewer but this will be for the drainage lead to comment on. Similarly there are a number of detailed design, access, ecology, heritage etc. issues that need to be considered. However, as set out above, both sites are allocated in the adopted Local Plan for residential development, and the presumption in favour of sustainable development applies to them.

In summary the presumption in favour of sustainable development applies to proposals in the Future Growth Area. This does not mean that poor quality developments or those that divert significantly from the Masterplan should be approved. However, the bar to resist proposals is much higher, because the principle of development has been established.

### **Torbay Council Strategic Planning (Transport) - Incorporating the views of the Highway Authority:**

The Local Highway Authority do not object to this application. All issues previously raised, principally in relation to highway safety, have been acceptably addressed.

Concerns had previously been raised about the standards which were being met/applied in the case of this proposal. Discussions took place about the use of standards but it has been possible to find a solution which is considered to be acceptable and provide sufficient visibility at the junction to provide a safe access. The upgrade of the zebra crossing (with a history of safety concerns) to a signalised crossing also increases the safety for pedestrians and cyclists in that area.

The forward visibility of vehicles queuing at the signalised junction was the final concern to be overcome. The issue related to vehicles travelling from the east and with those drivers having insufficient visibility of what was estimated to be a maximum queue potential. In order to overcome this issue, given the topography of the area and likelihood of a maximum queue length specifically being met, automated signage has been proposed as a warning to drivers on the approach.

Visibility from the site access to the west is considered acceptable but it was agreed that parking restrictions would be included for the length of the visibility splay. These have not been shown on the submitted plan (Vectos 173135\_G\_12\_B, received

26.11.2019) but it is not necessary to amend the plan, so long as the works are included within the highways agreement. It will be important that all the works on the plan are secured through a S278 Highway Agreement.

The following comments were raised previously but for completeness have been re-included. In terms of other access to the development, the applicant confirmed that;

- *“We can provide engineering details around the proposed pedestrian link to the west connecting to the village centre and school.*
- *We can widen the footway into the site, creating a footway/cycleway of 3m width on the eastern side of the access (indeed this could pass through the site and onwards to the new connection to the west)”.*

It is considered that these points achieve a sustainable access to the site which is in accordance with the national, local and neighbourhood policies, as well as the corporate objectives of the Council. However, this is not shown on current submitted plans and would be a matter to be included within the detailed application to follow.

Note, one additional access opportunity exists to the far eastern end of the site, to join the footpath network on the northern side of Totnes Road towards Paignton. Options for pedestrian access to this point should be considered going forward.

With regards to the Travel Plan, the TA sets out that it will be submitted to the Council for approval prior to occupation of the development and there is an expectation this will be controlled by condition. However, it will be necessary to be in a position to inform residents of their travel options much sooner and to have a ‘welcome pack’ or similar arrangement available in advance of occupation so that they can make informed decisions. As such I would expect this to be sooner and would recommend the Travel Plan it is submitted with any reserved matters application. The Travel Plan target should be to achieve the levels set out in the Local Plan policy. If agreed at an earlier stage this information can then be provided to prospective buyers to enable them to consider their accessibility options from the outset.

Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD will also apply if the application is approved (to the non-affordable dwellings). In the case of Sustainable transport it is indicated as “trip rate x £171” per dwelling. In this case the trip rate (although questioned by the LHA it was not challenged) is equal to 3.998 (Transport Assessment TRCIS output) per dwelling, multiplied by £171 equals £684 per non affordable dwelling built following any reserved matters or full planning consent. Alternatively the SPD also makes an assumption on a trip rate specific to different sized dwellings. This method could be used but can only be calculated following the detail planning application. This funding would support strategic connectivity from Collaton St Mary to employment areas along the Western Corridor and into Paignton Town Centre.

Local Plan Policy SS6.2 and SDP3 indicates that development along the Totnes Road area (SDP3.3) will require infrastructure improvement works to the A385 Totnes Road. As noted in the Planning Contributions and Affordable Housing SPD, this is estimated at £1m (para 4.2.7) and it is appropriate to divide that amongst the properties proposed, using the numbers as set out in the Adopted Masterplan. In total,

the Adopted Masterplan supports approximately 460 homes (£2,174 per dwelling). That same Adopted Masterplan estimates 70 dwellings on this site. Therefore £152,180 towards the development and implementation of the scheme.

Detailed comments in relation to the site layout will be reserved for any detail application that may arise once a solution to the highway safety has been found. In general though my advice would be for the applicant to consider the Design Guide. Policies in both the Local Plan and Neighbourhood Plan will also be relevant when considering sustainable access and movement around the site, as well as parking and other provisions.

**South West Water:**

No objection. The impact of the foul flows generated by the development upon the public sewer network have been hydraulically modelled and capacity confirmed to be available.

Supplementary comments regarding concerns on capacity and infrastructure:

*"I am pleased to provide comments on the points raised to give reassurance to the LPA, Councillors and residents as to how we will manage our clean and waste water services for new developments.*

*Prior to 1 April 2018, each new development site would be reviewed on a case by case basis and should there be a need for off-site reinforcement to support the development, the activities would be funded by the individual developments if this was not recognised in the South West Water business plan.*

*This was formalised with the developer by either using a Section 106 contribution, or in more recent years, via a planning condition. However, the significant change in the Developer Services Charging Arrangements on 1 April 2018 which was brought forward by Ofwat, moved the off-site reinforcement to be funded by the infrastructure charge (authorised by Section 146(2) of the Water Industry Act 1991 which is applied to each new property (or commercial property based on loading) to recover the costs of network reinforcement involving new development.*

*The infrastructure charge will allow new development to progress without any adverse impact upon the levels of services experienced by our existing customers as a consequence of new development. Our Asset Management Team will be carrying out an evaluation of the waste water assets in Collaton St Mary and this information will allow us to review if there is a need to carry out off-site reinforcement to support the developments in the area. The review will be based on the overall master plan of this area to ensure we look at the holistic view of development in this area.*

*I trust this provides the clarity required from SWW as to how we will review the area and how this also is to be funded should there be a requirement to reinforce the network to support these developments."*

**Torbay Council Drainage Engineer:**

No objection.

Further to the additional information relating in regard to the surface water drainage design for the above development, it is confirmed that the points raised within my consultation response dated 6<sup>th</sup> April 2020 have now been answered within the latest information.

As a result there are no objections on drainage grounds to outline planning permission being granted based on the latest submitted drawings and hydraulic modelling.

As this is an outline planning application with the final layout yet to be fixed, a final detailed drainage design that responds to any subsequent revised layout must be submitted as part of any reserved matters.

### **Historic England:**

The application site is surrounded by a number of listed buildings. Historic England's remit is limited to the grade II\* listed Parish Church of St Mary and the impact of the development on its setting. The church is located in a small group of buildings to the north of the A 385 and west of the current development site. Due to the location of the development and the retention of the green buffers within the proposed layout, we do not wish to comment on this aspect of the proposal in any specific detail.

As a note there are a number of other designated assets that do not fall within our remit and that will require assessment by the council in determining the application. As the decision maker, you should assess the potential impact of the development on the significance of the heritage asset including any significance derived from its setting. Advice from your conservation specialists and archaeological advisors should allow the potential level of impact to be established and whether this will result in harm. This harm will need to be considered within the planning balance.

### **Torbay Council Interim Heritage Advisor:**

The site itself does not contain any designated heritage assets, nor in my opinion does it contain any obvious non-designated heritage assets. However, in the wider vicinity of the site there are a number of designated and potentially non-designated assets and as such consideration should be given to the setting of these assets, in so far as there is no evident impact upon the fabric of these assets. For the avoidance of doubt my observations do not address the archaeology (if any) of the site, but focuses on the legislative considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 16 of the NPPF and policies HE1 and SS10 of the Torbay Local Plan, and associated Neighbourhood Plan heritage considerations.

The closest designated heritage asset is the listed buildings at Collation Farmhouse and associated farmyard, which are located to the south of the site, on the opposite side of the Totnes Road. The listing citation, the farmhouse is believed to have been built in the mid-19th century in a simplified Tudor style, and exhibits features such as mullioned windows and an original white marble chimney surround. The planned farmyard also dates to the mid-19th century and, as with the farmhouse, is built in local red Breccia rubble. In terms of the setting of these buildings this is now very much influenced by main road and what is largely now a semi urban character. Whilst the proposed scheme will involve a new access in reasonably close proximity to the farmhouse there is already a zebra crossing and street lighting and hence the general



settings character will not be harmed. It will be desirable to ensure that the application site frontage where it adjoins the main road retains a good degree of planting to help provide a softer setting to the listed building acknowledging that it would have once had a more rural setting than that which currently exists. The applicant's heritage report reasonably assesses the setting considerations and I do not dispute the conclusions of this report.

There are 6 listed buildings which form a cluster of buildings to the west of the site, including the Grade II\* listed Parish Church of St. Mary, located to the west of the site. In my opinion these buildings are sufficiently divorced from the new development and I note that a good buffer area is proposed between the listed buildings and the proposed housing. Existing trees and hedgerow provide a good degree of visual containment. In conclusion the setting of these buildings will not be harmed. It will be important to ensure that any subsequent landscaping scheme considers the setting of these listed buildings and is designed to maintain the soft buffer between the listed buildings and new development. Care should also be taken to ensure that the design of the footpath links avoid a hard urban appearance. Again the applicant's heritage report reasonably assesses the setting considerations and I do not dispute the conclusions of this report.

The applicant's heritage report considers the setting on listed buildings further from the site and I consider that the conclusions are appropriate. No impacts are identified in terms of non-designated heritage impacts.

**Archaeological Advisor:**

Parts of the site are considered to have a higher archaeological potential than is suggested in the submitted documents. These areas are currently identified as public open space or retained for agricultural use. Should these areas come forward for expansion of the development area in the future then I would recommend pre-application assessment and evaluation through a staged programme of work commencing with archaeological geophysical survey.

**Ecology Advisor:**

The key ecological issues considered to be relevant to the determination of this application relate to the use of the site by foraging/commuting bats (including greater horseshoe), cirl bunting, badgers (with two main badger setts recorded within the application area), notable invertebrates (brown hairstreak and great green bush cricket) and an exceptional population of slow worm.

General ecology

The ecology report indicates potential effects during construction on the slow worm population, foraging and commuting bats including greater horseshoes, foraging badgers, nesting birds and habitats used by hedgehog, brown hare and common amphibians. The cirl bunting territories were recorded outside the construction area and will not be directly affected by loss of habitat. Any potential disturbance effects in the east of the construction area will be mitigated as set out in the ecology report. The main badger setts are not located within the proposed construction area and the ecology report details the mitigation measures proposed to ensure that these setts are retained and protected during construction. Pre-construction surveys are proposed to record any changes in outlier sett locations and inform a Natural England licence to

close any setts within the construction zone. Mitigation measures have been proposed to ensure legal compliance with regards to the risks relating to breeding birds, amphibians and reptiles.

The ecology report has identified the potential for positive effects on ecology during the operational phase of the development. This is broadly associated with the management of the retained habitat to increase the diversity and value to birds, bats, reptiles, badgers and hedgehogs. The key potential adverse effect associated with operation is associated with the increased light levels, however the measures to reduce light spill and maintain dark corridors is considered to be effective mitigation.

#### South Hams SAC / Habitat Regulations Assessment (HRA)

A HRA (Stages 1 and 2) has been completed on behalf of Torbay Council to fulfil the requirement of regulation 63 of the Conservation of Habitats and Species Regulations 2017. The HRA concluded that in view of the application, there is not likely to be any significant effect on the South Hams or Lyme Bay and Torbay Special Areas of Conservation (SAC) alone or in combination with other proposals or projects, subject to mitigation measures.

The mitigation measures included within the EclA and Shadow HRA reports are to be secured through the implementation of the provided Construction Ecological Management Plan (CECoMP) and the Landscape Environmental Management Plan (LEMP). The following bat mitigation proposals for the development are stated in the Shadow HRA:

#### During construction

- Tree and retained hedgerow protection during construction. Contractor's compounds and associated parking and storage areas would be at least 10m away from hedgerows, trees and woodland edge.
- Lighting would be turned off overnight throughout the construction period. Any security lighting would be low-level and motion activated on short-timers.
- An Ecological Clerk of Works would be appointed to oversee all ecological mitigation and enhancement delivery during pre-construction and construction phases.

#### During operation

- The development design is such that landscape connectivity important for greater horseshoe bats has been maintained.
- A maximum lux level of 0.5lux at 10m from the face of the key western, northern and eastern commuting and foraging corridors would be achieved as shown in shadow HRA Figure 4. A 0.5 lux level of lighting is generally accepted as providing a 'dark' environment, which would not deter light-sensitive bat species, and is based on studies investigating the effects of lighting on the lesser horseshoe bat (Stone *et al.*, 2009).
- The positioning of residential units and roads, along with the locations of proposed hedgerow, woodland and scrub planting would ensure that lighting from internal sources and car headlights would not significantly increase light spill onto the key GHS habitat.
- A bespoke greater horseshoe bat roost will be created within the mitigation area. The detailed design of the bat roost would be confirmed in conjunction with the first Reserved Matters Application for the site and would be delivered

in the first phase of construction.

- The eastern half of the site (approximately 6.55ha) would be retained as cattle-grazed pasture with habitat enhancement targeted at greater horseshoe bats under a specific agricultural management regime. The management prescriptions to enhance the foraging habitat within the greater horseshoe bat mitigation area has already been agreed between the landowner, tenant farmer and Bloor Homes. This would be funded via a management fee from homeowners, and its implementation could be secured through the Section 106 Agreement.
- Approximately 7.53ha of the site would be Green Infrastructure, consisting of Public Open Space with meadow, tree (including orchard) and scrub planting; allotments; amenity areas and drainage features. This area is also likely to provide foraging opportunities for greater horseshoe bat.

#### Monitoring (detailed within section 4.5 of the shadow HRA (EAD Ecology 2019))

- Post-construction monitoring would be undertaken on key habitat features of importance to GHS bats. Measurements of pre-construction light levels would be collected at points on the edge of these habitats to provide a baseline for post-construction monitoring.
- Lux level measurements would be undertaken in Years 1, 3, 5 and 10 following completion of the development to ensure that 0.5lux levels and below are still being achieved.
- Automated bat activity monitoring to be undertaken in Years 1, 2, 5 and 10, would be undertaken at the same static detector positions as the baseline surveys in May, July and September. A GHS bat monitoring strategy would be included in the LEMP, and all results of all monitoring would be submitted to Torbay Council.
- The proposed bespoke GHS roost would be monitored by a licensed bat ecologist in Years 2, 4 and 10 following its construction. Monitoring would consist of internal inspections of the roof void to search for evidence of use by GHS i.e. presence of GHS and/or droppings/feeding remains.

Additional measures to secure the proposed mitigation in light of comment from Natural England shall be required and take the form of the proposed planning conditions. These shall include a CEcoMP and LEMP which shall include relevant sections with regard to habitat phasing, hedgerow management, detailed roost design and clear illustration of how the measures shall be managed “in perpetuity”.

#### Recommended conditions (HRA)

- Control of External Light Spill to Maintain Dark Areas on Site and in Surrounding Areas
- Detail of bespoke greater horseshoe bat roost
- Construction Environmental Management Plan – Biodiversity
- Landscape and Ecological Management Plan (LEMP) or equivalent
- Ecological monitoring to provide early warning of threats to bat commuting routes

#### Conclusions

There is no reason for refusal of this planning application on ecological grounds provided the proposals within the ecology report are implemented and maintained.

This includes provision of a biodiversity metric calculation, CEcoMP, LEMP, greater horseshoe bat mitigation area management plan, the appointment of an Ecological Clerk of Works, a detailed lighting strategy and appropriate post-construction monitoring. It is recommended that these measures are secured via appropriately worded planning conditions when this application is determined.

**Natural England:**

No Objection.

Comment regarding protected species/sites

Having reviewed the Council's HRA/AA Natural England has no objection, subject to appropriate mitigation as identified being secured to ensure no adverse effect on the integrity of South Hams Special Area of Conservation (SAC). In order to mitigate these adverse effects and make the development acceptable, the following mitigation measures are required / or the following mitigation options should be secured:

- All mitigation and enhancement measures to address potential impacts upon greater horseshoe bats associated with the South Hams SAC.
- In addition, the delivery of further mitigation measures to ensure that the proposals are sufficiently robust.

It is advised that an appropriate planning condition or obligation is attached to any planning permission to secure these measures.

Natural England's advice on other natural environment issues is set out as follows:

Comment regarding biodiversity net gain

In the Chancellor's 2019 Spring Statement, the government announced that it "will Mandate net gains for biodiversity on new developments in England to deliver an overall increase in biodiversity". Accordingly and to future proof the proposed development, we advise that the proposals are reviewed in light of this commitment towards the delivery of biodiversity net gain. It would be useful to demonstrate the delivery of biodiversity net gain, with the use of a recognised biodiversity metric mechanism. To assist, we suggest further opportunities to deliver biodiversity enhancements for consideration:

- Extend the native scrub, tree planting, and species rich grassland seed to the Greater Horseshoe Mitigation Area.
- Creation of further hedgebanks in Greater Horseshoe Mitigation Area to create smaller fields, utilising soil from construction excavation.

**RSPB:**

The RSPB are not convinced that the proposals will deliver a net gain for ciril buntings. While supportive of proposals that will enhance the GHS (and other retained and created habitats) for greater horseshoe bats, some aspects of this, eg, extent and density of tree planting (yet to be clarified), will not benefit ciril buntings and could result in a net loss of habitat suitable for them. The RSPB remain of the view that compensation for one (a 3<sup>rd</sup>) ciril bunting territory is appropriate and that is the recommendation. However, if your authority decides to grant permission without this provision, we recommend that post construction monitoring should include a timetable

of cirl bunting survey with the proviso that if such monitoring determined a reduction in cirl bunting territories on site (and we consider there are 3 likely present and using habitat on the site), compensation is provided.

Update comments following points raised by the agent:

RSPB site-specific survey for cirl buntings are to establish the presence of breeding (or wintering) birds. They are not sufficiently detailed to determine exactly what areas of habitat cirl buntings are or are not using, so it cannot be concluded from the surveys that cirl buntings do not use any of the potentially suitable habitat that will be lost to built development. Interpretation of survey findings is subjective, but in our view the number and location of registrations suggests it is more likely that 3 not 2 territories were identified during survey.

In our view, the degree of uncertainty over the degree of proposed new tree planting, in the POS and in the GHS mitigation area, and absence of a detailed LEMP to know how the retained and created habitats outside the proposed GHS will be managed, together with the lack of certainty over long term funding for management of the GHS, support our view that, to be certain that the proposed development will not have an adverse impact on cirl buntings, compensation provision should be provided for one territory. Such compensation would be need to be secured via a s106 agreement, needs to be agreed at outline stage. Currently we do not have the benefit of the details of planting, management and management responsibility that we understand are to be confirmed via conditions on any permission (i.e. after grant of this application) and are not then likely to come forward until a reserved matters application is submitted.

**Torbay Development Agency Affordable Housing Team:**

The affordable housing policy requirement on this site is that 30% of the homes developed should be affordable and as a result we will expect to see 30 of the 100 homes as affordable housing including 2 wheelchair adapted units. As with all new developments we would anticipate that the mix on bedroom numbers is proportionate to the mix as a whole and rather than the affordable housing being designed in one location for them to be pepper potted throughout the scheme.

With over 1000 households on the waiting list for affordable housing in Torbay the above site will have a positive impact on providing much needed accommodation and providing the above points are taken into consideration and subject to a satisfactory S106 going forward housing services would be supportive of the application.

**Torbay Development Agency Schools Capital and Planning Officer:**

The latest published position statements reiterate that the need and demand for school places in Paignton remains high and particularly now in the secondary sector.

S106 contributions should be sought in-line with the Adopted SPD for education particularly to address the shortfall in the older year groups in primary and across the whole of the secondary sector.

**Torbay Council Community Safety Team:**

No objection to this application being approved. Would suggest the inclusion of a condition requiring the submission of a construction management plan for the approval of the local planning authority prior to development commencing. This should have

particular reference to the control of dust and noise. A contaminated land report is not necessary.

**Police Designing Out Crime Officer:**

It is appreciated that the application is for outline planning permission with all matters reserved except for access, as such detail is too limited to enable a full response at this time but please find the following initial advice and recommendations from a designing out crime, fear of crime and disorder perspective to be considered for any future reserved matters.

**Torbay Council Natural Environment Services Team:**

Due to the vicinity of the development site to a new Country Park at Westerland Valley and the access opportunities that the Country Park will offer to the new residents it would be good if the development could open up and manage a new footpath and access point to the Country Park (as shown in the Collaton St Mary Masterplan) and put in associated footpath signage. If a financial contribution could be sought to support access improvement within the Country Park and an ongoing contribution sought from the development to support maintenance/upkeep within the Country Park this would help ensure the long term management of this new greenspace. It is important to flag up connectivity between this development and the proposed new developments to the south and facilitating access from these developments to the new Country Park.

There is currently limited play provision within the area and we would like to create new play facilities at Westerland Valley, whether this is through more informal play structures (natural play) or creating opportunities for children on scooters/balance bikes. Could a financial contribution could be sought for some new play facilities at Westerland and an allowance for maintenance.

We support that the development is providing Green Infrastructure onsite but I would like to see further enhancement of the wider GI network. We would like to establish opportunities within the Greenspace contribution/CIL for this development to support wider enhancement of the Country Park through mechanisms such as Interpretation onsite, signage and engagement with the community through the contribution towards a new Park Ranger.

There are allotments shown on the landscape plan – who will be responsible for the ongoing management of them? We are looking to create a new community orchard within Westerland Valley so it would be good to establish whether there are opportunities to further enhance the local food provision through this development.

I have seen in the comments from the RSPB that there is the need to deliver offsite compensation for one cirl bunting territory and that this contribution will come to Torbay Council to pool with other contributions. There is potential to look strategically within Westerland Valley at opportunities to deliver an offsite cirl bunting reserve, which is better connected to other cirl bunting sites within Collaton St Mary. This reserve if secured and managed in perpetuity will greatly support the local cirl bunting population, which are under increasing threat from loss of suitable habitat through development and fragmentation of farmland.

We support the provision of the Greater Horseshoe Bat Mitigation area and the enhancement to hedgerows through the development but would like to highlight the requirement for that land to be managed for conservation in perpetuity and the viability of that mitigation not to be compromised by further development. This mitigation area will support the creation of a connected wildlife rich network at Westerland Valley and if there are opportunities through s106 to strengthen the Greater Horseshoe Bat strategic flyway and commuting route that is identified in the Collaton St Mary Masterplan through tree planting and double hedgerows that would be great. There is also potential to create further bat roosts up through the Westerland Valley.

**Environment Agency:** No comment supplied.

**Devon Wildlife Trust:** No comment supplied.

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

#### **Planning Officer Assessment**

1. Principle of Residential Development
2. Access and Highway Safety.
3. Drainage and Flood Risk
4. Ecology and Biodiversity
5. Design and Visual Impact
6. Impact on Heritage Assets
7. Impact on Residential Amenity
8. Other Considerations

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

The application site is located within a Strategic Delivery Area (SDA), as designated in the Local Plan under Policy SS1, which identifies areas for the delivery of growth and change in Torbay for the period of the Local Plan, where the site forms part of the Paignton North and Western Area SDA. In addition the site is also part of a wider Future Growth Area as identified within Policy SS2 of the Local Plan, where it sits in the identified *Paignton North and West Area, including Collaton St Mary* (Policy SS2.2). Strategic policy SDP3 of the Local Plan for the Paignton and North and Western Area identifies that 460 houses could be provided within the Totnes Road / Collaton St Mary Future Growth Area over the plan period. Policies SS1 and SS2 identifies that Future Growth Areas are areas within SDAs that show broad locations where the Council will seek to work with landowners and the community, through neighbourhood planning and/or master-planning, to identify in more detail the sites, scale of growth, infrastructure etc that is required to help deliver the aspirations of the Local Plan. These strategic policies all support the principle of residential development on the site.

The site is also subject to an adopted masterplan for the wider Future Growth Area (adopted February 2016) for the Collaton St Mary area. The adopted Masterplan identifies the lower slopes adjacent to the Totnes Road (and to the west of Borough Park Road) as a potential site for housing that is expected (through the illustrative detail and text) to bring forward approximately 70 dwellings across an area of 3.7

hectares, at around 20 dwellings per hectare. The proposed development is broadly aligned with these principles of the Masterplan in terms of location, i.e. infilling across the site from Borough Park Road, and also in terms of the potential density of development. There is however a variance in that it presents an expectation to provide development over a slightly larger site area of 4.4 hectares, which spreads approximately 25-30 metres further northwards into the site than identified within the Masterplan. The impact of this variance will be discussed within subsequent sections of this report however it does not alter the broad conformity with the general principles of the Masterplan, of housing on the lower slopes of the site at a low density.

In regard to other matters of principle the Paignton Neighbourhood Plan does not identify housing sites. However, Policy PNP24 (*Collaton St Mary Village*) does outline that any further development beyond the currently developed areas will only be supported where the proposals are in accordance with the adopted Masterplan for the area. As the application site is identified as a potential site for housing within the adopted Masterplan the Neighbourhood Plan is considered to support the principle of housing development on this site. It should be noted that aside from the aforementioned slight divergence from the Masterplan in terms of the spread northwards there is a deviation from the Masterplans illustrative text in that the access point is proposed off Totnes Road rather than Borough Park Road. In regard to the principle of utilising a different access point to that shown within the adopted Masterplan, such an access should be considered on its own merits in terms of highway safety and its broader strategic merit. It should not be discounted solely on the notion that it doesn't accord with the Masterplan unless, as just detailed, there are sound functional planning reasons to do so.

In relation to the proposed housing number it is important to note that the layout and number shown on the Masterplan should be considered as being indicative only, as the adopted Masterplan layouts are all somewhat schematic. Hence the Masterplans number should not be taken as a ceiling on the number of dwellings that can be achieved, certainly in light of the government's clear agenda to boost housing supply and guidance on support for development that makes efficient use of land.

As a final point of principle, it is clear that there is the potential for some form of conflict with Policy PNP19 (*Rural Character Areas*) of the Paignton Neighbourhood Plan should a future reserved matters application present dwellings within the designated rural area, as currently shown within the submitted indicative masterplan. However, it is important to note that Policy PNP19 does not expressly preclude development, but seeks development that does not damage its quality and the relationship between urban and rural areas. There is hence clearly an expectation for some development to be delivered within the designated Rural Character Area generally. In this instance it is considered, if a future reserved matters application presents development within the Rural Character Area to a level loosely aligned with the indicative layout and section detail currently submitted, that any impact upon the character of the wider area is unlikely to be demonstrably adverse, as a substantial rural backdrop would still be visibly present from key public views. The likely impact of development character is touched on in Section 5 below but would ultimately be considered more robustly considered at reserved matters stage.



For the reasons stated above the principle of residential development on this site is accepted, when considering the Development Plan as a whole, subject to other material considerations which are further discussed in more detail below.

## **2. Access and Highway Safety**

Para. 108 of the NPPF (the Framework) guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; and (c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree.

Para. 109 of the Framework confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA2 of the Local Plan states that all development 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. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided.

The Paignton Neighbourhood Plan is largely silent on access and highway matters beyond guiding that: appropriate infrastructure should be in place for development, sustainable modes should be encouraged, and; suitable parking and cycle facilities should be provided within all residential development.

The Paignton Neighbourhood Forum objects to the access on the basis that the adopted Collaton St Mary Masterplan shows no access onto Totnes Road and Policy PNP24 (Collaton St Mary Village) of the Paignton Neighbourhood Plan expressly requires proposals to be in accordance with the adopted Masterplan for the area. It is noted that the masterplan cites "*vehicular access is proposed via Borough Park Road. Direct access onto the Totnes Road is not deemed to be appropriate due to the unsuitability of the junctions with the Totnes Road*". The Forum's view is that this suggests that an access onto Totnes Road was considered but discounted through the master-planning process. Notwithstanding the position of the Forum it is advised that if a safe and suitable access can be shown to be achievable it should not be discounted solely on the grounds of discordance with the expectations of the Masterplan, unless there are sound highway safety or strategic planning reasons to support such a rejection. The merit of the proposed Totnes Road access is considered in detail below.

Following the receipt of revised plans the proposal is to provide a junction with a 6m wide carriageway into the site just east of the existing zebra crossing on the Totnes Road. There is no dedicated right hand turn lane into the site, which is informed by the supporting data that suggested that there is no capacity requirement for one. The Highway Authority agree with this position. There are proposed works to the highway in support of the junction which include the removal of the existing zebra crossing and

its replacement to the east of the new access with a light controlled pedestrian crossing. There are also plans for anti-skid surfacing either side of the crossing, which is extended in length on the outbound approach towards the brow of the hill. The applicant has also, through revised plans, included the provision of an automated warning sign at the brow of the hill to the east, which would be linked to the light-controlled crossing, in order to warn outward bound traffic of potential queuing traffic over the hill.

The proposed junction design is considered to secure adequate visibility for the class of road and the light controlled junction is considered suitably designed in light that it replaces a zebra crossing with impaired visibility. The forward visibility for outbound traffic approaching from the east over the brow of the hill is slightly below Torbay's design standard but exceeds a national standard in terms of Design for Streets. In the circumstance the use of a 'smart' sign to warn approaching vehicles of potential queuing traffic is considered to present a satisfactory solution considering the locality constrains further improvement, and there being a small difference between the forward visibility achieved and Torbay's standard, suggesting it is unlikely to significantly increase the risk of collisions. All matters considered the proposed access is considered suitable and safe and hence in accordance with local and national policy guidance.

In terms of broader movement objectives, the indicative proposals suggest the introduction of pedestrian/cycle connections to the east and west. Pedestrian and cycle permeability is welcomed and a future reserved matters application should include these aspirations. Public access to the public open space and publically available connections further to the north towards the identified country park (Westerland) should also be duly considered and secured by planning conditions and obligations as necessary.

In terms of future considerations, should the proposal be granted planning permission, it is recommended that internal roads are built to the standards outlined within the Torbay Highway Design Guide to ensure that they have the potential to be adopted by the Local Highway Authority. Ultimately further scrutiny will be given to the internal layout at reserved matters stage.

Local Plan Policy SS6.2 and SDP3 indicates that development along the Totnes Road area (SDP3.3) will require infrastructure improvement works to the A385 Totnes Road. As noted in the Planning Contributions and Affordable Housing SPD, this is estimated at £1m (para 4.2.7) and hence a proportionate obligation of £152,180 towards the development and implementation of the scheme should be secured via a legal agreement. In addition Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD also suggests a sustainable transport obligation should be secured (indicated as an obligation of £684 per non affordable dwelling built). The precise amount would be established at reserved matters stage however the current detail suggests this is likely to secure funding of circa £47,880 for sustainable transport improvements in the area, towards the strategic connectivity from Collaton St Mary to employment areas along the Western Corridor and into Paignton Town Centre.

Finally in regard to the principle of providing the access off the Totnes Road rather than off Borough Park Road (as indicated within the adopted Masterplan) it is considered that there is no strategic merit for one route of access over the other. Hence in the absence of a strategic reason to seek to utilise Borough Park Road as the access point the proposed access should be determined on its own merit in terms of the layout and the safety of the junction and, as concluded above, the proposed junction is considered acceptable by the Highway Authority.

Considering the points above and having regard to guidance contained within the NPPF, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Para 109), the proposal is (subject to securing the identified matters) considered acceptable on highway and movements grounds, and in accordance with the Policies TA1 and TA2 of the Local Plan, and in broad accordance with the Paignton Neighbourhood Plan and the NPPF.

### **3. Drainage and Flood Risk**

National guidance contained within the NPPF cites that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (Para 163). It also guides that Major developments should incorporate sustainable drainage systems unless there is clear evidence that this would be inappropriate (Para 165).

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, which is aligned with guidance contained within the NPPF. In regard to foul waters Policy ER2 of the Local Plan includes reference that development proposals should provide appropriate sewage disposal systems with separate foul and surface water, which seek to use sustainable measures and reduce water being discharged into shared sewers.

The Paignton Neighbourhood Plan has two key policies relating to drainage and flood risk. Policy PNP1 (Area Wide) Section (i) *Surface Water* cites that developments will be required to comply with all relevant drainage and flood risk policy. It furthers that proposals which achieve more than sustainable drainage improvements and move beyond Sustainable Urban Drainage systems (SUDs) by keeping surface water out of the combined sewer network at source are encouraged. PNP24 (Collaton St Mary) cites that foul and surface water disposal have become a significant problem in the area and furthers that residential development proposals where appropriate will be required to demonstrate (i) that sufficient capacity exists to accommodate the additional development and not cause any risk of flooding to existing properties, and (ii) there is infrastructure in place to provide for, and service, such growth and development.

In terms of context the site sits in an area with a low risk (Flood Zone 1) of flooding, however it does sit within the Critical Drainage Area that covers most of Torbay, as designated by the Environment Agency. It should also be noted that, although not

within the site, there is a linear area of heightened flood risk to the south that follows the valley floor from west to east.

The Paignton Neighbourhood Forum have raised an objection on the grounds of flooding and there is also a notable degree of local concern on the matter raised through numerous representations. The Forum is concerned that the application fails to demonstrate sufficient regard has been given to flash flooding that occurs south of the site that they link to ground water and surface water entering the water course and combining with foul water to the detriment of the area. The Forum's concern includes that they believe inadequate information has been provided to demonstrate that the proposed SUDS soakaway solution and subsequent system management arrangement meet the requirement of the Local Plan and the Paignton Neighbourhood Plan, where the latter expressly states the information is required when such applications are first submitted and will not be dealt with subsequently by conditions. The Forum also cite a Supreme Court decision in 2009 that determined that where such situations exist they need to be examined and resolved at the planning application stage, not by the assumption that they can be deferred to the consideration of the relevant utility provider.

The application is accompanied by a detailed flood risk assessment and outline drainage strategy which identifies that surface water run-off from the development will be drained via infiltration drainage in the form of soakaways. There is also a utilities plan that illustrates that foul waters will be connected to the Public Sewer that runs along the Totnes Road, connected at a point adjacent to the proposed access.

In regard to surface water management additional design work has been undertaken by the applicant and recently supplementary detail to support the applications design strategy of utilising soakaways to sustainably manage surface water runoff has been submitted. The Council's drainage engineer has considered this additional detail and no longer objects to the application as it is considered that the proposal now demonstrably evidences that the development would not increase the risk of flooding to land or buildings adjacent.

In regard to foul water the application details a connection to the public sewer system on the Totnes Road at the point of the proposed access. South West Water (SWW), who are the statutory undertakers that manage the public sewer system, have considered the proposal and confirmed that they do not object to planning permission being granted. It is noted that SWW also confirmed that the impact of the foul flows generated by the development upon the public sewer network have been hydraulically modelled and capacity confirmed to be available.

Based on the above comments there is no objection to outline planning permission being granted for the development subject to a condition requiring the developer to submit their final drainage design for approval once the reserved matters sets the detailed design parameters. The proposal is, for the reasons above, considered to be in accordance with Policies ER1, ER2, SS2 and SS7 of the Local Plan, and in accordance with the Paignton Neighbourhood Plan, and advice contained within the NPPF.

Notwithstanding the clarity of the conclusions above due to the level of current and

previous concern by local residents and Members, additional information has been sought from SWW as the statutory undertaker who manage the public sewer system, in terms of how they seek to manage capacity and deal with growth. Following this request for further information SWW has outlined that there has been a 'model shift' in how they operate following significant change in 2018 brought forward by Ofwat (The Water Services Regulation Authority), and they now no longer rely on the planning system to secure funding for changing needs in capacity. They confirmed that where they previously engaged with the planning process on a case-by-case assessment and sought necessary funding via conditions or S106 legal agreements, they now operate a model that is detached from and does not rely on the planning system. The 'new' system now secures infrastructure funding through developer connections charges (and strategic delivery plans), which they cite should allow new development to progress without any adverse impact upon the levels of service experienced by existing customers as a consequence of new development. The 'new' model of management outlined by SWW and summarised above clearly outlines that SWW no longer rely on the planning system to deliver necessary infrastructure and hence there would appear no sound planning reason not to support the proposal on flood risk and drainage grounds, where there is support from the Lead Local Flood Authority in terms of surface water and the statutory undertaker in terms of foul water.

As an anecdotal note SWW have confirmed that their Asset Management Team will be carrying out an evaluation of the waste water assets in Collaton St Mary and this information will allow them to review if there is a need to carry out off-site reinforcement to support the developments in the area. They confirmed that this review will be based on the overall master plan of this area to ensure we look at the holistic view of development in this area.

#### **4. Ecology & Biodiversity**

Policy NC1 of the Local Plan and guidance within the NPPF seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development.

Policy PNP1 (Area Wide) of the Paignton Neighbourhood Plan states that development will not be supported where the development proposal would result in an adverse impact on a European protected site and Policy PNP1 (c) *Design Principles* includes a number of aspirations for development to secure, where possible and appropriate to the scale and size of development. PNP1 (c) includes reference to safeguarding biodiversity and geodiversity by ensuring that layout and design will protect existing features of biodiversity value on site and biodiversity connections with related sites, and ensure that features of geodiversity value are protected and wherever possible enhanced in their condition and future management. The policy furthers that hedgerow habitat should be provided on at least one development boundary wherever possible, and that bat and bird boxes should be featured.

In terms of ecology, the key ecological issues relevant to the determination of this application relate to the use of the site by foraging/commuting bats (including the Greater Horseshoe Bat), cirl buntings, badgers (with two main badger setts recorded within the application area), notable invertebrates (brown hairstreak and great green bush cricket) and slow worms.

The Paignton Neighbourhood Forum have within their objection advised the submitted mitigation proposals do not take properly into account the mitigation requirement resulting from the in-combination effect of other sites, contrary to the requirement within the Local Plan, which expressly requires a bespoke Greater Horseshoe Bat mitigation plan for all development within the area to be submitted and approved before planning permission will be granted. The Forum cite the proposal therefore conflicts also with Policy PNP1 of the Paignton Neighbourhood Plan which makes clear development will not be supported that would result in an adverse impact on a European protected site.

The application is supported by an ecological impact assessment and a shadow Habitat Regulations Assessment (HRA) which seeks to address the European protected site. These documents have been reviewed by the Council's ecological advisor and Natural England and the RSPB have also provided detailed comments on the development proposals and its associated ecological issues. Natural England have also provided secondary comments on the Council's own HRA. The summary conclusions on the ecological merit of the development proposals are detailed below.

Firstly in regard to the considerations associated with the South Hams Special Area of Conservation (Greater Horseshoe Bat) the Council's ecological advisor has considered the 'shadow' HRA submitted by the applicant and has undertaken a formal HRA and Appropriate Assessment (AA). The Council's HRA/AA concluded that with mitigation there would be no '*likely significant effect*' alone or in combination with other proposals or projects on the South Hams SAC. Natural England have been re-consulted and have provided detailed comment on the Council's HRA/AA, including its conclusions and proposed mitigation measures (conditions). Natural England have advised that they concur with the Council's conclusions of there being no '*likely significant effect*', providing that all mitigation measures are appropriately secured in any permission given. Notwithstanding the Forums concerns the matter is therefore considered to be positively concluded in terms of ensuring no adverse impact on a European protected site. As a note the HRA/AA also concluded on the Lyme Bay and Torbay SAC and found there to be no likely significant effect.

In regard to broader ecology matters the cirl bunting territories were recorded outside the construction area and it was concluded that they would not be directly affected by loss of habitat, with any potential disturbance effects in the east of the construction area will be mitigated as set out in the submitted ecology report. Notwithstanding the conclusions of the submitted ecology report and the Council's own advice the RSPB recommend that financial compensation is provided for a 3<sup>rd</sup> pair of cirl buntings, to secure off-site mitigation land. The applicant has indicated that they are happy to defer to this request, notwithstanding the conclusions of their own ecologists and provide a financial mitigation for off-site cirl bunting habitat as requested.

In regard to badgers the main badger setts are not located within the proposed construction area and the submitted ecology report details the mitigation measures proposed to ensure that these setts are retained and protected during construction.

Pre-construction surveys are proposed to record any changes in outlier sett locations and inform a Natural England licence to close any setts within the construction zone.

Mitigation measures have also been proposed to ensure legal compliance with regards to the risks relating to breeding birds, amphibians and reptiles, which can be secured by appropriate planning conditions.

Submitted detail further identifies the potential for positive effects on ecology during the operational phase of the development. This is broadly associated with the management of the retained habitat to increase the diversity and value to birds, bats, reptiles, badgers and hedgehogs, which is supported.

In-line with advice from Natural England, the RSPB and the Council's ecology advisor, the proposal is considered acceptable on ecological and biodiversity grounds for the reasons stated above, in-line with the aspirations of policies within the Local Plan and Paignton Neighbourhood Plan, and advice contained within the NPPF. There is considered to be no reason for refusal of this planning application on ecological grounds provided the proposals within the submitted ecology report are implemented and maintained. This includes provision of a biodiversity metric calculation, Construction Ecological Management Plan, Landscape and Ecological Management Plan, greater horseshoe bat mitigation area management plan, the appointment of an Ecological Clerk of Works, a detailed lighting strategy and appropriate post-construction monitoring. It is recommended that these measures are secured via appropriately worded planning conditions should the application be positively determined.

## **5. Design and Visual Impact**

Whilst the proposal only seeks detailed consent for the proposed access, being in outline with all other matters reserved for future consideration, the submitted information does include an indication of a proposed site layout and detail on the likely character and appearance of the development, offering indicative layout and section drawings together with accompanying written commentary. In regard to this outline application it is necessary to consider whether the submitted detail indicates and ultimately provides sufficient comfort that the amount of development (up to 100 dwellings) could be appropriately achieved in terms of its layout, design and character, without undue visual impact.

Achieving good design is a central thread within government guidance and Part 12 of the NPPF "Achieving well-designed places" offers key guidance. Paras 124, 127, 129 and 130 are particularly relevant and accumulatively inform that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 130 offers that 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. Thus, if on receipt of an application for approval of reserved matters the Local Planning Authority does not consider the detailed proposals to be of sufficiently high quality they may, at their own

discretion and based on the then submitted detail, decide to issue a refusal on that basis without prejudice to the principle of any outline permission already granted.

In regard to the Local Plan Policy SS2 states that development delivered within each of the Future Growth Areas must be integrated with existing communities, and reflect the landscape character of the area as informed by Torbay's Landscape Character Assessment (2010). Local Plan Policy SS8 states that development proposals outside of the AONB designation (the site is not within the AONB) will be supported where they conserve or enhance the distinctive character of Torbay, or where the impact is commensurate with the landscape importance. Local Plan Policy SS11 states in part that development should be of an appropriate type, scale, quality, mix and density in relation to its location. In terms of non-strategic policies Local Plan Policy DE1 outlines a number of factors towards securing development that is well-designed and that respects Torbay's special qualities. In addition to the above Policy PNP1 (c) and (d) of the Paignton Neighbourhood Plan sets out local design criteria, whilst PNP24 seeks development to be designed in such a way that it re-establishes the village character (of Collaton St Mary) and respects prominent landscape and other features.

Consultee comments received from the Paignton Neighbourhood Forum cite a concern that the proposal is an overdevelopment of the site that conflicts with the indicated capacity of 70 dwellings within the adopted Masterplan that was established having regard to the importance of landscape, biodiversity and infrastructure. The Forum cite a concern on the detailed breach of the Development Plan boundary which they state is unjustified and contrary to the adopted Collaton St Mary Masterplan and Policy PNP1 (Area wide), and Policy PNP19 (Rural Character Area) and Policy PNP24 (Collaton St Mary) of the Paignton Neighbourhood Plan. A number of public objections raise similar concerns in terms of the landscape and character impacts, generally citing the scheme as an overdevelopment of the site that would harm the character of the village and wider area. As previously discussed within Section 1 (principle) the policies are not considered to preclude development *per se* and hence proposals should be judged on their broader merit where they sit within the Rural Character Area.

In terms of context the site is identified within the Torbay Landscape Character Assessment as Rolling Farmland (1J The Blagdons) with a broad commentary of there being a distinct unified landscape due to a prevailing agricultural pattern with few detracting elements, but with reference that the landscape value reduces towards the southern end towards the A385 (Totnes Road). The Collaton St Mary Masterplan considers the potential for development and it cites that there is the potential for development on the southern lower slopes of the hill just above the existing Village, as this area is fairly hidden behind existing urban development. The Masterplan furthers that the boundary of development would need to be curtailed and aligned with the adjacent existing development (taken as reference to Borough Park Road to the east) as the upper slopes of the hilltop are more visible and sensitive to change. This commentary aligns with an 'area of reduced landscape and visual sensitivity' being illustrated and a masterplan layout that suggested development maintained below a linear field hedge boundary that runs east-west across from Borough Park Road to the Church approximately 110-140m north of the Totnes Road. Finally in terms of policy context the Paignton Neighbourhood Plan identifies the open countryside (PNP19) with a central aspiration that as it is a finite resource it is important to ensure that any further development does not damage its quality and the relationship with urban and



rural areas. The bulk of the proposed 'developed area' sits to the south of the aforementioned field boundary which shows around 85 of the 100 dwellings delivered within the area not designated as open countryside. This results in the indicative layout showing around 15 dwellings within land identified as open countryside within the Paignton Neighbourhood Plan, within an area loosely 180m wide by 20m-30m deep.

In terms of assessing the design and visual impact as the proposal is in outline the design will principally be scrutinised at reserved matters stage should outline permission be granted. Notwithstanding this basic principles can be considered to determine whether the amount of development is likely to be adequately achieved.

In terms of design the indicative masterplan appears to present sufficient confidence that a suitable residential environment could be achieved. The basic layout suggest perimeter blocks will be achieved which will present properties facing and framing the streets, which is a supported layout proposition. The indicative layout suggests that garden space could be adequately resolved to meet the standard expected within the Development Plan of 55sqm, whilst also reflecting the more spacious character of the rural edge development. In addition the suggested distances between properties are largely in excess of the 20-21m guide for back-to-back relationships plus an allowance for likely level changes, which indicates that the guide distance should be increased to secure suitable levels of privacy. The suggestion of planting within the developed area has the potential to remove or at least soften the few direct sight-lines, which is welcomed in principle. In terms of other matters the indicative masterplan appears to suggest adequate parking could be provided to meet the expected level of 2 spaces per dwelling. Further details will be required as part of a reserved matters submission to enable the precise parking arrangement to be properly scrutinised, but it appears, based on the space available, that an adequate parking arrangement could be provided for the proposed number of units without compromise on other important aspects of the scheme, such as dwelling sizes, the availability of landscaping and amenity space etc.

It is noted that the accompanying Design and Access Statement presents images that suggest a largely open plan design typology to plots, which would appear counter to the prevailing local form and counter to the prevailing rural vernacular within other villages and hamlets within the broader area. Plots appear generally presented with a far more defined sense of enclosure with walls, hedges and occasionally railings prevalent. Boundary treatments are an important contributor to character and it is advised that a future reserved matters should duly consider the local vernacular notwithstanding the currently presented 'indicative detail' in order to deliver development that accords with the adopted masterplan and Policy PNP24 of the Paignton Neighbourhood Plan

All matters considered there appears to be scope to resolve an adequate design outcome for the amount of development sought to present an acceptable residential environment for future occupiers and occupiers of existing properties. Ultimately a detailed layout and residential environment would be considered at the reserved matters stage.

In regard to visual impact although the application seeks outline consent the suggested layout and scale should be duly interrogated to determine the likely visual impact resulting from the amount of development being proposed. Having considered the proposal and the context there is considered to be broad alignment between what is being proposed and the informative landscape assessment, the Torbay Landscape Character Assessment, the adopted Masterplan for the area and the Neighbourhood Plan guidance. In terms of alignment the proposal concentrates development in the southern 'bowl' close to the Totnes Road with land above maintained as a landscape setting for the village, with open space, allotments and agriculture uses, which is a principle that is supported. The key area of divergence, and one touched on by the Forum within their objection and within Section 1 (Principle) above, is that the proposal suggests development may be presented beyond the existing field boundary line that is delineating feature for where development is expected to cease within the Masterplan, which is consistent with the Neighbourhood Plan *open countryside* designation of fields to the north whilst excluding fields to the south of this feature. The policy position around this and the likely visual impact is hence central within the consideration of the scheme, which is summarised in some detail below.

The application is supported by landscape and visual impact assessment and this concludes that the landscape character of the site as being medium to medium/high quality, which is consistent with the Torbay Landscape Character Assessment. Both assessments principally conclude that the elevated area of the hill is considered to have little capacity to accommodate built development due to its elevated and open character and contribution to the setting of Paignton. The submitted assessment furthers that the lower slopes adjoining existing built up areas are identified as having medium susceptibility to change, as they have some ability to absorb development without a significant change in character, as the land is more enclosed and is currently influenced by the proximity the built-up area of Paignton, which is considered to be a reasonable assumption. The lower slopes is where development is proposed and hence there is broad agreement alignment with the landscape character assessments for the area.

In terms of character the indicative proposal is somewhat suburban in layout and scale but this is not at odds with the adopted Masterplan for the area, which presents a single linear extension somewhat akin to suburban street that is Borough Park Road to the east. The proposal covers a slightly larger area than that indicated within the adopted Masterplan however the layout appears to present certain features that would possibly counter any potential wider impact caused by there being a larger developed area. For example the illustrative layout has the potential to offer a softer and slightly more organic form of development than that illustrated within the adopted Masterplan. For example the perimeter blocks (the groupings of houses) are relatively small and could have the potential to present a more intimate, somewhat semi-rural feel, compared to the single linear arrangement envisaged within the adopted Masterplan. In addition tree planting within the built envelope appears prevalent which, if adequately resolved in a future reserved matters detail, could help break up and soften the development when experience within and from afar. There are also more substantial pockets of tree planting envisaged along the southern border that could well screen the development from the few public views of the lower slopes. Finally it is noted that revised section plans submitted by the applicant have responded to some initial concern from Officers in terms of a potential impact on the wider landscape

character. The section now shows reduced height dwellings at the highest part of the site, in the area which is identified as open countryside within the Paignton Neighbourhood Plan. This treatment of scale would help limit the visual prominence of the 'additional' development that sits beyond the line illustrated within the adopted Masterplan. The section suggests that reduced storey dwellings within the designated open countryside are likely to have a ridge height only 1m higher than dwellings immediately below, which sit within the area of development envisaged by the adopted Masterplan. As public views from the south are principally on lower land these 'additional' dwellings are likely to have a limited visual impact in the wider context of the areas character. Having considered the context the likely visual impact of the development, including importantly the 'additional' proposed development that sits within the designated *open countryside*, it is considered that although it may present a slightly more visible development when viewed from the few public views to the south, the expected impact upon the character of the area is to be considered unlikely to be significant.

Separately in regard to the design and visual impact of the detailed access the junction point sits at the eastern boundary of Collaton St Mary where it transitions to the western outskirts of Paignton. The Character within the area of the proposed junction is quite urban compared to other parts of Collaton St Mary and the access point is unlikely to have detrimental impact upon local character when considering the current street character.

All matters considered based on the indicative information provided the proposed development is for the reasons above considered to demonstrate the potential to provide a satisfactory form of development in terms of layout, in accordance with Policies SS2, SS3, H1 and DE1 of the Local Plan, Policies PNP1, PNP1(a), PNP19 and PNP24 of the Paignton Neighbourhood Plan, the adopted Collaton St Mary Masterplan, and the NPPF. The outline detail has also been scrutinised in regard to the recently published National Design Guide and the illustrative scheme does not appear to present any obvious conflict with the advice offered within the document.

Members are advised that in the absence of a 5-year housing supply the presumption in favour of sustainable development, the tilted balance, should be applied and hence should Members consider the limited spread into the open countryside to present harm it would need to be significant and demonstrable in order to justify a refusal. As concluded above any likely impact is not considered to be significant and demonstrable.

## **6. Impact on Heritage Assets**

As an outline proposal with all other matters reserved for future consideration except for the access, it is necessary to consider the likely impact upon heritage assets of the expected scheme, informed by the submitted supporting information.

The NPPF guides that when considering the impact of a proposed development on the significance of a designated heritage asset, that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 193). The NPPF

further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 194). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 196).

In terms of the local Development Plan it is guided that development proposals should have special regard to the desirability of preserving any listed building and its setting (Policy HE1 of the Local Plan). This is aligned with the duties for decisions as laid out within the Planning (Listed Buildings and Conservation Areas) Act 1990 c.9 para 66, where decisions shall have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

In terms of the heritage context for this proposal the site does not contain any designated heritage assets however in the wider vicinity of the site there are a number of designated assets and as such consideration should be given to the setting of these assets.

The closest designated heritage asset is the listed buildings at Collation Farmhouse and associated farmyard, which are located to the south of the site, on the opposite side of the Totnes Road. In terms of the setting of these buildings the surrounds are influenced by the main road and what is largely now a semi urban character. Whilst the proposed scheme will involve a new access in reasonably close proximity to the farmhouse there is already a zebra crossing and street lighting and hence the general settings character will not be harmed. It is considered desirable to ensure that the application site frontage where it adjoins the main road retains a good degree of planting to help provide a softer setting to the listed building acknowledging that it would have once had a more rural setting than that which currently exists. This could reasonably be achieved by due consideration of a future landscaping as part of the reserved matters.

Further afield there are listed buildings which form a cluster of buildings to the west of the site, including the Grade II\* listed Parish Church of St. Mary. These buildings are considered to be sufficiently divorced from the development with a substantial buffer of distance, existing development, or existing landscaping between the listed buildings and the proposed development. In terms of the nearby church especially existing trees and hedging is considered to provide a good degree of visual containment. This conclusion is aligned with comments received from Historic England regarding the grade II\* church where they stated that due to the location of the development and the retention of the green buffers within the proposed layout, they do not wish to comment on this aspect of the proposal in any specific detail.

All matters considered the setting of these buildings will not be harmed, although it is appreciated that it will be important to ensure that any subsequent landscaping scheme considers the setting of these listed buildings and is designed to maintain the soft buffer between the listed buildings and new development. Care should also be taken to ensure that the design of the footpath links avoid a hard urban appearance, which would be secured through the consideration of the reserved matters.

On balance, with no substantive harm expected by the detailed access or the future development subject to a reserved matters application, when considering the Development Plan and the NPPF, the proposed access arrangements and indicative development in terms of heritage impacts and thus suitable for approval, in accordance with Policy HE1 of the Local Plan and Paragraphs 193, 194 and 196 of the NPPF.

In reaching this conclusion Officers have duly considered the general duties as respects listed buildings under the Planning (Listed Buildings and Conservation Areas) Act 1990 c.9 para 66.

## **7. Impact on Residential Amenity**

Policy DE3 of the Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Paignton Neighbourhood Plan is largely silent on the matter of amenity but expectations aligned with elements of DE3 are stipulated within Policy PNP1. The NPPF guides that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve (Para 124) and that planning policies and decisions should ensure that developments, amongst a number of things, should create places that promote health and well-being, with a high standard of amenity for existing and future users.

The site borders existing residential properties along the southern border and along part of the eastern border. The impact during and after construction on the amenity afforded these occupiers hence needs to be duly considered. 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 movement and parking impacts through the use of a planning condition. In terms of the finished development the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance for existing occupiers in the area. In terms of scale and form this will be established within a future reserved matters application however officers are satisfied that it will be possible to develop the site without having an unacceptable impact on the residential amenity of existing dwellings.

In summary the proposed access arrangements, indicative layout and supporting information are considered to demonstrate the potential to provide a satisfactory form of development in terms of protecting the amenities of adjacent occupiers, in accordance with Policies DE1 and DE3 of the Local Plan, Policy PNP1 of the Paignton Neighbourhood Plan, the adopted Masterplan for Collaton St Mary, and the NPPF.

## **8. Other Considerations**

### *Housing Supply*

The Council cannot currently demonstrate a 5 year housing land supply, as sought by Government, and the proposal will help with the delivery of housing with a form of development that is considered to accord with the Development Plan. As stated within

this report the site is allocated and the proposals are in broad accordance with the adopted masterplan for the area. 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.

The provision of housing is a significant benefit within the planning balance, certainly in light of the current published position where the Authority can only demonstrate between a 2.5 - 3 year supply, which is a significant shortfall.

It is concluded that the development accords with the Development Plan and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were this judgment different and the proposal considered to conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. As stated the land is allocated for housing and the development broadly accords with an adopted masterplan for the area, that is itself supported within the Neighbourhood Plan, the conclusion would in such a circumstance be that the adverse impacts are not significant and demonstrable in this context, and the tilted balance in favour of granting permission should apply.

### **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development.

The site is identified for housing within the Development Plan and is hence broadly considered a sustainable site for future residential development.

The proposal is supported by an energy statement that presents proposed measures by the developer to reduced CO2 emissions, delivered through a combination of utilising passive design measures, well insulated and air tight building fabric and space and water heating provided by high efficiency gas fired boilers with flue gas heat recovery.

### **Local Finance Considerations**

#### **S106:**

The following are draft Heads of Terms for a legal agreement, which should be completed prior to a planning consent being issued. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. It is recommended that authority to progress and complete the legal agreement be delegated to officers.

#### **Highway works**

In-line with Torbay Local Plan Policy SS6.2 and SDP3 development along the Totnes Road area (SDP3.3) will require infrastructure improvement works to the A385 Totnes Road. Based on the scale of the development expected within the area and within this

site a proportionate funding level of £152,180 towards the development and implementation of this scheme should be secured.

### **Affordable Housing**

Affordable housing provision should be secured from this development in accordance with Policy H2 of the Torbay Local Plan, which states that for development of greenfield sites for schemes of 30+ dwellings that 30% should be affordable housing. At 30% the scheme should secure 30 affordable units.

Elements of the provision, such as location and mix, to be agreed through the reserved matters stage when the form and layout is progressed beyond the current indicative stage.

### **Sustainable Transport**

In accordance with Torbay Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD (to open marking housing only) Sustainable Transport obligations should be secured at a rate of £684 per eligible dwelling (or other alternative method as agreed). This funding would support strategic connectivity from Collaton St Mary to employment and retail areas along the Western Corridor and into Paignton Town Centre.

### **Greenspace and Recreation**

No detailed obligation request or expected level of play provision raised by Natural Environment Services. It is noted that the indicative masterplan includes a play area to provide public play space, together with more informal open space. The Planning Contributions and Affordable Housing SPD indicates a development of this scale should secure a LAP and a LEAP. Parameters for the provision and retention of future public play space, which secures appropriate play space for different ages of children, should be secured, including funding mechanisms or public adoption, and dispute mechanisms, along with the provision and maintenance of the public open space, public access routes and allotments.

### **Education**

Obligations in-line with the adopted SPD should be sought to secure increased school capacity within Paignton, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Lifelong Learning Obligations**

Obligations in-line with the adopted SPD should be sought to secure library improvements within the area, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Waste and Recycling**

Obligations in-line with the SPD should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

### **Cirli Bunting Mitigation**

Financial mitigation to secure compensatory habitat is secured elsewhere for one curlew territory via a financial contribution to Torbay Council, as set out in the Wildlife and development guidance note: curlew (Devon County Council, Teignbridge District Council and Torbay Council, October 2017).

### **GHB Mitigation**

Delivery and in perpetuity management of the Greater Horseshoe Mitigation Area.

### **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.

#### **HRA:**

The application site is within a sustenance zone and landscape connectivity zone associated with the South Hams SAC.

A Habitat Regulations Assessment / Appropriate Assessment has been carried out for this development. The proposed development is unlikely to have a significant effect on the South Hams SAC. Natural England have been consulted and concur with the Council's conclusions, subject to securing the proposed mitigation measures. Proposed conditions are detailed at the end of this report.

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing.

It is acknowledged that there are concerns about the potential impact upon setting of the listed church and broader landscape impact. This is an outline application and therefore details of layout, scale, appearance and landscaping for the development will be the subject of future reserved matters applications. Nevertheless sufficient information has been submitted as part of this outline application to demonstrate that the proposed development can take place without significant harm to matters such as heritage, landscape or residential amenity.

### **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.

### **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 and Reasons for Decision**

The site is broadly identified for housing within the Development Plan and the proposal does appear to be fairly consistent with the associated adopted Masterplan for the area and would deliver much needed housing. The proposal is ultimately considered a good use of an identified site that would provide much needed housing to help meet local need.

Key public concerns regarding the impact upon the Greater Horseshoe Bats and flooding are resolved to the satisfaction of the statutory consultees on these matters, and the highway authority does not object to the access or impact upon the road network.

There is a degree of discordance with the Development Plan in terms of likely encroachment into the open countryside, as designated within the Paignton Neighbourhood Plan. However the visual impact of this likely encroachment is not expected to be significant in terms of the wider landscape setting of Collaton St Mary. Therefore notwithstanding this discordance there is, for the reasons stated within this report, a much broader accordance with the Development Plan that Members should consider as part of the balancing exercise. Officers consider the impact of some development within the open countryside does not warrant refusal of the application, due to the much broader accordance with the Development Plan and the material benefit of providing housing where the Council is currently advising of there being a significant shortfall below the 5 year supply expected by government, and where the government has clearly stated it wishes to significantly boost housing delivery.

In-line with the above conclusions and the detail contained within this report the proposals are considered to be in general accordance with the provisions of the Development Plan. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay. In the absence of material considerations that weigh sufficiently against the proposal the Officer recommendation is one of approval, subject to suitable conditions and S106 Legal Agreement.

## **Officer Recommendation**

Approval: Subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning;
2. The completion of a S106 Legal Agreement to secure the heads of terms above, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.

The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director responsible for Planning, including the addition of any necessary further planning conditions or obligations.

## **Conditions**

### **Standard time condition:**

That in the case of any reserved matter, an application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and

That the development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

### **1. Reserved Matters condition**

An application for the following reserved matters shall be submitted to the Local Planning Authority for its approval in writing:

- (i) layout,
- (ii) scale,
- (iii) appearance; and
- (iv) landscaping.

The details of the reserved matters shall be consistent with the details submitted and approved pursuant to the outline consent.

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced, and the development shall be undertaken in accordance with the approved reserved matters.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

## **2. Control of External Light Spill to Maintain Dark Areas on Site and in Surrounding Areas (HRA)**

All reserved matters applications shall include a Lighting Assessment, including lux contour plan, for both public-realm and domestic lighting in combination with any existing light sources in the locality to demonstrate compliance with the 0.5lux design parameter set out in the shadow HRA (EAD Ecology, 2019).

The development shall proceed in accordance with the Lighting Assessment and no additional external lighting shall be provided at any time unless previously agreed in writing by the Local Planning Authority

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030.

## **3. Detail of bespoke greater horseshoe bat roost (HRA)**

The reserved matters shall include a detailed design of the proposed bat roost. The approved roost shall be delivered in the first phase of construction or in accordance with a timetable agreed in writing with the Local Planning Authority and shall be retained and maintained at all times thereafter.

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030.

## **4. Construction Environmental Management Plan – Biodiversity (HRA)**

All reserved matters applications for layout shall include a Construction Environmental Management Plan (*CEMP: Biodiversity*), which shall have been prepared in accordance with specifications in BS42020; clause 10.2 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 (may be provided as a set of method statements).
- 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) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP: Biodiversity, and the actions that will be undertaken.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030.

## **5. Landscape and Ecological Management Plan (LEMP) or equivalent (HRA)**

All reserved matters applications for layout and landscaping shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, which shall be submitted and shall include, but not be limited to, the following.

- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- b) Ecological trends and constraints on site that might influence management.
- c) A habitat phasing plan to ensure habitat is established and functional in advance of impacts.
- d) Aims and objectives of management.
- e) Appropriate management options for achieving aims and objectives. Noting the comments from Natural England with regards to preferred hedgerow management options.
- f) Prescriptions for management actions.
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- h) Details of the body or organisation responsible for implementation of the plan.
- i) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All development and post-construction site management shall be undertaken in accordance with the LEMP.

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030.

## **6. Ecological monitoring to provide early warning of threats to bat commuting routes (HRA)**

All reserved matters applications for layout and landscaping shall include a monitoring strategy which shall be prepared with the purpose '*provide early warning of any change in site conditions (such as those brought about by loss of suitable habitat features or adverse light spill) that are likely to impair or disturb greater horseshoe bats being able to commute through the site adjacent to the site boundary*'. The strategy will be prepared in accordance with the specifications in BS42020; clause 11.2.3 and shall include the following.

- a) Aims and objectives of monitoring to match the stated purpose;
- b) Identification of adequate baseline conditions prior to the start of development (including light levels within the dark areas);
- c) Appropriate success criteria, thresholds, triggers and targets against which the continued effectiveness of the bats' commuting routes can be judged;
- d) Methods for data gathering and analysis (to include appropriate bat surveys and light monitoring);
- e) Location of monitoring/sampling points;

- f) Timing and duration of monitoring;
- g) Responsible persons and lines of communication;
- h) Contingencies and remedial measures that will be triggered should monitoring detect a change in site conditions;
- i) Review, and where appropriate, publication of results and outcomes.

A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals as identified in the Strategy. The report shall also set out where the results from monitoring show that site conditions are changing and consequently how contingencies and/or remedial action will be identified, agreed with the local planning authority, and then implemented so that the development still delivers the fully functioning bat commuting routes associated with the originally approved scheme. The monitoring strategy will be implemented in accordance with the approved details.

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030.

### **7. Highway 1**

No dwelling shall be occupied until all estate roads required for access to that dwelling have been constructed to adoptable standards in accordance with the Torbay Highway Design Guide for New Developments in force at the time of commencement of the development and an agreement has been entered into between the developer and the Council as Highway Authority under Section 38 of the Highways Act 1980 for the adoption of the estate roads.

Reason: To ensure that the estate roads serving the development are completed to an acceptable standard and are available for use by the occupants and other users of the development, in the interests of amenity and highway safety, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030.

### **8. Highway 2**

Prior to commencement of development a S278 Agreement shall be entered into with the Highway Authority to secure works to the highway to deliver the approved junction and all necessary pedestrian crossing, surface and signage works. The works to the highway shall be delivered in accordance with the Agreement prior to the occupation of any dwelling.

Reason: To ensure highway safety is not impaired, in accordance with Policies TA1, TA2 and DE1 of the Torbay Local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

### **9. Flood risk**

As part of any reserved matters application for layout a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in-line with the design parameters outlined within the submitted and approved Flood Risk Assessment, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of any part of the development unless a phasing plan has been submitted to and approved by the Local Planning Authority, and shall be subsequently maintained thereafter.

Reason: To ensure that there are no increased flood risk, in accordance with Policies ER1 and ER2 of the Torbay Local Plan, the Paignton Neighbourhood Plan, and advice contained within the NPPF.

### **10. Affordable Housing**

As part of any application for reserved matters relating to the proposal's layout and scale, a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority. The submitted details shall include information about the siting, size, and tenure type of the affordable units. The development shall be undertaken in accordance with the approved details.

Reason: In accordance with Policy H2 of the Torbay Local Plan 2012-2030.

### **11. Biodiversity enhancement measures**

The reserved matters for layout and landscaping shall include details to ensure that there is no net biodiversity loss as a result of the development. The net biodiversity impact of the development shall be measured in accordance with the DEFRA biodiversity metric 2.0 as applied in the area in which the site is situated at the relevant time and the scheme shall include:

1. Proposals for on-site mitigation (full details of which will be provided in relation to each phase of development in accordance with Condition 4 [CEMP] of these conditions) and/or for off-site offsetting;
2. A methodology for the identification of any receptor site(s) for offsetting measures;
3. The identification of any such receptor site(s);
4. The provision of arrangements to secure the delivery of any offsetting measures (including a timetable for their delivery); and
5. A management and monitoring plan (to include for the provision and maintenance of any offsetting measures in perpetuity).

The written approval of the Local Planning Authority shall not be issued before the arrangements necessary to secure the delivery of any offsetting measures have been executed. The scheme shall be implemented in full accordance with the requirements of the scheme or any variation so approved.

Reason: in the interests of biodiversity, in accordance with Policies SS8 and NC1 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

### **12. 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: In the interests of highway safety and local neighbour amenity, in accordance with Policy TA2 and DE3 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure appropriate mitigation at all stages of development.

### **13. Travel plan**

The reserved matters for layout and scale shall include a Travel Plan that seeks to achieve sustainable modes of travel in-line with targets set out in the Local Plan policy. The approved Travel Plan shall be implemented as approved.

Should the annual reviews show that the development is failing to secure a modal shift of 30% of potential users to sustainable modes of travel, additional measures, in discussion with the Local Planning Authority, shall be agreed and implemented.

Reason: To reduce the impact of the development upon the transport network, in accordance with Policy TA2 of the Torbay Local Plan 2012-2030.

### **14. Energy**

As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The measures in relation to each residential unit shall be completed, in accordance with the approved details, prior to the first occupation of that unit.

Reason: In the interests of sustainable development and in accordance with Policy PNP1 of the Paignton Neighbourhood Plan and Policy SS14 of the adopted Torbay Local Plan 2012-2030 and Policies PNP1(d) and PNP1(f) of the Paignton Neighbourhood Plan.

### **15. Phasing**

A phasing plan shall be submitted to and approved in writing by the Local Planning Authority as part of the first application for reserved matters approval of layout. The plan shall demonstrate how the development will be implemented in relation to an agreed timetable of works, and shall include the provision of play space, open space, and allotments, landscaping and ecological enhancement, amenity footpaths, highway works and other ancillary infrastructure. The development shall then be implemented in accordance with the approved phasing plan.

Reason: To ensure that necessary elements of the scheme are implemented within acceptable parameters and at an appropriate stage, to comply with policies SS2, SS9,

SS10, NC1 and DE1 of the adopted Torbay Local Plan 2012-2030 and Policies PNP1(a), PNP19 and PNP24 of the Paignton Neighbourhood Plan.

#### **16. Pedestrian access routes**

The reserved matters for layout and landscaping shall include details of pedestrian links to the Totnes Road to the south, which shall include plan and section drawings at scale 1:20 or larger, together with pedestrian access routes within the Public Open Space and land identified for agriculture to the north of the housing, which shall seek to broadly accord with the public access aspirations outlined within the adopted Collaton St Mary Masterplan. The details shall include plans and sections as necessary and details of any gates or stiles to be provided. The approved details shall be implemented in accordance with the approved detail and phasing pursuant to Condition 15 and maintained for public use at all times thereafter, unless otherwise agreed in writing with the Local Planning Authority.

Reason: To provide appropriate pedestrian connections to Collaton St Mary and to the public open space and countryside to the north, to encourage green infrastructure links and active lifestyles in accordance with Policies SS9 and DE1 of the adopted Torbay Local Plan 2012-2030, PNP24 of the Paignton Neighbourhood Plan, and the NPPF.

#### **17. Play Areas**

The reserved matters for layout and landscaping shall include details of local play commensurate to a LAP and a LEAP as detailed within the adopted Planning Contributions and Affordable Housing SPD that details the type and provision of play for a variety of ages of children. The detail shall include appropriate provision of impact absorbing surface treatments, means of enclosures and litter and seating facilities.

The reserved matters shall seek to secure appropriate levels of natural surveillance to all play areas and an appropriate buffer distance from properties to ensure neighbour amenity is not unduly impacted. The approved play areas shall be provided prior to the first occupation of the 50th dwelling or in accordance with the phasing plan submitted to and approved in writing by the Local Planning Authority pursuant to Condition 15 and maintained for public use at all times thereafter.

Reason: To ensure that the development provides a range of physical, social and green infrastructure, including local play spaces, in accordance with Policies SS7, SS9, SS11 and DE1 of the adopted Torbay Local Plan 2012-2030 and Policy PNP24 of the Paignton Neighbourhood Plan.

#### **18. Parking Provision**

The reserved matters shall include details for the parking of vehicles for all dwellings. The approved parking facilities shall be provided in full for each dwelling prior to its first occupation and shall be maintained for the purposes of parking at all times thereafter.

Reason: To ensure adequate parking is provided to support an adequate residential environment, protect the amenities of the area and maintain highway safety, in accordance with Policy TA3 of the adopted Torbay Local Plan 2012-2030.



### **19. Landscape provision and maintenance**

All planting, seeding or turfing comprised in the approved details of landscaping reserved matters shall be carried out in the first planting and seeding season following the first occupation of the development unless otherwise agreed in writing with the Local Planning Authority within a phasing plan pursuant to Condition 15. Any trees or plants which within a period of 10 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: To secure an appropriate form of development in accordance with Policies NC1, C4 and DE1 of the adopted Torbay Local Plan 2012-2030 and PNP1(a), PNP1(c), PNP19 and PNP24 of the Paignton Neighbourhood Plan.

### **20. Removal of PD – boundary treatments**

Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting, or further amending that Order), no development of the types describes in Schedule 2, Part 2, Classes A and B including gates, fences, walls or other means of enclosure and means of access shall be erected or constructed between the buildings and the estate roads unless permission is granted by the Local Planning Authority.

Reason: In order to safeguard the character and visual amenities of the locality.

### **21. Removal of PD – roof extensions and hardstandings**

Notwithstanding the provisions of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting or further amending that Order), no development of the types described in Schedule 2, Part 1, Classes B, C and F of the Order, including the construction of dormers, roof alterations and provision of hardstandings, shall be carried out on the site, other than that hereby permitted, unless the permission in writing of the Local Planning Authority is obtained.

Reason: To protect the appearance of the area, to prevent the increased risk of flooding elsewhere and in the interests of amenity.

### **Development Plan Relevant Policies**

- SS1 - Growth Strategy for a prosperous Torbay
- SS2 – Future Growth Areas
- SS3 - Presumption in favour of sustainable dev
- SS8 - Natural Environment
- SS9 – Green infrastructure
- SS10 – Conservation and the historic environment

SS11 - Sustainable Communities Strategy  
SS12 - Housing  
SS13 - Five Year Housing Land Supply  
SDP3 – Paignton North and Western Area  
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

PNP1 – Area Wide  
PNP1(a) – Rural Character Area  
PNP1(c) – Design Principles  
PNP1(d) – Residential Development  
PNP1(f) – Towards a sustainable low carbon economy  
PNP1(g) – Designing out crime  
PNP1(h) – Sustainable transport  
PNP1(i) – Surface water  
PNP19 – Safeguarding the open countryside  
PNP24 – Collaton St Mary Village



Application Site Address	1 Seaton Close, Torquay, TQ1 3UH
Proposal	Single storey extension to the north east (side) elevation and the extension of the existing balcony along the south east (front) elevation together with changes to fenestration.
Application Number	P/2020/0228
Applicant	Mr D'Aprano
Agent	PMR Architecture
Date Application Valid	06/03/20
Decision Due date	01/05/20
Extension of Time Date	n/a
Recommendation	Approval: Subject to no new material planning considerations being raised within the remaining consultation period and planning conditions as outlined within the report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing & Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to the number of objections that have been received and concern of the Ward Member with regard to impact on the character of the area.
Planning Case Officer	Sean Davies

## **Location Plan**



### **Site Details**

The site is at 1 Seaton Close, Torquay, TQ1 3UH and comprises a detached two storey house with integral garage and its curtilage. The site forms part of the built up area, but is not otherwise subject to any designations within the Torbay Local Plan.

### **Description of Development**

The proposals are for a single storey extension<sup>1</sup> to the north east (side) elevation and the extension of the existing balcony along the south east (front) elevation together with changes to fenestration.

### **Pre-Application Enquiry**

DE/2019/0067: Single storey extension to front and side of property.

### **Relevant Planning 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 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.

### **Relevant Planning History**

None.

### **Summary of Representations**

The following representations relate to the original two storey proposal. The amended single storey scheme has been re-advertised and any further comments will be reported verbally to the committee.

5 representations in support of the application and 15 representations objecting to the application have been received.

Representations made in support of the application include that the proposals would be in keeping with and enhance the local area and other properties. Also that many other houses in the surrounding area have bigger extensions.

Objections to the application are summarised below:

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<sup>1</sup> The proposals were originally for a two storey extension but have been revised following discussions with the Council.

52-54 Lyme View Road: two objections received from occupants of the flats facing the rear elevation of the proposed extension. Concerns raised included:

- the proposals would not be in keeping with the local area and the property as extended would be larger than most around it;
- the addition of a chimney would be out of character (this has now been removed from the proposals);
- the proposals would lead to a loss of light;
- the proposals would obstruct views of traffic along Lyme View Road from Seaton Close.
- concerns about noise and disruption during construction;

56-66 Lyme View Road: six objections received from occupants of the flats opposite the side elevation of the proposed extension. Concerns raised included:

- the proposed windows in the side elevation would overlook the bedrooms of the flats at 56-66 Lyme View Road leading to a loss of privacy;
- the proposals would limit light to the flats at 56-66 Lyme View Road;
- the proposals would impact on and be out of keeping with the local area due to their size;
- the proposed chimney (this has now been removed from the proposals) would be out of character with neighbouring properties;
- concerns about parking arrangements and the loss of the existing garage and the potential for on street parking outside the property to raise safety issues at the junction of Seaton Close and Lyme View Road.
- the proposals would reduce visibility to Lyme View Road from Seaton Close;
- disruption during construction.

51 Lyme View Road: this property is opposite 1 Seaton Close. Concerns raised included:

- the proposals would not be in keeping with the local area;
- the proposals would lead to loss of light from a side view window towards All Saints Church;
- the proposed balcony would overlook the lounge, window, conservatory and garden.

55 Lyme View Road: this property is further down Lyme View Road from no. 51. Concerns raised included:

- the proposals would not be in keeping with the local area.

2-12 Seaton Close: five objections received. Concerns included:

- the proposals would impact on and be out of keeping with the local area due to their size;
- the proposals would represent overdevelopment;
- a full width balcony and chimney (the chimney has now been removed from the proposals) would be out of keeping with surrounding properties;
- the proposals would add almost 50% to the existing dwelling;
- the proposals would limit visibility at the junction of Seaton Close and Lyme View Road;
- the proposals would set a precedent for further development;
- the Deeds of Covenant attached to properties in the TQ1 3UH postcode prohibit the type of development proposed;
- loss of sea views;
- concerns about disturbance during construction;

**Torquay Neighbourhood Forum:**

No response received.

## **SRM Procedure**

Date: 19/0520 email sent to Ward Members, Councillors Anne Brooks, Hazel Foster and Ray Hill.

Response Received: Objection to application received from Councillor Foster 19/05/20.

Outcome: The application will be decided at Committee.

## **Key Issues/Material Considerations**

1. Principle of Residential Development
2. Visual impact
3. Amenity
4. Transport and accessibility
5. Parking and access requirements
6. Ecology
7. Flood risk and drainage

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

The proposal seeks permission for a single storey extension to the north east (right side when viewed from the front) elevation and the extension of the existing balcony along the south east (front) elevation together with changes to fenestration. There are no Local Plan policies indicating that the proposal is not acceptable in principle.

### **2. Visual impact**

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 DE5 of the Local Plan states that extensions to domestic dwellings should not dominate or have other adverse effects on the character or appearance of the original dwelling or any neighbouring dwellings or on the street scene in general and should not impair highway safety. Policy TH8 of the Torquay Neighbourhood Plan states that development proposals must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The property is a two storey dwelling approximately 7.5m wide with integral garage and porch that extend out approximately 1.4m beyond the main building line to support a balcony extending across slightly more than half of the front elevation. It occupies an elevated position on a corner site at a T junction with Seaton Close and Lyme View Road and is clearly visible from both. A brick wall leading off the side of the property encloses a back garden.

The proposals involve extending the front of the existing dwelling at ground floor level to match the main building line and adding a single storey extension across the existing gable end approximately 3.3m in width with dual pitch roof matching the pitch of the roof over the main dwelling. The existing balcony is proposed to be extended across the full width of the existing dwelling (not the extension). The integral garage would be repurposed as living and storage space with the existing garage door retained. There would also be changes to fenestration as summarised below:

#### **Front elevation**

- at first floor level an additional set of glazed doors providing access to the extended balcony from the main bedroom would be provided with an existing window reduced in size to provide symmetry to the design.

- at ground floor level the existing floor to ceiling window serving the living room would be replaced with a smaller window. The proposed single storey side extension would have a new window (living room) to the front elevation.

#### Rear elevation

- the proposed single storey side extension would have a window (dining room) in the rear elevation.

#### Side elevation (south west)

- no changes proposed.

#### Side elevation (north east)

- a new pair of narrow windows are proposed at first floor level to serve existing bedrooms.
- the proposed ground floor extension would also have a pair of windows in line with those above serving the living and dining rooms.

The walls, roof, and windows would be constructed of materials to match the existing structure. Existing hanging tiles to the first floor front of the property would be replaced by horizontal cladding boards.

This application has been amended since submission. The proposals were originally for a two storey side extension. This application has been revised to a single storey extension in response to concerns raised by officers and having regard to local representations.

Objections were made that the proposals as originally submitted, which were for a two storey extension with external brick chimney, would have detracted from the character of the local area by virtue of their size relative to neighbouring properties and the host dwelling; that they would have resulted in overdevelopment at the site, and that features such as the proposed full width balcony (proposed originally to extend across the full width of the dwelling and proposed extension) and chimney would have been out of keeping with surrounding properties.

It is considered that the proposals as revised and scaled back, which now only involve a single storey extension are sufficient to address these concerns. Given the size of the curtilage to the property it is considered that these proposals would not represent overdevelopment.

Concerns have also been raised that the grant of planning permission in this case would set a precedent for further development in the area. However it should be noted that all planning applications are considered on their merits and in relation to the specific local conditions of the site concerned.

Taking the above into account the proposal is therefore considered to be in accordance with Policies DE1, DE5 and TH8.

### **3. Amenity**

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

Objections have been raised variously about loss of views, restrictions in Deeds of Covenants relating to properties in the TQ1 3UH postcode and disturbance during construction. However

these are not material planning considerations and cannot be taken into account in deciding whether or not planning permission should be granted.

#### Front elevation

An objection was received from the occupants of 51 Lyme View Road opposite the property that the proposals would lead to a loss of light and overlooking of their lounge window, conservatory and garden. Balanced against this, the distance between the properties, is approximately 21m, satisfying the spacing requirement generally agreed as being acceptable. Given the presence of the existing balcony (which is proposed to be extended by approximately 2.8m) and the distance between the properties it is considered that no material loss of light or privacy warranting a refusal of planning permission would be involved in this case.

#### Rear elevation

Two objections were received from the occupants of the flats at 52-54 Lyme View Road concerning the potential for loss of light. However, the distance between the properties would be in the region of 28m. This exceeds the distance generally accepted as providing an acceptable degree of separation (21m) between properties and as such it is considered that no material loss of privacy or light warranting a refusal of planning permission would be involved in this case.

#### Side elevation (north east)

Objections have been received about the potential for overlooking and loss of light to the flats at 56-66 Lyme View Road. The difference in levels between 1 Seaton Close and these properties is significant. However, the distance between the properties is also significant and would range from approximately 25-30m with the proposed extension in place. Again, this exceeds the distance generally accepted as providing an acceptable degree of separation (21m). As the proposed side extension is single storey this separation distance would be increased to approximately 28-33m in respect of the proposed new first floor windows. As such it is considered that no material loss of privacy or light warranting a refusal of planning permission would be involved in this case.

It is considered that the proposals would not detract materially from the amenity of any other neighbouring properties along Seaton Road.

Given its siting, scale, and design, it is therefore considered that the proposal would not result in any unacceptable harm to the amenities of neighbours. The proposals are therefore considered to be in accordance with Policy DE3.

#### **4. Transport and accessibility**

Policy TA1 of the Local Plan states that the Council is seeking to develop a high quality transportation system to be achieved in part through improving road safety and minimising conflict between road users.

Objections have been made that the proposals would restrict visibility for traffic exiting Seaton Close onto Lyme View Road.

However it is considered that the position of the proposed extension would not impede the existing visibility splay at the junction with Lyme View Road. The proposals are therefore considered to be in accordance with Policy TA1.

#### **5. Parking and access requirements**

Policy TA3 of the Local Plan states that dwelling houses should be served by two parking spaces. Policy TH9 of the Neighbourhood Plan states 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 resulting from the development.

Concerns have been raised about parking arrangements associated with the proposals, the loss of the existing garaged parking space and the potential for on-street parking to lead to safety issues at the junction of Seaton Close and Lyme View Road. However, even with the loss of the garage, there is space for two cars to be parked one in front of the other on the drive without overhanging the footpath. The proposal is therefore considered acceptable with regards to Policies TA3 and TH9.

## **6. Ecology**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy TE5 of the Torquay Neighbourhood Plan cites that where there may be an impact development should be accompanied by 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.

The application has been accompanied by an ecological survey report. The report findings stated that there was no evidence of bats on site and no further surveys are required. Should planning permission be granted, the recommendations of the ecological report should be employed through a planning condition. The proposal therefore complies with Policies NC1 and TE5.

## **7. 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.

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. Given the nature of the proposal, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice. The proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

## **Local Finance Considerations**

### **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.

#### **HRA:**

Not applicable.

## **Planning Balance**

This report gives consideration to the issues raised in the objections received and concludes that these are not of sufficient weight to warrant the refusal of the application and as such it is concluded that the planning balance is in favour of supporting this proposal.

### **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 and Reasons for Decision**

The proposal is: acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and would provide acceptable arrangements in relation to access and parking, flood risk, and ecology. The proposed development is therefore considered acceptable, having regard to the Development Plan, and all other material considerations.

### **Officer Recommendation**

That planning permission is granted, subject to the conditions detailed below and subject also to no new material planning considerations being raised within the remaining consultation period. 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, Housing and Climate Emergency.

### **Conditions**

1. Notwithstanding any details shown on the approved plans the extension hereby approved and any other alterations to the dwelling hereby approved shall be clad in materials matching those of the host dwelling, 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.

2. In accordance with the submitted flood risk assessment received, 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 40% 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.

3. The development shall be carried in strict accordance with the recommendations set out in the bat and nesting bird survey dated 27/02/20 (Plan reference P2020-0228-03, received 28/02/20).

Reason: To prevent harm to protected species in accordance with policy NC1 of the New Torbay Local Plan 2012-2030.

### **Development Plan Relevant Policies**

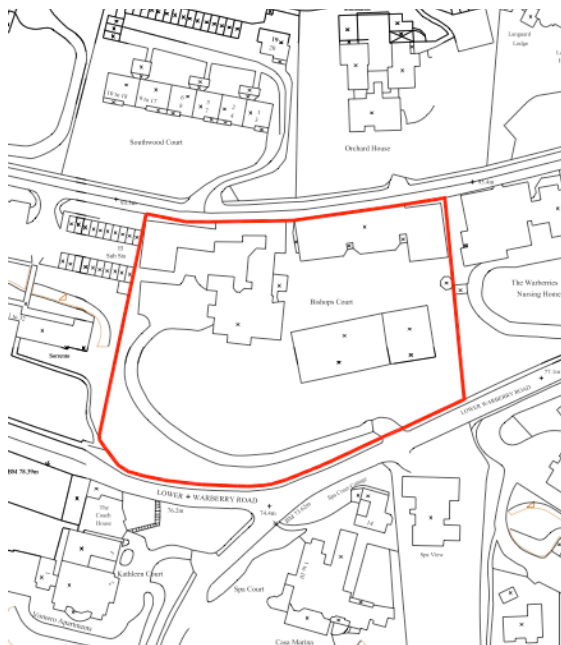
TA1 - Transport and accessibility

TA3 - Parking requirements  
DE1 - Design  
DE3 - Development Amenity  
ER1 - Flood Risk  
NC1 – Biodiversity and geodiversity  
TH9 – Parking facilities  
TH8 – Established architecture  
TE5 – Protected species habitats and biodiversity



Application Site Address	Bishops Court Hotel, Lower Warberry Road, Torquay
Proposal	Conversion and refurbishment of mansion to form 5 apartments. Removal of redundant leisure complex and construction of 11 new houses within grounds. Conversion and refurbishment of 14 existing curtilage apartments to form 4 houses, and construction of 8 radial garages and 2 detached garages to replace surface parking.
Application Number	P/2019/1274
Applicant	Ascena Developments Limited
Agent	Mr Charles Uzzell
Date Application Valid	03.12.2019
Decision Due date	03.03.2020
Extension of Time Date	18.06.2020
Recommendation	Approval
Reason for Referral to Planning Committee	Major Planning Application
Planning Case Officer	Mr. Alexis Moran

## **SITE PLAN**



## **Site Details**

Bishops Court, a former hotel and Grade II listed building stands in a spacious plot with a vehicular access from Lower Warberry Road. It was formerly known as 'Normount' and was built in 1844.

The villa has been subject to a number of alterations and extensions over the years in order to provide additional holiday accommodation in the hotels heyday, which did compromise its architectural integrity.

The site is bound to the north by Middle Warberry Road, to the east by The Warberries Nursing Home and to the west by a block of flats known as 'Sorrento'. The site slopes down from the north to the south. The main villa is grade II listed, as is the neighbouring nursing home; the pavilion at the east of the site is also separately grade II listed as is the entrance gate and piers.

The major part of the garden to the villa, which lies to the east of the site, was previously occupied by two additional terraces of holiday accommodation running east-west across the site and built into the slope. The lower terrace has been partly demolished in recent years.

The site is within the Warberries Conservation Area. The Conservation Area Appraisal identifies the main villa as an important building with an unspoilt frontage. The view south from the rear of the villa is identified as important within the conservation area and the front boundary walls are shown as prominent walls. The site is covered by a Tree Preservation Order (1973.12).

### **Description of Development**

The proposal is for the development of 20 dwellings (5 apartments and 15 houses). The scheme comprises the conversion of the existing Bishops Court Grade II Listed Building to 5 apartments. The conversion of 14 existing apartments/bedsits to the north & north-west of the Listed Building to four houses. The partial conversion, extension and new build of five houses to the north-east of the Listed Building referred to on the plans as the Upper Houses. The partial conversion, extension and new build of five houses to the south-east of the Listed Building referred to on the plans as the Lower Houses, and a new house in the south west corner of the site for a live on-site caretaker.

Fourteen of the proposed houses are either conversions or conversion/extension/new build on the footprint of existing buildings on the site. There is also a proposed new house in the south-west corner of the site that is currently a surface parking area.

The apartments and houses all have garaging, the development provides 57 parking spaces including 39 spaces for the 20 dwellings and 18 visitor spaces including 3 disable parking spaces.

### **Pre-Application Enquiry**

N/A.

### **Relevant Planning 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 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.

#### **Relevant Planning History**

P/2019/1262: The Listed Building application which accompanies this major planning application; recommended for approval, pending consideration.

P/2013/0372/MPA: This provides for the demolition of the existing holiday accommodation in the garden area and its replacement by a lower terrace of 9, 3 storey, 3 bed dwellings and a rear terrace of 9, three storey, 4 bed dwellings. Each of the terraces has integral garages and visitor spaces; committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P/2013/0400/PA: This application proposed amendments to the approved scheme for conversion of the main villa to flats and reduces the number of units from 8 to 7. The ground floor apartments comprise 2 large 3 bed units to avoid undue impact on the existing layout. Of the remaining units, 4 are 2 bed units and 1 is 1 bed. The changes relate principally to the layout and alterations to the rear elevation; committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P.2013/0401/LB: Is the listed building application in connection with the above planning application.

P/2013/0891: This relates to the redevelopment of a block of holiday accommodation to the rear of the villa to provide 6 new dwellings (2x 1 bed 3 x 2 bed and 1 x 3 bed); committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P/2012/1001: Certificate of lawfulness for a proposed erection of four dwelling house described as Mews Building E in accordance with planning permission granted on 8 July 2009 (LPA ref P/2008/1623/MPA); Approved 08.02.2013

P/2008/1623 & P/20089/1624: Alterations to grade II listed building and conversion into apartments; removal of hotel and bedroom blocks; formation of 42 residential units and spa facilities comprising 32 no 2 storey dwellings and 10 no apartments (revised scheme); Approved 08.07.2009

## **Summary of Representations**

One letter of objection was received at the time of writing this report which stated that the development would be out of keeping with the area and overly dense.

One letter of representation was received which requests a condition be added regarding flood risk.

## **Summary of Consultation Responses**

**Historic England** – No comment

### **Torbay Council Heritage advice –**

*Built 1844, Bishops Court (formerly Normount) is a large Neo-classical style property with a natural slate roof and stucco/painted render external finish. The building is described within the published Warberries Conservation Area Appraisal as having a largely unspoilt frontage and being part of an important group of buildings.*

*The building has been subject to various alterations including extensions, alterations to the plan form and inconsistent decoration undertaken throughout the life of the building during its residential and hotel uses. The significance of the heritage asset has undoubtedly been impacted in the past by unsympathetic development both to itself and the setting. However, the building still retains many features that contribute positively to its historic and architectural value.*

*It is proposed to subdivide the principle building into 5 apartments. Internally alterations to the openings, circulation and new partitions are proposed to facilitate the conversion. 2 apartments to the ground and first floors are proposed, with a further 1 apartment to be located on the second floor.*

*Generally the approach to the conversion into 5 apartments is more suitable than the previously approved application that sought a larger number of units. The relieved pressure has enabled a more sympathetic subdivision of spaces, with the larger units allowing for a reduced impact upon features of architectural interest throughout the Grade II Listed building.*

*The method of internal subdivision would retain any existing detailing such as cornicing, panelling and picture rails and would continue them around the newly created spaces. Partitions have also been located pragmatically reducing clashes with detailing where possible. Where insulation is proposed to exterior walls to provide increased thermal performance, any surface mounted detailing would be carefully removed and repositioned on top of the newly lined walls to match the existing appearance, preserving the historic plaster beneath. Whilst the proportions of some of the rooms would be altered with the proposed layout, many of the principle rooms have been retained relatively unaltered. As stated within the submitted heritage statement, the stripping out of any redundant services when work is carried out on site should be carried out with care to ensure the historic fabric is preserved. The proposal would retain significant features for example fireplaces and surrounds, throughout the building and has minimised the removal of internal historic fabric allowing the alterations to the layout to be generally reversible.*

*There would be few alterations to the unspoilt frontages of the building, with repair to existing stucco/render and windows and general redecoration. Throughout the building many of the windows would be 'overhauled' repairing/replacing where necessary to match comparative originals where appropriate. The replacement of existing windows with new timber sliding sash to match others in the rear wing would provide a consistent appearance to this part of the building. The proposed replacement/alterations to the windows would provide a consistent appearance within wing extending from to the North and to other existing windows within the newly created courtyard area. The removal of later incongruous additions to the building would result in an enhancement of the existing appearance of the building.*

*The listed description describes the large terraced garden having been altered for hotel use. The contribution of garden to the setting to the significance of the heritage asset has undoubtedly been eroded over time through a series of developments and alterations. Beyond the site itself, there are limited views of the listed building and its setting due to the wider topography of the area and the site's existing boundary treatment and vegetation.*

*The proposed residential development within the grounds would be located in the place of existing alterations to the setting and, as such, are considered to be suitably located. The key views of the listed building on entering the site up the sweeping drive would be maintained, enabling the intended prominence of the listed building to be appreciated. The proposed layout would also maintain the link between the listed building on the site and the listed pavilion located within the grounds.*

*The cumulative change to the setting over time, has resulted in the setting of the heritage asset no longer making the contribution it once did to the significance of the listed building.*

### **Conclusion**

*The proposal is a suitable development that would enable the continued use of the building and would result in improvements in the quality of the Grade II Listed building after the removal of extensions and other alterations that currently have a negative impact on the significance of the building.*

*Whilst there are some elements of the proposal which might be regarded as falling within the less than substantial harm category these are weighted against the other more positive elements highlighted, which overall would serve to result in a neutral impact on the special merit of the listed building.*

*This conclusion has been reached in relation to section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.*

### **Recommendations.**



*It is recommended that a schedule of works should be submitted that include details all internal and external alterations to the Listed Building.*

*All stripping out should be undertaken with particular care to ensure the historic fabric is preserved. Where alterations to the historic fabric are identified and necessary works of making-good should be carried out to match the existing original adjacent work in respect of materials used, detailed execution and finished appearance.*

*The development should be carried out in accordance with the submitted details.*

**Torbay Council Drainage Engineer** – *No objection providing the surface water drainage is constructed in accordance with drawing number 102176-D001 Revision C and the previously submitted hydraulic design.*

**Senior Tree and Landscape Officer –**

*Having reviewed the above application please see below for comments:*

*Appraisal*

- *The site is subject to an area tree preservation order – 1973.12*
- *The site is located within the Warberries Conservation Area*
- *All trees on site are subject to statutory protection*
- *The submitted tree appraisal provides an overview of the trees on site*
- *The site is complex in respect of existing level changes and surfaces around the trees*

*Conclusion*

- *The site can be developed*
- *The impact on the trees will need to be considered as part of the development proposals*
- *The complex nature of the site may allow for modification of perceived rooting environments*
- *The development is sustainable from an arboricultural perspective providing the following recommendations are adhered to*

*Recommendations*

- *Detailed tree protection plan (including demolition protection plan if necessary)*
- *Detailed method statements*
- *Arboricultural impact assessment.*
- *The above documents to be submitted and approved prior to commencement.*

**Natural England** – No comment

**Torbay Council Strategic Transport** – No objection

**Police Architectural Liaison Officer** - *With regard to multi-occupancy buildings, tradesperson buttons are discouraged by the police due to an increase in crime, fear of crime and antisocial behaviour as such the delivery of mail will need to be*

considered. A couple of options to consider could be an approved external wall mounted mail box system or an approved 'through the wall' into individual secure boxes. Also the reading of utility meters should be capable of being done remotely to prevent accessing having to be gained into the building/dwellings.

Shared entrances should also have an access control facility and a visitor door entry system for each dwelling with both audio and visual capacity.

- **Activity** - Places where the level of human activity is appropriate to the location and creates a reduced risk of crime, fear of crime and a sense of safety at all times.
- **Management and maintenance** - Places that are designed with management and maintenance in mind to discourage crime, fear of crime and ASB

The proposed on-site caretaker is noted and much supported in satisfying the requirements of this attribute.

The proposed parking provision for the above scheme is noted but it is respectfully requested that the provision and design of the parking is considered to be both sufficient, when balanced against the overall schedule of accommodation and practical and convenient to use to prevent unplanned parking elsewhere, as it is the 'elsewhere' that can prove problematic and lead to upset and angst amongst residents due to inconsiderate and/or obstructive parking.

## **Key Issues/Material Considerations**

### **Planning Officer Assessment**

1. Principle of Residential Development
2. Design and Visual Impact
3. Impact on Heritage Assets
4. Impact on Residential Amenity
5. Impact on Highway Safety
6. Ecology and Biodiversity
7. Drainage and Flood Risk

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

1.1 In terms of the principle of a residential use Policy H1 of the Torbay Local Plan states that proposals for new homes within the built-up area (as is the case in this instance), will be supported subject to consistency with other policies in the Local Plan. Torquay Neighbourhood Plan Policy TS4 (Support for Brownfield and Greenfield development) states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in this plan.

1.2 The site is shown as a committed site (CDST28) in both the Torbay Local Plan and the Torquay Neighbourhood Plan and has an extant permission P/2008/1624 for 32 no 2 storey dwellings and 10 no apartments. Bishops Court is a stalled brownfield site that is currently unused and run-down.

1.3 The principle of the change of use of the site from a hotel/holiday accommodation to residential was established by the extant permission on the site and it is noted that Torquay Neighbourhood Plan Policy TT2 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 will be supported in principle (subject to other policies in this Plan) 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.

1.4 In light of the broad aspirations of Policies H1, TS4, TT2 and previous permissions and allocations on the site, the principle of residential use is considered acceptable, subject to broader policy considerations.

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

2.1 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.

2.2 Accordingly, 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.

2.3 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.

2.4 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.

2.5 The Grade II Bishops Court building is to be divided into 5 apartments rather than 8 which are currently approved. Externally the alterations include the removal of the later rear north-west corner extension of the mansion and the polygonal linking element will be removed to restore the separation between the building and its former service wings. The windows throughout the building are to be 'overhauled' and repaired or replaced where necessary to match the comparative originals. The general approach to the alterations and refurbishment of the mansion will remain much as previously approved, but with fewer apartments.

2.6 The conversion of the building to the north and north-west of the Listed Building from fourteen existing apartments into four houses is considered to provide an enhancement to the Listed Building's setting through the reduction in the density of activity which will create less pressure on the site from uses such as car parking that presently are considered as harming to the setting of the Listed Building. The minor external alterations to the render and cornice are considered to enhance the buildings.

2.7 The five houses proposed to the north-east of the site will be located in a similar position, albeit over an extended footprint, as the existing buildings in this location. The new houses would be no higher than the existing building and would be finished with sedum roofs with solar arrays. The houses would consist of a lower ground floor parking area and home gym/cinema area with three storeys of accommodation above. The north elevation facing Middle Warberry Road is clad with natural slate so as to have a similar appearance as the existing. The proposed buildings in this location would be no more visible than the existing. The south facing elevations provide a modern contrast to the Listed Building and follow the design considered acceptable as part of previous applications on the site. The houses are finished with render on and broken up on their southern elevations at ground floor by cladding and on the east and west elevations by cladding and additional windows. The materials for the cladding will form part of the materials condition and it may be a more suitable solution for the cladding to be stone rather than timber.

2.8 The south-east block of five houses is a partial conversion of the existing building, a very substantially engineered concrete structure that supported a garden area and lawn tennis court on its roof. The five houses here would be of a similar design and finish to the five to the north of them. They would comprise of a ground floor parking area and gym/cinema room with two storeys of accommodation above. The five houses will be on a lower part of the site that slopes steeply from south to north, which would provide some mitigation to the perceived height of these buildings and their relationship to the Listed Building.

2.9 The Caretaker's house is a modest 3-bedroom house located in the south-west corner of the site on the opposite side of the access road to the Listed Building and is finished with timber cladding and a natural slate roof, which is befitting of its tree orientated setting. It will be seen as being separate from the Listed Building and will have limited impact on its setting.

2.10 It is considered that the form and layout of the development would make effective use of what is brownfield land, and respond well to the topography of the site. The development would result in some enhancements to the site which includes dated and tired structures and would provide a less dense development than the 42 dwellings that currently have consent on the site. The key views of the listed building on entering the site up the sweeping drive would be maintained and the proposed layout would also maintain the link between the listed building on the site and the listed pavilion located within the grounds.

2.11 Given the proposals' siting, layout, scale, and overall design, it is considered that they 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 and refuse storage arrangements, it is considered that the proposal is in accordance with Policies DE1, SS10, SS11 and HE1 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

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

3.1 The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 193). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 194). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 196).

3.2 Section 72 of The Planning (Listed Buildings and Conservation Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Similarly Section 66 of the Act requires that in considering whether to grant planning permission for development which affects a Listed Building or its setting, the local planning authority 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.

3.3 Policy HE1 refers to Listed Buildings and states that development proposals should have special regard to preserving listed buildings and their setting. Policy SS10, Conservation and the Historic Environment, 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 designated Conservation Areas.

3.4 Policy TH10 of the Torquay Neighbourhood Plan states that alterations to Listed Buildings will be supported where they safeguard and enhance their historic qualities and elements according to their significance. In doing so, proposals which at the same time contribute to providing a sustainable economic future for such buildings will be particularly supported. Policy TT2 of the Torquay Neighbourhood Plan which states that change of use from tourist accommodation and other development proposals requiring consent will be supported in principle 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. However the change of use of the hotel to residential is largely established by extant permission P/2008/1624.

3.5 It is considered that the conversion of the Grade II Listed Building into 5 apartments is more sympathetic to the internal architectural features than the extant permission which sought to divide the building into 8 apartments. The reduction in units reduces clashes with detailing and allows for minimal alterations to the principle rooms and in general the alterations to the layout to be generally are reversible.

3.6 As previously noted there would be few alterations to the unspoilt frontages of the building, with repair to existing stucco/render and replacement windows to timber sliding sash to match the original windows, where appropriate which would provide a beneficial and consistent appearance throughout the building. The proposal includes the removal of later incongruous and deleterious additions to the building would result in an enhancement of the existing appearance of the building, the structure linking the Grade II Listed Building to the building to the north is to be removed which reinstates the building to its original, stand alone, setting.

3.7 The conversion of the building to the north/north-east, which includes minimal external alterations, would result in a better relationship to the Listed Building than the extant permission on this part of the site, which allowed for 14 dwellings, insofar as the pressure on space for parking, bin storage and amenity space.

3.8 The proposed development of 5 dwellings to the north-east of the Listed Building, although being increased in footprint would have a limited impact on the setting of the Listed Building. This building is to be no higher than the existing building in this location and its north elevation is designed to be of similar appearance to the existing. Consequently this part of the development, which is the most visible in the wider conservation area, is considered to have an acceptable impact on the character and appearance of the conservation area.

3.9 The proposed development of 5 dwellings to the south-east of the Listed Building would result in an additional 2 storeys of development in this location which would inevitably result in the most impact on the Listed Building considering the sympathetic nature of the scheme overall. However, due to the topography of the site, they are set lower than the Listed Building and the limited impact they would have on the setting of the Listed Building is considered to be less than substantial whilst providing a public benefit by providing viable addition dwellings to the Councils five year housing land supply. In terms of their impact on the setting of the Listed Building, the Councils Heritage advisor has stated that the cumulative change to the setting over time, has resulted in the setting of the heritage asset no longer making the contribution it once did to the significance of the listed building. The additional development in this area would not significantly impact on the main view of the Listed Building which is obtained when entering the site and moving up the driveway.

3.10 As previously noted, the dwellings to the north-east and south-east of the Listed Building are of a modern design which is deemed to be acceptable in this location and provides a distinction between old and new rather than a less appropriate pastiche form of development.

3.11 The proposed care takers accommodation is considered to be of an acceptable scale, location and design so as to have limited impact on the setting of the Listed Building and the wider conservation area.

3.12 Overall the proposal is deemed to be a suitable development that would enable the continued use of the Listed Building and would result in improvements to its quality through the removal of extensions and other alterations that currently have a negative impact on the significance of the building. Whilst there are some elements

of the proposal which might be regarded as falling within the less than substantial harm category these are weighted against the other more positive elements which overall would serve to result in a neutral impact on the special merit of the list building.

3.13 Subject to a condition requiring the submission of a schedule of works that include details of all internal and external alterations to the Listed Building, as recommended by the Councils Heritage advisor, the proposal is considered to comply with policies HE1 and SS10 of the Torbay Local Plan and policies TH10 and TT2 of the Torquay Neighbourhood Plan.

3.14 This conclusion has been reached in relation to section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

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

4.1 Policy DE3 of the Torbay Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers.

4.2 The development to the north and west of Bishops Court are largely retained as existing and therefore the relationship with neighbouring properties to the west of the site is not altered, nor is the relationship within the site between the existing buildings.

4.3 The existing building to the east is to be replaced with five new dwellings (upper houses) which are no higher than the existing. The new houses in this location would not result in an unacceptable level of overlooking/intervisibility to properties to the east.

4.4 The new dwellings on the former tennis court (lower houses) are to be two storeys in height, above the current ground level in this location, and make use of the existing structures at lower ground level to provide parking and leisure/amenity space. The addition of five new dwellings in this location are considered to have an acceptable impact on the privacy and amenity of the Warberries nursing home to the east and would not result in unacceptable levels of overlooking/intervisibility or an overbearing impact.

4.5 The relationship between the front elevations of the upper houses and the rear elevations of the lower houses is considered to be an acceptable one in terms of overlooking/intervisibility given the distance, difference in levels and the trees and landscaping between them.

4.6 In general, the external amenity areas for the properties accord with the requirements of Policy DE3 (TLP) and there are sufficient cycle and bin storage areas (although further details of bin storage will be requested via condition). All of the

proposed dwellings comfortably comply with the internal space standards identified in the Local Plan.

4.7 In summary the proposal is deemed to provide a satisfactory form of development in terms of protecting the amenities of adjacent and future occupiers, in accordance with Policies DE1 and DE3 of the Torbay Local Plan. The proposal is considered to be an improvement in terms of its impact on existing and future amenities on and off site when compared to the extant permission for 42 dwellings on the site.

## **5. Impact on Highway Safety**

5.1 The NPPF guides that in assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree (Para 108). It also furthers (Para 109) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5.2 Policy TA2 of the Torbay Local Plan states that all development 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. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided. 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, this states that 1 space per apartment and 2 per dwelling plus appropriate guest parking provision should be provided. Policy TH9 of the Torquay Neighbourhood Plan states that parking levels should comply with Policy TA3 of the Local Plan.

5.3 The proposal provides 39 resident parking spaces for all dwellings on the site plus 18 visitor parking spaces (including 3 disabled parking spaces) all of which are designed and sited to limit their impact on the setting of the Listed Building. During the application phase some of the garages have been increased in length to meet the size standards set out in Appendix F of the Local Plan. All garages include electric charging points.

5.4 The closest bus stops to the site are located on Lower Warberry Road and Middle Warrbery Road with a total of four stops within 200m of the site. The Lower Warberry Road stop to the west of the site provides a layby and shelter. The submitted swept path analysis confirms that refuse vehicles are able to enter and exit the site in a forward gear.



5.5 The Council's Strategic Transport Officer has advised that the level of parking is acceptable and meets the requirements of Policy TA3 and TH9 of the Torquay Neighbourhood Plan. The existing access is also considered to be acceptable to serve the proposed development and does not require alteration and therefore accords with Policy TA2 of the Local Plan.

## **6. Ecology & Biodiversity**

6.1 Policy NC1 of the Torbay Local Plan and guidance within the NPPF seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development.

6.2 The proposed scheme will require the partial demolition of the building(s) to the north-east of the site, some demolition to the building to the south-east and conversion of the remaining buildings. The bats surveys resulted in a close examination of the site, where evidence of bat roosts and hibernation was evident. This required the redesign of the proposed Upper Houses to the East of the site, Units 3, 4 & 5. It has been found that an existing void area to the rear of these units is used for both roosting and hibernation. As such these units have been amended to retain the void. This reduces the floorspace of these units deleting the home cinema/gym/games room to units 3 & 4. There is also a redesign of the lift and stairs within the units.

6.3 The site and building layout will be retained close to existing, with new houses constructed within the footprint of the existing buildings and hardstanding, and boundary trees and vegetation retained. Therefore, there is considered to be no net loss of habitats and no significant additional illumination.

6.4 The ecological site survey results have informed measures which have been specifically designed to mitigate and compensate for the ecological impacts of the development, in order to provide a gain in biodiversity at the site post-development. The proposal shall be conditioned to accord these measures which include:

- A minimum of six bat roosting provisions which are suitable for different species of bats will be installed on the buildings and mature trees, located away from lit areas.
- A minimum of six bird boxes suitable for different species of birds which nest in association with human habitation will be incorporated into the buildings proposed for the site or the surrounding mature trees. These will include house sparrow *Passer domesticus* boxes on the buildings, and robin *Erithacus rubecula* and general purpose boxes on the trees.
- Landscaping should include enhancement of the retained planting with native/wildlifeattracting species to provide habitat and foraging value for reptiles, badgers, bats and birds.
- Any arisings from vegetation management should be utilised to create habitat piles and compost heaps in relatively undisturbed areas of the site.

6.5 A badger sett was found on-site and it is recommended that this should be surveyed for activity at least two months prior to commencement of works. If it is considered to be active, a licence from Natural England will be required to

temporarily close the sett before any excavations can take place within 20 metres of the sett throughout the construction works. A condition requiring the survey being carried out and the result submitted to the Local Authority will be added.

6.6 All trees on the site are protected by an area tree preservation order and by virtue of being within a conservation area. The Council's Senior Tree and Landscape Officer has confirmed that development is sustainable from an arboricultural perspective providing the following information is submitted to the Council for approval via condition prior to commencement of works on site:

- Detailed tree protection plan (including demolition protection plan if necessary)
- Detailed method statements
- Arboricultural impact assessment.

6.7 Subject to the addition of suitable conditions the proposal is deemed to comply with Policies NC1 and C4 of the Local Plan.

## **7. Flood Risk and Drainage**

7.1 Policy ER1 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.

7.2 Infiltration testing completed on site indicates that infiltration SuDS techniques are suitable for the site and the applicant proposes a combination of a soakaway and discharging into the existing surface water system at a maximum of the 1 in 10 year greenfield run off rate (2.4l/s) will be suitable for the site. The proposed surface water drainage design presented in the submitted drainage report contains the 1% (1 in 100 year) annual exceedance probability rainfall event including a 40% allowance for climate change and 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.

7.3 The Council's Drainage Engineer and South West Water have raised no objections to this method of drainage, subject to the use of conditions requiring adherence to the submitted drainage and flood risk details.

7.4 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.

## **8. Other Considerations**

### **Housing Supply**

8.1 The Council cannot currently demonstrate a 5 year housing land supply, as sought by Government, with the land supply position at 2019 was 2.5 years and the draft position for 2020 is similar to this. The five year supply position represents a

significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

8.2 Considering the housing supply position it is advised that in determining the application, the presumption in favour of sustainable development at Paragraph 11 of the NPPF must be applied. 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.

8.3 It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were Members of a different judgment and were to consider the proposal to be in conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

### **Sustainability**

8.4 Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development.

8.5 This is a stalled brownfield site which is identified as a committed site for housing within the Development Plan and Torquay Neighbourhood Plan and is hence broadly considered sustainable for future residential development.

8.6 The proposed development has been designed to minimise carbon emissions and re-use of existing on-site resources where appropriate to reduce the development's carbon footprint. The 15 new houses are designed to exceed building regulation requirements with high levels of thermal insulation to walls, floors, roofs, windows and doors.

8.7 The new houses are to be heated via roof mounted PV and heat pumps with heat recovery ventilation. Battery storage areas are provided in the new houses. Where possible the development has been designed so the new houses have large south facing windows to maximise solar gain.

8.8 In the Listed Building internal thermal insulation linings will be used on existing retained internal walls where this does not compromise historic features. The building hitherto has been heated with an inefficient gas fired boiler. Once redeveloped optimal alternatives will be used that do not adversely impact on the historic features of the Listed Building.

8.9 The application proposal has been designed to include a high proportion of recycled material including existing foundations and retaining structures including lower car park together with the substantial landscaping green roofs to minimise carbon footprint. This design approach to the site is in accordance with Local Plan policies SS3 and ES1.

### **Proactive Working**

In accordance with the guidance contained in the NPPF the Council has worked in a positive and pro-active way and has secured improvements to the scheme through revised plans, and concludes that the application is acceptable for planning approval with imposed conditions to enable the grant of planning permission.

### **EIA/HRA** **HRA**

The proposal does not include any works which would result in the loss, damage or disturbance, at a landscape scale, to a network of potential GHS commuting routes. The proposal will not cause loss, damage or disturbance to any existing mitigation features or pinch points. Therefore, there is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.

### **E IA**

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.

### **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**

#### **Affordable Housing S.106 Agreement**

With regards to affordable housing, Policy H2 (Affordable housing) states that the affordable housing requirement for a scheme of 20 plus dwellings on brownfield land is 20%. The applicant has submitted an Independent Viability Assessment which has been independently reviewed and confirmation has been received that the scheme is unlikely to be viable if affordable housing was provided. In accordance with the provisions of the Council's Planning Contributions and Affordable Housing SPD, and in light of uncertainties pertaining to build costs and values, 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

### **Community Infrastructure Levy**

The residential aspect of the site 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

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

The site is a stalled brownfield housing site and the development provides a secure future for the currently neglected Grade II Listed Building on the site.

The proposed units comfortably meet the internal size standards set out in the Local Plan and provide suitable amenity space and car parking without causing significant harm to the Listed Building or wider conservation area. The development is considered to result in less than substantial harm to the Listed Building with a public benefit through the re-use of said Listed Building and the provision of much needed additional housing.

The proposals are considered to be in accordance with the provisions of the Development Plan.

The Officer recommendation is one of conditional approval. The proposal is ultimately considered a good use of an identified site that would provide much needed housing to help meet local need.

### **Officer Recommendation**

Approval: Subject to;

The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning and Transport;

A s.106 agreement 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 and to rescind application P/2012/1001;

The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning and Transport, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **1. Materials**

Prior to the commencement of any development other than demolition, a full external material schedule to include details of colour, form and texture, rainwater goods, ducting, flues, ventilation extraction and meter boxes. Where requested by the Local Planning Authority samples of materials to be used in the construction of the external surfaces of the development hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the area in accordance with policies DE1, SS10 & HE1 of the Torbay Local Plan 2012-2030 and policy TH8 of the Torquay Neighbourhood Plan.

## **2. Drainage**

The development shall proceed fully in accordance with the surface water management as detailed within the submitted hydraulic design and drawing number 102176-D001 Revision C and RW102176V002 Revision B which shall be completed prior to the first occupation any building and maintained at all times thereafter, unless otherwise submitted to and agreed in writing by the Local Planning Authority.

Reason: To secure an appropriate form of development that does not increase the risk of flooding to residents or land or buildings adjacent, in accordance with policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and the Environment Agency Critical Drainage Area Advice Note dated May 2015.

## **3. Tree Protection Measures**

Prior to the commencement of development, including ground clearance, a detailed Tree Protection Plan (including a demolition protection plan if necessary), detailed Arboricultural Method Statements and an Arboricultural Impact Assessment shall be submitted to and approved in writing by the Local Planning Authority. The Development shall proceed in full accordance with the approved Method Statements.

Reason: To secure suitable landscaping to support the residential development hereby approved, in the interests of amenity in accordance with policies DE1, DE3 and C4 of the Torbay Local Plan 2012-2030 and policy PNP1(c) of the Paignton Neighbourhood Plan. These measures are required pre-commencement to ensure against potential harm from construction activities.

## **4. Schedule of works**

The conservation repair works to the Grade II Listed Building shall be completed in accordance with the approved schedule of works and shall be retained as such at all times thereafter.

Reason: In order to preserve the heritage asset in a manner appropriate to its significance and in order to comply with Policies SS10 & HE1 of the Torbay Local Plan 2012-2030.

## **5. Completion of works to LB in accordance with condition 4**

No more than two of the new dwellings, hereby approved, to the south-east (indicated on the plans as the 'Lower Houses') of the Grade II Listed Bishops Court shall be occupied until the works to restore the Grade II Listed Building are completed in accordance with Condition 4.

Reason: To ensure that the Grade II Listed Building is sympathetically restored in line with Policy SS10 of the Torbay Local Plan 2012-2030.

## **6. Windows and 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:

- 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 Listed Building in accordance with Policy HE1 of the Torbay Local Plan and TH10 of the Torquay Neighbourhood Plan.

## **7. Construction Method Statement**

No development except internal works to existing buildings shall take place 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 respective Statements 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 of any external works to safeguard the amenity of the locality in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

## **8. Parking Implementation**

Prior to the occupation of the dwellings hereby approved, their associated car parking spaces and garages, as shown on the approved layout plan, shall be provided and thereafter made permanently available for the use of the associated properties.

Reason: to ensure all properties have dedicated parking facilities and in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

### **9. Bin stores**

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 of the Adopted Torbay Local Plan 2012-2030.

### **10. Implementation of bicycle storage**

Prior to the first use of the development hereby approved, bicycle storage facilities shown on the approved plans shall be provided. Once provided, storage arrangements 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 2012-2030.

### **11. Nesting season - birds**

All demolition and/or the removal of vegetation shall be undertaken outside of the bird nesting season (March-August inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds. If nests are found no works shall be undertaken until the birds have fledged within an area identified by the ecologist.

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

### **12. External Lighting**

Prior to the installation of any external lighting on the outside of the building or elsewhere on the site, full details including design, siting and illumination-type shall be submitted to and approved in writing by the Local Planning Authority. Only lighting that has been approved in writing by the Local Planning Authority shall be installed. The lighting shall then be installed, operated, and maintained in accordance with the approved details.

Reason: In the interests of amenity and design in accordance with Policy NC1 of the Torbay Local Plan 2012-2030

### **13. Landscaping**

Prior to the first occupation of the development hereby permitted full 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.

#### **14. Ecology**

The development shall proceed fully in accordance with the recommendations detailed in the Ecological Appraisal reference 19-3489.01 (received 02.12.2019).

This shall include;

- A minimum of six bat roosting provisions which are suitable for different species of bats will be installed on the buildings and mature trees, located away from lit areas, prior to the occupation of the first dwelling or in accordance with a timetable to be agreed with the LPA
- A minimum of six bird boxes suitable for different species of birds which nest in association with human habitation will be incorporated into the buildings proposed for the site or the surrounding mature trees. These will include house sparrow *Passer domesticus* boxes on the buildings, and robin *Erithacus rubecula* and general purpose boxes on the trees. The boxes shall be provided prior to the occupation of the dwellings to which they relate.
- Landscaping should include enhancement of the retained planting with native/wildlife attracting species to provide habitat and foraging value for reptiles, badgers, bats and birds.
- Vegetation management should be utilised to create habitat piles and compost heaps in relatively undisturbed areas of the site.
- Roosting provisions and/or bat boxes must not be directly illuminated by any proposed security or decorative lighting. All security lighting will be set on a timer and be tightly shaded to minimise the duration and spread of the light.
- The use of bat friendly roofing materials

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

#### **15. Badger sett**

The on-site badger sett shall be surveyed for activity at least two months prior to commencement of works, details of which shall be submitted to the Local Authority. If it is considered to be active, a licence from Natural England will be required to temporarily close the sett before any excavations can take place within 20 metres of the sett throughout the construction works.

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

## **16. Boundary Treatment**

Prior to the first occupation of the development hereby permitted, a scheme of boundary treatment shall be submitted to the Local Planning Authority for approval. The approved boundary treatments shall be fully installed in accordance with the approved details and 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 Torbay Local Plan 2012-2030.

## **17. No PD Part 1 Class A**

Notwithstanding the provisions of Classes A to H of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no enlargements, improvements or other alteration shall take place to the dwellings hereby approved within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, 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 DE3, SS10 & HE1 of the Torbay Local Plan 2012-2030.

### **Relevant Policies**

SS3 - Presumption in favour of sustainable development

SS9 - Green Infrastructure

SS10 - Conservation and Historic Environment

SS11 - Sustainable Communities Strategy

SS12 - Housing

SS13 - Five Year Housing Land Supply

SS14 - Low Carbon Development and Adaptation to Climate Change

W2 - Waste audit for major and significant waste generating developments

W3 - Existing waste management facilities in Torbay

SDP1 - Paignton

SDP3 - Paignton North and Western area

TA1 - Transport and accessibility

TA2 - Development access

TA3 – Parking requirements

ES1 - Energy

NC1 - Biodiversity and Geodiversity

H1 - Applications for new homes

H2 - Affordable Housing

DE1 – Design

DE3 - Development Amenity

HE1 – Listed Buildings

C4 - Trees, hedgerows and natural landscape

ER1 - Flood Risk

ER2 - Water Management

TH8 - Established architecture

TH9 - Parking facilities

TH10 - Protection of the historic built environment

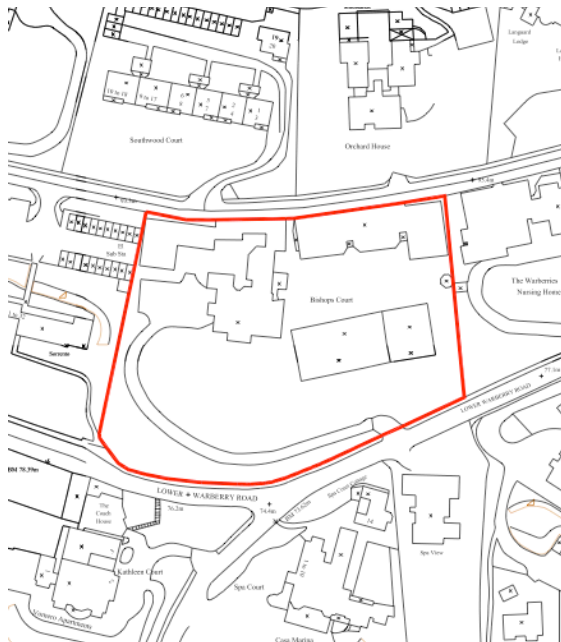
TS1 – Sustainable Development

TS4 - Support for Brownfield and Greenfield development



Application Site Address	Bishops Court Hotel, Lower Warberry Road, Torquay
Proposal	Listed building consent for conversion and refurbishment of mansion to form 5 apartments. Removal of redundant leisure complex and construction of 11 new houses within grounds. Conversion and refurbishment of 14 existing curtilage apartments to form 4 houses, and construction of 8 radial garages and 2 detached garages to replace surface parking.
Application Number	P/2019/1262
Applicant	Ascena Developments Limited
Agent	Mr Charles Uzzell
Date Application Valid	03.12.2019
Decision Due date	03.03.2020
Extension of Time Date	18.06.2020
Recommendation	Approval
Reason for Referral to Planning Committee	Major Planning Application
Planning Case Officer	Mr. Alexis Moran

## **SITE PLAN**



## **Site Details**

Bishops Court, a former hotel and Grade II listed building stands in a spacious plot with a vehicular access from Lower Warberry Road. It was formerly known as 'Normount' and was built in 1844.

The villa has been subject to a number of alterations and extensions over the years in order to provide additional holiday accommodation in the hotels heyday, which did compromise its architectural integrity.

The site is bound to the north by Middle Warberry Road, to the east by The Warberries Nursing Home and to the west by a block of flats known as 'Sorrento'. The site slopes down from the north to the south. The main villa is grade II listed, as is the neighbouring nursing home; the pavilion at the east of the site is also separately grade II listed as is the entrance gate and piers.

The major part of the garden to the villa, which lies to the east of the site, was previously occupied by two additional terraces of holiday accommodation running east-west across the site and built into the slope. The lower terrace has been partly demolished in recent years.

The site is within the Warberries Conservation Area. The Conservation Area Appraisal identifies the main villa as an important building with an unspoilt frontage. The view south from the rear of the villa is identified as important within the conservation area and the front boundary walls are shown as prominent walls. The site is covered by a Tree Preservation Order (1973.12).

### **Description of Development**

Listed building consent is sought for the development of 20 dwellings (5 apartments and 15 houses). The scheme comprises the conversion of the existing Bishops Court Grade II Listed Building to 5 apartments. The conversion of 14 existing apartments/bedsits to the north & north-west of the Listed Building to four houses. The partial conversion, extension and new build of five houses to the north-east of the Listed Building referred to on the plans as the Upper Houses. The partial conversion, extension and new build of five houses to the south-east of the Listed Building referred to on the plans as the Lower Houses, and a new house in the south west corner of the site for a live on-site caretaker.

The proposed development includes the subdivision of the principle building into 5 apartments. Internally alterations are proposed to the openings, circulation space and new partitions are proposed to facilitate the conversion. The proposal provides 2 apartments to the ground and first floors, with a further 1 apartment to be located on the second floor.

Fourteen of the proposed houses are either conversions or conversion/extension/new build on the footprint of existing buildings on the site. There is also a proposed new house in the south-west corner of the site that is currently a surface parking area.

The apartments and houses all have garaging, the development provides 57 parking spaces including 39 spaces for the 20 dwellings and 18 visitor spaces including 3 disable parking spaces.

## **Pre-Application Enquiry**

N/A.

## **Relevant Planning 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 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.

## **Relevant Planning History**

P/2019/1274: The Major Planning Application which accompanies this Listed Building Consent application; recommended for approval, pending consideration.

P/2013/0372/MPA: This provides for the demolition of the existing holiday accommodation in the garden area and its replacement by a lower terrace of 9, 3 storey, 3 bed dwellings and a rear terrace of 9, three storey, 4 bed dwellings. Each of the terraces has integral garages and visitor spaces; committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P/2013/0400/PA: This application proposed amendments to the approved scheme for conversion of the main villa to flats and reduces the number of units from 8 to 7. The ground floor apartments comprise 2 large 3 bed units to avoid undue impact on the existing layout. Of the remaining units, 4 are 2 bed units and 1 is 1 bed. The changes relate principally to the layout and alterations to the rear elevation; committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P.2013/0401/LB: Is the listed building application in connection with the above planning application.

P/2013/0891: This relates to the redevelopment of a block of holiday accommodation to the rear of the villa to provide 6 new dwellings (2x 1 bed 3 x 2 bed and 1 x 3 bed); committee resolution to approve (11.11.2013) however the legal agreement was not signed.

P/2012/1001: Certificate of lawfulness for a proposed erection of four dwelling house described as Mews Building E in accordance with planning permission granted on 8 July 2009 (LPA ref P/2008/1623/MPA); Approved 08.02.2013

P/2008/1623 & P/20089/1624: Alterations to grade II listed building and conversion into apartments; removal of hotel and bedroom blocks; formation of 42 residential units and spa facilities comprising 32 no 2 storey dwellings and 10 no apartments (revised scheme); Approved 08.07.2009

### **Summary of Representations**

One letter of objection was received at the time of writing this report which stated that the development would be out of keeping with the area and overly dense.

One letter of representation was received which requests a condition be added regarding flood risk.

These letters were submitted with reference to the Major planning application which accompanies this application and not for this Listed Building Consent application.

### **Summary of Consultation Responses**

**Historic England** – No comment

#### **Torbay Council Heritage advice –**

*Built 1844, Bishops Court (formerly Normount) is a large Neo-classical style property with a natural slate roof and stucco/painted render external finish. The building is described within the published Warberries Conservation Area Appraisal as having a largely unspoilt frontage and being part of an important group of buildings.*

*The building has been subject to various alterations including extensions, alterations to the plan form and inconsistent decoration undertaken throughout the life of the building during its residential and hotel uses. The significance of the heritage asset has undoubtedly been impacted in the past by unsympathetic development both to itself and the setting. However, the building still retains many features that contribute positively to its historic and architectural value.*

*It is proposed to subdivide the principle building into 5 apartments. Internally alterations to the openings, circulation and new partitions are proposed to facilitate the conversion. 2 apartments to the ground and first floors are proposed, with a further 1 apartment to be located on the second floor.*

*Generally the approach to the conversion into 5 apartments is more suitable than the previously approved application that sought a larger number of units. The relieved pressure has enabled a more sympathetic subdivision of spaces, with the larger units allowing for a reduced impact upon features of architectural interest throughout the Grade II Listed building.*

*The method of internal subdivision would retain any existing detailing such as cornicing, panelling and picture rails and would continue them around the newly created spaces. Partitions have also been located pragmatically reducing clashes with detailing where possible. Where insulation is proposed to exterior walls to provide increased thermal performance, any surface mounted detailing would be*

*carefully removed and repositioned on top of the newly lined walls to match the existing appearance, preserving the historic plaster beneath. Whilst the proportions of some of the rooms would be altered with the proposed layout, many of the principle rooms have been retained relatively unaltered. As stated within the submitted heritage statement, the stripping out of any redundant services when work is carried out on site should be carried out with care to ensure the historic fabric is preserved. The proposal would retain significant features for example fireplaces and surrounds, throughout the building and has minimised the removal of internal historic fabric allowing the alterations to the layout to be generally reversible.*

*There would be few alterations to the unspoilt frontages of the building, with repair to existing stucco/render and windows and general redecoration. Throughout the building many of the windows would be 'overhauled' repairing/replacing where necessary to match comparative originals where appropriate. The replacement of existing windows with new timber sliding sash to match others in the rear wing would provide a consistent appearance to this part of the building. The proposed replacement/alterations to the windows would provide a consistent appearance within wing extending from to the North and to other existing windows within the newly created courtyard area. The removal of later incongruous additions to the building would result in an enhancement of the existing appearance of the building.*

*The listed description describes the large terraced garden having been altered for hotel use. The contribution of garden to the setting to the significance of the heritage asset has undoubtedly been eroded over time through a series of developments and alterations. Beyond the site itself, there are limited views of the listed building and its setting due to the wider topography of the area and the site's existing boundary treatment and vegetation.*

*The proposed residential development within the grounds would be located in the place of existing alterations to the setting and, as such, are considered to be suitably located. The key views of the listed building on entering the site up the sweeping drive would be maintained, enabling the intended prominence of the listed building to be appreciated. The proposed layout would also maintain the link between the listed building on the site and the listed pavilion located within the grounds.*

*The cumulative change to the setting over time, has resulted in the setting of the heritage asset no longer making the contribution it once did to the significance of the listed building.*

### **Conclusion**

*The proposal is a suitable development that would enable the continued use of the building and would result in improvements in the quality of the Grade II Listed building after the removal of extensions and other alterations that currently have a negative impact on the significance of the building.*

*Whilst there are some elements of the proposal which might be regarded as falling within the less than substantial harm category these are weighted against the other more positive elements highlighted, which overall would serve to result in a neutral impact on the special merit of the listed building.*



*This conclusion has been reached in relation to section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.*

**Recommendations.**

*It is recommended that a schedule of works should be submitted that include details all internal and external alterations to the Listed Building.*

*All stripping out should be undertaken with particular care to ensure the historic fabric is preserved. Where alterations to the historic fabric are identified and necessary works of making-good should be carried out to match the existing original adjacent work in respect of materials used, detailed execution and finished appearance.*

*The development should be carried out in accordance with the submitted details.*

**Key Issues/Material Considerations**

**Planning Officer Assessment**

1. Design and Visual Impact
2. Impact on Heritage Assets

**1. Impact on Visual Amenity**

1.1 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.

1.2 Accordingly, 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.

1.3 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.

1.4 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.

1.5 The Grade II Bishops Court building is to be divided into 5 apartments rather than 8 which are currently approved. Externally the alterations include the removal of the later rear north-west corner extension of the mansion and the polygonal linking element will be removed to restore the separation between the building and its former service wings. The windows throughout the building are to be 'overhauled' and repaired or replaced where necessary to match the comparative originals. The general approach to the alterations and refurbishment of the mansion will remain much as previously approved, but with fewer apartments.

1.6 The conversion of the building to the north and north-west of the Listed Building from fourteen existing apartments into four houses is considered to provide an enhancement to the Listed Building's setting through the reduction in the density of activity which will create less pressure on the site from uses such as car parking that presently are considered as harming to the setting of the Listed Building. The minor external alterations to the render and cornice are considered to enhance the buildings.

1.7 The five houses proposed to the north-east of the site will be located in a similar position, albeit over an extended footprint, as the existing buildings in this location. The new houses would be no higher than the existing building and would be finished with sedum roofs with solar arrays. The houses would consist of a lower ground floor parking area and home gym/cinema area with three storeys of accommodation above. The north elevation facing Middle Warberry Road is clad with natural slate so as to have a similar appearance as the existing. The proposed buildings in this location would be no more visible than the existing. The south facing elevations provide a modern contrast to the Listed Building and follow the design considered acceptable as part of previous applications on the site. The houses are finished with render on and broken up on their southern elevations at ground floor by cladding and on the east and west elevations by cladding and additional windows. The materials for the cladding will form part of the materials condition and it may be a more suitable solution for the cladding to be stone rather than timber.

1.8 The south-east block of five houses is a partial conversion of the existing building, a very substantially engineered concrete structure that supported a garden area and lawn tennis court on its roof. The five houses here would be of a similar design and finish to the five to the north of them. They would comprise of a ground floor parking area and gym/cinema room with two storeys of accommodation above. The five houses will be on a lower part of the site that slopes steeply from south to north, which would provide some mitigation to the perceived height of these buildings and their relationship to the Listed Building.

1.9 The Caretaker's house is a modest 3-bedroom house located in the south-west corner of the site on the opposite side of the access road to the Listed Building and is finished with timber cladding and a natural slate roof, which is befitting of its

tree orientated setting. It will be seen as being separate from the Listed Building and will have limited impact on its setting.

1.10 It is considered that the form and layout of the development would make effective use of what is brownfield land, and respond well to the topography of the site. The development would result in some enhancements to the site which includes dated and tired structures and would provide a less dense development than the 42 dwellings that currently have consent on the site. The key views of the listed building on entering the site up the sweeping drive would be maintained and the proposed layout would also maintain the link between the listed building on the site and the listed pavilion located within the grounds.

1.11 Given the proposals' siting, layout, scale, and overall design, it is considered that they 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; bicycle, and refuse storage arrangements, it is considered that the proposal is in accordance with Policies DE1, SS10, SS11 and HE1 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

## **2. Impact on Heritage Assets**

2.1 The NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 193). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 194). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 196).

2.2 Section 72 of The Planning (Listed Buildings and Conservation Areas) Act requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of that area. Similarly Section 66 of the Act requires that in considering whether to grant planning permission for development which affects a Listed Building or its setting, the local planning authority 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.

2.3 Policy HE1 refers to Listed Buildings and states that development proposals should have special regard to preserving listed buildings and their setting. Policy SS10, Conservation and the Historic Environment, 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 designated Conservation Areas.

2.4 Policy TH10 of the Torquay Neighbourhood Plan states that alterations to Listed Buildings will be supported where they safeguard and enhance their historic

qualities and elements according to their significance. In doing so, proposals which at the same time contribute to providing a sustainable economic future for such buildings will be particularly supported. Policy TT2 of the Torquay Neighbourhood Plan which states that change of use from tourist accommodation and other development proposals requiring consent will be supported in principle 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. However the change of use of the hotel to residential is largely established by extant permission P/2008/1624.

2.5 It is considered that the conversion of the Grade II Listed Building into 5 apartments is more sympathetic to the internal architectural features than the extant permission which sought to divide the building into 8 apartments. The reduction in units reduces clashes with detailing and allows for minimal alterations to the principle rooms and in general the alterations to the layout to be generally reversible.

2.6 There would be few alterations to the unspoilt frontages of the building, with repair to existing stucco/render and replacement windows to timber sliding sash to match the original windows, where appropriate which would provide a beneficial and consistent appearance throughout the building. The proposal includes the removal of later incongruous and deleterious additions to the building would result in an enhancement of the existing appearance of the building, the structure linking the Grade II Listed Building to the building to the north is to be removed which reinstates the building to its original, stand alone, setting.

2.7 The conversion of the building to the north/north-east, which includes minimal external alterations, would result in a better relationship to the Listed Building than the extant permission on this part of the site, which allowed for 14 dwellings, insofar as the pressure on space for parking, bin storage and amenity space.

2.8 The proposed development of 5 dwellings to the north-east of the Listed Building, although being increased in footprint would have a limited impact on the setting of the Listed Building. This building is to be no higher than the existing building in this location and its north elevation is designed to be of similar appearance to the existing. Consequently this part of the development, which is the most visible in the wider conservation area, is considered to have an acceptable impact on the character and appearance of the conservation area.

2.9 The proposed development of 5 dwellings to the south-east of the Listed Building would result in an additional 2 storeys of development in this location which would inevitably result in the most impact on the Listed Building considering the sympathetic nature of the scheme overall. However, due to the topography of the site, they are set lower than the Listed Building and the limited impact they would have on the setting of the Listed Building is considered to be less than substantial whilst providing a public benefit by providing viable addition dwellings to the Councils five year housing land supply. In terms of their impact on the setting of the Listed Building, the Councils Heritage advisor has stated that the cumulative change to the setting over time, has resulted in the setting of the heritage asset no longer making the contribution it once did to the significance of the listed building. The additional

development in this area would not significantly impact on the main view of the Listed Building which is obtained when entering the site and moving up the driveway.

2.10 As previously noted, the dwellings to the north-east and south-east of the Listed Building are of a modern design which is deemed to be acceptable in this location and provides a distinction between old and new rather than a less appropriate pastiche form of development.

2.11 The proposed care takers accommodation is considered to be of an acceptable scale, location and design so as to have limited impact on the setting of the Listed Building and the wider conservation area.

2.12 Overall the proposal is deemed to be a suitable development that would enable the continued use of the Listed Building and would result in improvements to its quality through the removal of extensions and other alterations that currently have a negative impact on the significance of the building. Whilst there are some elements of the proposal which might be regarded as falling within the less than substantial harm category these are weighted against the other more positive elements which overall would serve to result in a neutral impact on the special merit of the list building.

2.13 Subject to a condition requiring the submission of a schedule of works that include details of all internal and external alterations to the Listed Building, as recommended by the Councils Heritage advisor, the proposal is considered to comply with policies HE1 and SS10 of the Torbay Local Plan and policies TH10 and TT2 of the Torquay Neighbourhood Plan.

2.14 This conclusion has been reached in relation to section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings or their setting or any features of special architectural or historic interest which they possess and section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

### **3. Other Considerations**

#### **Housing Supply**

3.1 The Council cannot currently demonstrate a 5 year housing land supply, as sought by Government, with the land supply position at 2019 was 2.5 years and the draft position for 2020 is similar to this. The five year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

3.2 Considering the housing supply position it is advised that in determining the application, the presumption in favour of sustainable development at Paragraph 11 of the NPPF must be applied. 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.

3.3 It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were Members of a different judgment and were to consider the proposal to be in conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

### **Proactive Working**

In accordance with the guidance contained in the NPPF the Council has worked in a positive and pro-active way and has secured improvements to the scheme through revised plans, and concludes that the application is acceptable for planning approval with imposed conditions to enable the grant of planning permission.

### **EIA/HRA**

#### **HRA**

The proposal does not include any works which would result in the loss, damage or disturbance, at a landscape scale, to a network of potential GHS commuting routes. The proposal will not cause loss, damage or disturbance to any existing mitigation features or pinch points. Therefore, there is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.

#### **E IA**

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.

### **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.

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

The development is considered to result in less than substantial harm to the Listed Building with a public benefit through the re-use of said Listed Building and the provision of much needed additional housing.

The proposals are considered to be in accordance with the provisions of the Development Plan.

The Officer recommendation is one of conditional approval. The proposal is ultimately considered a good use of an identified site that would provide much needed housing to help meet local need.

### **Officer Recommendation**

Approval: Subject to;

The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning and Transport;

The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning and Transport, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **1. Materials**

Prior to the commencement of any development other than demolition, a full external material schedule to include details of colour, form and texture, rainwater goods, ducting, flues, ventilation extraction and meter boxes. Where requested by the Local Planning Authority samples of materials to be used in the construction of the external surfaces of the development hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be carried out in accordance with the approved details.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the area in accordance with policies DE1, SS10 & HE1 of the Torbay Local Plan 2012-2030 and policy TH8 of the Torquay Neighbourhood Plan.

#### **2. Schedule of works**

The conservation repair works to the Grade II Listed Building shall be completed in accordance with the approved schedule of works and shall be retained as such at all times thereafter.

Reason: in order to preserve the heritage asset in a manner appropriate to its significance and in order to comply with Policies SS10 & HE1 of the Torbay Local Plan 2012-2030.

#### **3. Windows and 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:

- 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 Listed Building in accordance with Policy HE1 of the Torbay Local Plan and TH10 of the Torquay Neighbourhood Plan.

**Relevant Policies**

- SS3 - Presumption in favour of sustainable development
- SS9 - Green Infrastructure
- SS10 - Conservation and Historic Environment
- SS11 - Sustainable Communities Strategy
- SS12 - Housing
- SS13 - Five Year Housing Land Supply
- SS14 - Low Carbon Development and Adaptation to Climate Change
- W2 - Waste audit for major and significant waste generating developments
- W3 - Existing waste management facilities in Torbay
- SDP1 - Paignton
- SDP3 - Paignton North and Western area
- TA1 - Transport and accessibility
- TA2 - Development access
- TA3 – Parking requirements
- ES1 - Energy
- NC1 - Biodiversity and Geodiversity
- H1 - Applications for new homes
- H2 - Affordable Housing
- DE1 – Design
- DE3 - Development Amenity
- HE1 – Listed Buildings
- C4 - Trees, hedgerows and natural landscape
- ER1 - Flood Risk
- ER2 - Water Management
- TH8 - Established architecture
- TH9 - Parking facilities
- TH10 - Protection of the historic built environment
- TS1 – Sustainable Development
- TS4 - Support for Brownfield and Greenfield development