

Friday, 2 July 2021

**PLANNING COMMITTEE**

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

**Monday, 12 July 2021**

commencing at **4.00 pm**

The meeting will be held in the Town Hall, Torquay

**Members of the Committee**

Councillor Pentney (Chairman)

Councillor Brown

Councillor Dart

Councillor Dudley

Councillor Hill

Councillor Kennedy

Councillor Barbara Lewis

Councillor Mills

Councillor Jacqueline Thomas

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

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) - [www.torbay.gov.uk](http://www.torbay.gov.uk)

# PLANNING COMMITTEE AGENDA

**1. Apologies for absence**

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

**2. Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on

**3. 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.)

**4. Urgent Items**

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

**5. Dawn, Brim Hill, Torquay, TQ1 4TR P/2020/1044**

(Pages 4 - 35)

Extensions and renovations to existing house and garage: Single storey lower ground floor extension to rear (SE) with terrace over. Two storey side extension (SW). Single storey upper ground floor extension to side (NE). Raise roof ridge line and change roof profile to form attic room. Changes to fenestration (part retrospective).

**6. Ashfield Gables, Ashfield Road, Torquay, TQ2 6HE P/2021/0460**

(Pages 36 - 42)

Installation of a window and a door.

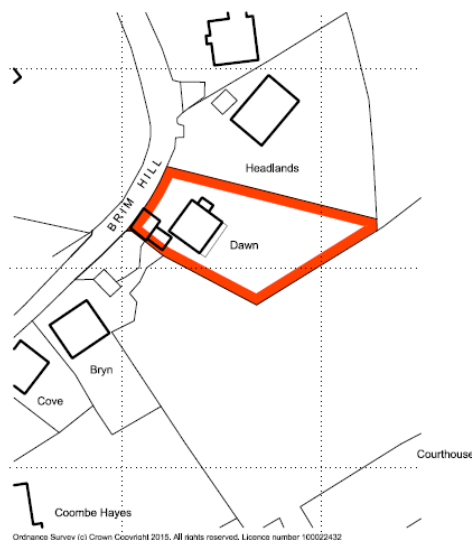
**Break**

- 7. Cherry Trees, 142 Newton Road, Torquay, TQ2 7AD P/2020/0866** (Pages 43 - 58)  
Alterations and extensions to existing dwelling to form five residential flats. Alterations include the formation of a two storey side extension over existing garage, the enlargement of a rear dormer (revised plans received on 14.04.2021)
- 8. Mayfield School, Moor Lane, Torquay, TQ2 8NH P/2021/0357** (Pages 59 - 79)  
Formation of new staff & teaching block
- 9. Land Off Orchard Way, Edginswell Torquay P/2021/0123** (Pages 80 - 100)  
Enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping.
- 10. Land South Of Yalberton Road, Paignton P/2021/0403** (Pages 101 - 127)  
Reserved Matters relating to application P/2014/0983, as amended by P/2018/0977 & P/2019/0605. Matters Reserved: (i) Layout, (ii) Scale, (iii) Appearance & (iv) Landscaping.
- 11. Land to the southeast of 39 Wall Park Road, Brixham.** (Pages 128 - 158)  
Outline application for 3 dwelling houses and associated improvements to the private access lane, with all matters reserved
- 12. 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.
- 13. Site visits**  
If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, 7 July 2021. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

## TORBAY COUNCIL

Application Site Address	Dawn, Brim Hill, Torquay, TQ1 4TR
Proposal	Extensions and renovations to existing house and garage: Single storey lower ground floor extension to rear (SE) with terrace over. Two storey side extension (SW). Single storey upper ground floor extension to side (NE). Raise roof ridge line and change roof profile to form attic room. Changes to fenestration (part retrospective).
Application Number	P/2020/1044
Applicant	Mr Tony Payne
Agent	DJMA Architects Ltd
Date Application Valid	27/11/20
Decision Due date	22/01/21
Extension of Time Date	N/a
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 & Climate Emergency.
Reason for Referral to Planning Committee	Councillors have referred the case to Planning Committee.
Planning Case Officer	Sean Davies

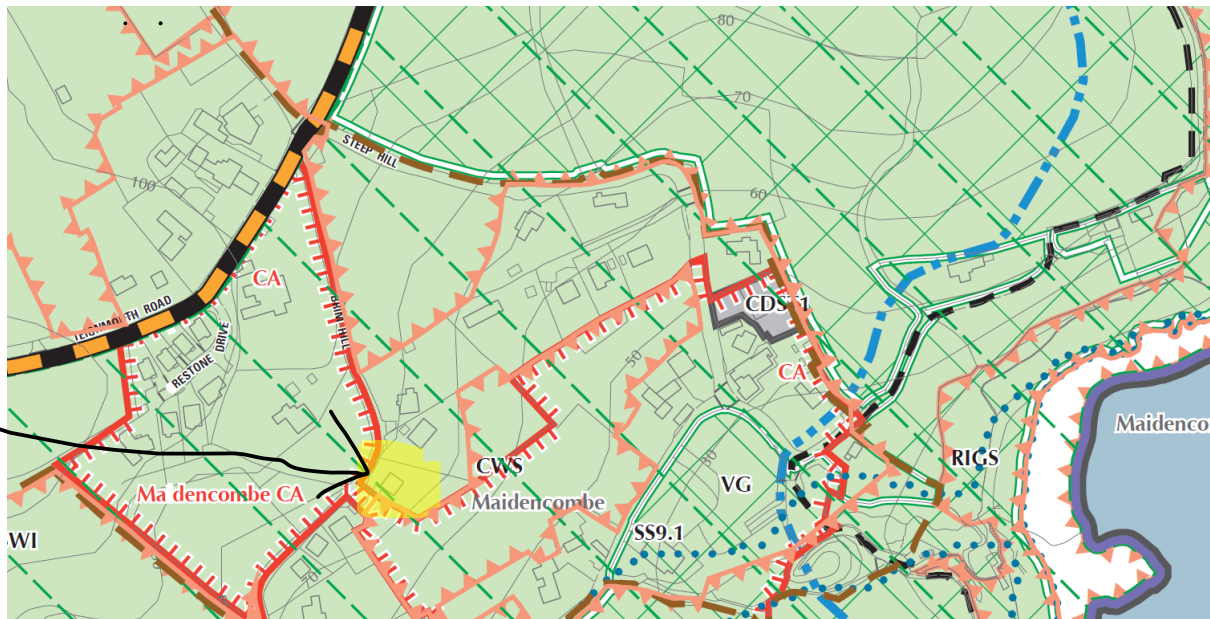
### Location Plan



### Site Details

The site at Dawn Brim, Torquay, TQ1 4TR is a detached dwelling and its curtilage. The site is within the Countryside Area and Undeveloped Coast as mapped in the Local Plan and falls within the Maidencombe Village Envelope. The site is just outside the Maidencombe conservation area. The boundary of the conservation area runs along the south and west boundary of the site and along the middle of Brim Hill outside the front of the site to the

north. The site is within a Landscape Connectivity Zone within the South Hams Special Area of Conservation for Greater Horseshoe bats.



- Light green - Countryside Area
- Mid green dotted line hatch – Undeveloped Coast
- Blue dash/dot/dot line – Coastal Change Management Area
- Black dotted line – SW Coast Path
- Brown dotted line – Maidencombe Village envelope
- Red toothed line – Maidencombe conservation area
- Blue circular dots – Flood Risk Area
- Orange teeth – woodland/wildlife site (included WITHIN the teeth)

### **Description of Development**

Extensions and renovations to existing house and garage: Single storey lower ground floor extension to rear (SE) with terrace over. Two storey side extension (SW). Single storey upper ground floor extension to side (NE). Raise roof ridge line and change roof profile to form attic room. Changes to fenestration (part retrospective).

The proposals are substantially similar to those granted approval in 2016 (P/2016/0471) subsequently successfully varied in 2018 (P/2018/0131).

#### **Single storey lower ground floor extension to rear (SE) with terrace over**

This element involves providing a new lower ground floor single storey rear extension running across the full width of the building plus the width of a new side extension. This extension would be approximately 1.4m deep. There would be a terrace over this extension to be accessed directly from new glazed doors at upper ground floor level in both the existing building and afore mentioned side extension (note: there is already a terrace in this approximate position across the full width of the existing building). The side of the terrace facing south west (towards Bryn) would be capped with a stone wall and opaque glazed privacy screen.

At lower ground floor level an existing decking area would be replaced, with vertical timber cladding from the level of the decking to the ground approximately 2m in height.

This element of the proposals is substantially the same as the previously approved scheme except that details of fenestration have changed and a new rear facing window is now proposed from a new en-suite bathroom to be formed in the north east elevation. The decking is also slightly higher

#### Two storey side extension (SW)

This element involves a sedum flat roof side extension running from the back of the existing garage to the rear of the existing building. The sloping nature of the site means that this extension would have two storeys at the rear and one at the front. The front part of the extension would house a utility room and W/C. At the rear there would be a new bedroom at lower ground floor level and a cinema room at upper ground floor level. The former would have glazed doors leading onto the terrace described above. The latter would have glazed doors onto the existing decking. The side of the extension would be faced with natural stone. The main differences between this element of the proposals and the previously approved scheme are that (i) previously approved curved glazing at upper ground floor level in the rear of the extension is now replaced with flat glazing parallel to the front of the terrace mentioned above, increasing its footprint slightly; (ii) the stone faced side of the extension (facing Bryn) would extend further to the rear elevation of the existing dwelling at upper ground floor level (replacing the previously approved curved glazing); (iii) there would be a new second small window in the side of the extension at lower ground floor level to the proposed bedroom.

The extension would be approximately 4.7m wide, 12.8m long and set back approximately 1m from the boundary with Bryn. It would fit under the eaves of the main dwelling and would be approximately 5.2m high above the level of the existing decking at the rear.

#### Single storey upper ground floor extension to side (NE) and changes in fenestration

This element of the proposals involves enlarging an existing single storey extension in the side of the dwelling facing Headlands. The extension currently forms the porch providing entrance to the dwelling. The proposals would bring this extension forwards by approximately 2m so that it was flush with the front of the main dwelling and re-purpose it as an en-suite/wardrobe to bedroom 3. The existing pitched roof would be raised to accommodate the greater width of the extension.

There would also be a new floor to ceiling height window at the rear of the building.

These elements of the proposals remains the same as in the previously consented scheme.

#### Changes to fenestration at front (NW)

At the front of the building a new front door would be sited between the existing bay windows. The left hand of these bay windows (when viewed from the front) would be moved to the edge of the building and the existing pitched roofs over both bay windows would be made higher. This element of the proposals remains the same as in the previously consented scheme.

#### Raise roof ridge line and change roof profile to form attic room

The roof of the existing dwelling would be raised approximately 1m to accommodate a new bedroom. This would have roof lights in the north west, north east and south east elevations and a small recessed balcony at the rear.

There would also be a new chimney in the south west side of the roof.

These elements of the proposals remains the same as in the previously consented scheme.

The plans as originally submitted included an error in the existing ridge height – the spot height indicating it to be 10m higher than it is. The applicant has been asked to provide revised, accurate plans updating this spot height. Visually there will be no change to the plans however.

### **Pre-Application Enquiry**

None.

### **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**

CN/2018/0068: Discharge of conditions 1,3 & 8 (of approval P/2016/0471/HA - Varied by P/2018/0311 - Extensions and alterations to house and garage including side & roof extensions, extended terrace & balcony and raise in ridge height. Re-Submission of P/2015/1025) - Cond 1: Stone sample. Cond 3: Lighting. Cond 8: Bat licence. APPROVED

P/2018/0311: Variation of condition P1 (approved documents) of application P/2016/0471 (Extensions and alterations to house and garage including side & roof extensions, extended terrace & balcony and raise in ridge height) Alterations sought: Raise in ridge height, alterations to fenestration including glazing on south east and north east elevation and relocation of roof window in sedum roof. APPROVED

P/2017/1290: Non Material amendment re P/2016/0471 (Extensions and alterations to house and garage including side & roof extensions, extended terrace & balcony and raise in ridge height) - Change of roof material WITHDRAWN

P/2017/1292: Non Material Amendment on application P/2016/0471: Extensions and alterations to house and garage including side & roof extensions, extended terrace & balcony and raise in ridge height (Re-Submission of P/2015/1025) (Revised description). Amendment sought: Alterations to glazing on south east and north east elevation. Roof window in sedum roof moved. WITHDRAWN

P/2016/0471: Extensions and alterations to house and garage including side & roof extensions, extended terrace & balcony and raise in ridge height (Re-Submission of P/2015/1025) (Revised description) APPROVED

P/2015/1025: Extensions and alterations including side & roof extensions & extended terrace & balcony REFUSED

DE/2015/0017: Joining of utility room to main dwelling house to include small extension. SPLIT DECISION

P/2014/0913: Proposed extension to Southwest facing elevation and alteration to existing roof REFUSED

P/2007/0574: Conversion of Outbuildings to Ancillary Accommodation APPROVED

### **Summary of Representations**

Approximately 15 representations have been made.

Representations comprise approximately 14 objections and one representation made in support by the applicant's agent in response to some of the objections made. Some organisations and neighbours have made more than one objection:

#### **Support**

##### **Daniel Metcalfe (the applicant's agent).**

- The applicant does not agree that permission P/2016/047 has lapsed
- The tick box interpretation of Local plan and Neighbourhood Plan policies (i.e. by Torquay Neighbourhood Forum) is highly subjective.
- The proposals are being assessed against the same Local Plan policies that they were assessed against in 2016 and have already been found to be compliant with these.
- Policies in the Torquay Local Plan have reciprocal policies in the Local Plan and do not introduce new requirements.
- Not all of the policies in the Torquay Local Plan identified by the Torquay Neighborhood Forum are relevant i.e. policies TH10 and TH11, which specifically refer to listed buildings and conservation areas (the site is not a listed building and is not in a conservation area)
- Elements of the proposals could be carried out using permitted development rights.
- *"The roof ridge heights and roof design are precisely as that approved under P/2016/0471. Ridge heights are indicated on the elevation drawings and relate to a level established in a measured survey..."*
- The applicant disagrees with the assessment made by Clarke Wilmott solicitors that the "principle elevation" of the elevation is the rear elevation and asserts that the principle elevation is the elevation facing the road i.e. Brim Hill (this effects what can be built under Permitted Development rights).
- Some objections refer to the removal of trees. The trees in question were in fact overgrown bushes. This is legal since the applicant planted these himself after the area wide Tree protection Area covering the site was introduced (1986) and as the site is not in a conservation area.



## Objections

### Torquay Neighbourhood Forum

The Neighbourhood Forum has made a single objection (see below). Sub Total = 1 objection,

### Representative bodies

Torbay Heritage Trust has made two objections. Maidencombe Community Group has made three objections. Maidencombe Residents Association has made one objection (identical to that made by Torquay Neighbourhood Forum). Sub Total = 6 objections.

(Note, the membership of these bodies is not known).

### Nearby properties

Two objections have been received from the property known as Bryn (including one objection made by Clarke Wilmott Solicitors on behalf of the occupier of Bryn). Single objections from properties near to the site have also been received from occupants of properties known as Wendy, Home Orchard and the Courthouse. Sub Total = 5 objections.

### Other properties

Objections have also been received from the occupant of a property known as Oakdene on Sladnor Park Road and Wekiva on Teignmouth Road. Sub Total = 2 objections.

Total = approximately 14 objections.

A summary of objections is provided below. For the complete avoidance of doubt Councillors should consult the Torbay website and read all objections in full.

### Torbay Coastal Heritage Trust (uploaded 05/01/21)

- Various concerns that the submitted Design and Access Statement is misleading, that the design is unsuitable for disabled people (contrary to assertions made in the D&A).
- Concerns about how the Maidencombe conservation area is viewed and that “*significantly the Dawn development site is located harmfully on an axis with two Grade II listed buildings to the front and rear...*”
- Concerns that the proposals would be overbearing on the Brim hill cluster of buildings, would have a detrimental impact on listed and key buildings overlooked below.
- Removal of trees.

### Torbay Coastal Heritage Trust (uploaded 27/01/21)

- Various points in relation to the letter sent by the applicants agent dated 15/01/21.

### Maidencombe Community Group (04/01/21)

- Application form contains error as states work has not started without consent even though previous permission (P/2016/0471) has lapsed.
- Proposals are contrary to policy TH12 of the Torquay Neighborhood Plan as scale, height, footprint, location and massing not in keeping with built surroundings and does not respect local character/conserves or enhance heritage or landscape assets where impacted.
- Scale of proposal contrary to policy DE1 subsection 14 of the Local Plan as does not relate to surrounding built environment in terms of scale, height and massing.
- Proposals are contrary to policy TH8 of the Torquay Neighbourhood Plan as does not reflect local character (height, scale, bulk and identity of surroundings).

- Proposals contrary to Policy TH11 as do not protect or enhance character or setting of conservation area.
- Proposals contrary to policy DE3, subsections 1, 3 and 4 of the Local Plan due to visual intrusion, overbearing scale, overlooking, privacy and light pollution.
- Proposals contrary to policy SS8 of the Local Plan due to lighting impacts on local environment.
- Concern that proposals would double the original footprint and substantially increase massing.
- Concern that the LPA should be consistent with other planning decisions at nearby sites and that approval would set a precedent for further inappropriate development.
- The proposal would build up to the south west boundary of the conservation area with no possibility of screening – difficult to see how proposed two storey extension can be built without encroaching on conservation area.
- Concern that previous applications to develop the plot adjacent to the south west boundary have been refused – concern that if approval granted for current application and for development on the adjacent site then this could lead to an unacceptable bulk of buildings in a confined space.
- Concern that submitted plans deficient and that application cannot be determined: very few measurements, plans contain “do not scale from this drawing” notation, proposed layout misleading as proposed extensions are faint, dotted line indicating current roof line inaccurate. No information provided as to current and existing roof heights. There are also inconsistencies in the plans (garage roof in NE/SE vs NW elevations, terrace/decking at lower ground level in SW and NE elevations).
- Southwest elevation: Proposed roof height unclear; not clear what proposed roof attic internal layout is; concerns about footprint of proposed decking; concern about effect of boundary wall on character of area.
- Southeast elevation: concerns about increase in footprint, height and use of glazing – out of character with local area. Plans misleading.
- Northwest elevation: garage has different roof to other elevations. Plans unclear.
- Northeast elevation: replacement decking not shown. Proposed ground floor window and veranda has potential to overlook Headlands.
- Proposed layout and footprint: plans misleading.
- Permitted development rights: “Fall Back position” as described in Design and Access Statement is unrealistic.
- Surface flooding and rise in water table: concerns about drainage arrangements. Local properties rely on private sewage systems as there is no mains drainage and that proposals would increase impermeable area of development, leading to private drainage systems becoming inoperable.

Maidencombe Community Group (22/01/21)

Comments made in response to letter from applicant’s agent dated 15/01/21:

- 2016 permission (P/2016/0471) has lapsed and so should not be taken account of in determining current application.
- Concern that application is assessed against policies in Torquay Neighbourhood Plan.
- Claim that proposed development could be progressed under permitted development rights incorrect for reasons set out in objection submitted by Clarke Willmott solicitors.
- Trees have been removed at the site without planning permission.

Maidencombe Community Group (26/05/21)

- The “Fall Back” position advanced by the applicant has not been adequately assessed and cannot be implemented
- Concern that a new (as opposed to updated) ecological assessment was not requested .
- Surface water drainage was not been adequately addressed Torbay drainage engineer has not been consulted.
- Concern that previous 2016 permission has expired,

- Contrary to 23 Policies in the Torbay Local Plan and Torquay Neighbourhood Plan.
- The similarity of the proposals to those granted permission in 2016 and 2018 are not grounds for approval .
- Number of objections must be accorded significant weight'
- Should not legitimize an illegal development that has been built without consent .
- Concern that the submitted plans are deficient. In particular roof heights are not clear and datum levels are unclear.
- *“Disagree that the ‘proposals are of a scale, height, footprint, location and massing in keeping with its built surroundings and the overall physical characteristics within the Village Envelope; and to protect the amenity of existing homes*
- Overbearing in respect of neighbouring properties and would lead to loss of privacy to neighboring properties.
- *Concerns were raised about officer integrity in how this case has been handled, these are serious and concerning allegations for which no evidence has been provided and which senior officers consider to be wholly unsubstantiated and inappropriate*

#### Maidencombe Residents' Association

- The proposals are contrary to the Local Plan Policies: SS1, SS3, SS8, SS9, SS10, C1, C2, C4, NC1, HE1, DE1, DE3, DE4, DE5, ER1, ER2, ER4. And also Torquay Neighbourhood Plan Policies: TS1, TH8, TH10, TH11, TH12, TE5.
- Permitted development rights, as described in the Design and Access statement, do not apply since the property pre-dates 1948.
- The application form states that work has started without consent but significant works have taken place.

#### The Bryn

- Application form contains errors which invalidate the proposals: work has started without consent, pre-planning advice received in 20115 is not relevant since relevant policies have come into force since this date.
- Proposals should be determined as a new application and assessed against current planning legislation.
- Proposals contrary to policy TH12 of the Torquay Neighbourhood Plan. Scale, height, footprint (30-40% increase), location and massing out of keeping with built surroundings and overall physical characteristics of Village Envelope.
- Concerns about visual appearance of proposed two storey extension, lower ground floor extension, increase in ridge height, additional decking with store room below creating appearance of four storey dwelling.
- Building up to the boundary of the conservation area (south west) will prevent any tree planting to shield views.
- Proposals contrary to policy DE1 subsection 14 of the Local Plan requiring proposals to relate to surrounding built environment in terms of scale, height and massing.
- Proposals contrary to policy DE3 subsection 1 of the Local Plan by virtue of visual intrusion, overlooking and privacy. Workmen working on lower ground floor extension have been able to look directly into The Bryn. Height and depth of proposals mean they would completely overlook house and garden. As extension is to be built to edge of boundary it will not be possible to shield with trees etc.
- Proposals contrary to policies TH12, TH8 and TH11 of the Torquay Neighbourhood Plan.
- Proposals could jar with setting of grade II listed buildings and character of conservation area, affecting how conservation area is viewed and what can be seen from within it. Style, scale and materials are inappropriate.
- Increase in width along south east and extensive glazing does not respect character of neighbouring properties or setting of heritage assets in the Combe.
- Submitted plans contain very few measurements. A caveat “do not scale” means that

development could not be controlled if approved. Concern that increase in ridge height shown on plans is inaccurate and that roof will need to be raised by 1.5-1.8m.

- Proposed layout is misleading. A judge found against Torbay Council in a recent case that it is unlawful to approve plans which cannot be controlled.
- No other property in Maidencombe has been allowed to increase ridge heights, footprint or massing like this before.
- Claim that development could be progressed under permitted development rights incorrect due to restrictions placed on Classes A, AA and B and so the fall-back position does not carry weight in determining the application.

#### Clarke Wilmott Solicitors acting for The Bryn

- The planning application is deficient. Objection from Maidencombe Community Group sets out examples of ways submitted plans are wrong or inconsistent with result that development could not be constructed in line with submitted plans.
- Existing and proposed floor levels have not been provided – significant given sloping site.
- Ecological assessment deficient: out of date, does not acknowledge Landscape Connectivity Zone for South Hams Greater Horseshoe Bats SAC. Concern that light spill from additional glazing and proposed external lights should be assessed in relation to potential to disturb bats. Concern that development has not been designed with regard to the conclusions of the Ecological Assessment and that the Ecological Assessment has been carried out without having regard to the proposed plans (i.e. viability of proposed roosting opportunities for bats in brightly lit environment). Concern that a lighting assessment should be carried out to inform the updated Ecological Assessment.
- Concern that permission P/2016/047 has lapsed since works did not start on site until 2020 and that Torbay Council has not addressed a formal complaint made by the Maidencombe Community Group about unauthorised development.
- Concern that the application should be assessed against the Torquay Neighbourhood Plan, adopted in 2019 and that the LPA cannot lawfully seek to rely on the decision making process undertaken in respect of the 2016 application.
- Concern that the fall-back position as described in the Design and Access Statement (DAS) should not be treated as a material consideration since the General permitted Development Order does not permit the type of development shown in the DAS. Examples include: the principle elevation of the original dwelling house is actually the rear of the house as currently laid out (A1(e)). The side extension would have a width greater than half the width of the original (i.e. as originally built) dwelling house (A1(j)).
- The application should be determined as fresh application without regard to the previous 2016 permission as the development plan has changed. The objection made by the Maidencombe Community Group assesses the application against relevant policies – the objection made by Clarke Wilmott solicitors agrees with this assessment.

#### Home Orchard

- Application form contains errors and is not valid.
- Concerns about trees/hedgerow removal.
- Soakaways should not be used on steeply sloping ground. The proposed use of soakaways at the site could lead to private sewage systems working in reverse.
- Contrary to Policy TH11 and TH12 of the Torquay Neighborhood Plan.
- Proposals would be overbearing and would result in overlooking to the conservation area and neighbours including the garden and swimming pool at Home Orchard.
- The site is within the mapped Countryside Area and Undeveloped Coast (Policies C1 and C2 of the Torbay Local Plan)
- The plans contain very few measurements and so cannot be assessed accurately and future development cannot be controlled.
- The proposals would be harmful to dark skies.
- Concerns about tree removal.

### Wendy

- The proposals do not take account of policies TH8, TH11 or TH12 of the Torquay Neighbourhood Plan.
- The removal of natural shielding (trees etc.) to facilitate views has made development stick out from all over the Combe.
- Approval would set precedent for further inappropriate development.

### Court House

- Out of keeping with local area.
- Negative effect on appearance of conservation area.
- Visual impact on Grade ii listed buildings in Maidencombe.
- Increased run off and rising water table could impact on the Court House's foundations and septic tank.
- Construction work could destabilise ground leading to land slips.
- Previous approvals at site inconsistent with other refusal decisions at nearby sites.
- Previous consent P/2016/0471 has now lapsed.
- Torquay Neighbourhood Plan has now been adopted so policies now carry full weight.
- Approval would set precedent for overdevelopment of other properties.
- Submitted plans not easy to understand and there is note that they are not to scale.
- Concern that proposals would involve significant increase in height, footprint (extending to boundary (south west)).
- Hedgerows and trees will be removed speculation that this work has already taken place.
- Extensive glazing to south east will cause significant light pollution in a dark area.
- Proposals are contrary to Torquay Neighbourhood Plan Policies TH11 and TH12.

### Wekiva

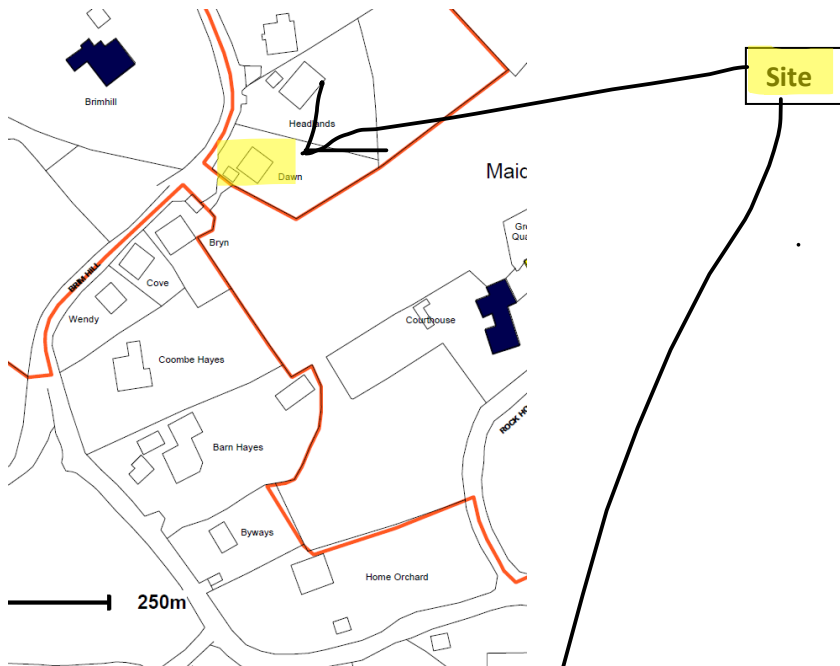
- Proposals area contrary to Torquay Neighbourhood Plan Policies TH8, TH10, TH11 and TH12.
- Scale, height, bulk and character of proposals are out of keeping with historic/rural character of Maidencombe and coastal setting.
- Site's boundary abuts conservation area on two sides – proposals would negatively impact on area and its heritage assets.
- Concern that the applicant's agent has close relationships with Torbay Council and the TDA which could influence the planning decision.

### Oakdene

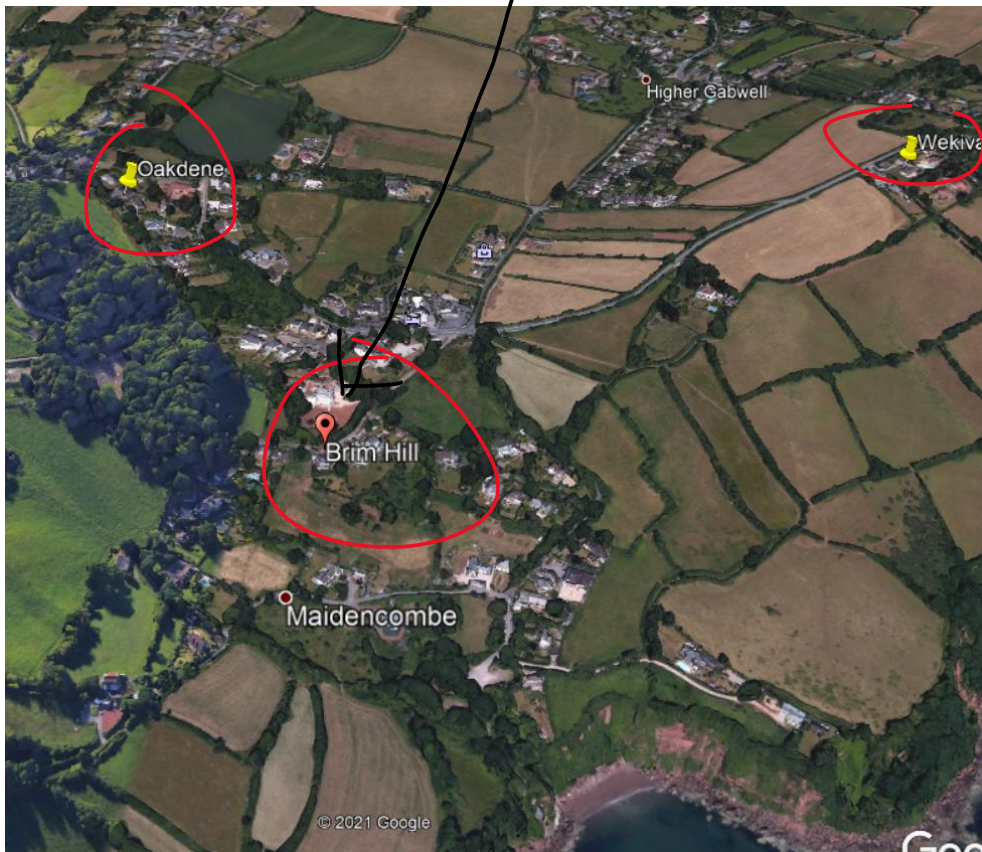
- Submitted application should be considered on its own merits and assessed against Torquay Neighbourhood Plan as previously consented application P/2016/0471 has lapsed.
- Proposals are contrary to Torquay Neighbourhood Plan Policies TH8, TH10, TH11 and TH12.
- Submitted plans are deficient as no structural dimensions or topographical information supplied and as plans are references as being not to scale.
- Concern that deficiencies in the plans mean that the LPA could not control construction if approval granted.
- Size, height bulk and mass contrary to numerous policies in Torbay Local Plan and out of character with local area.
- No meaningful environmental assessment on proposals' impact on conservation area, wildlife or Grade II listed buildings has been provided.
- Concern about impact of proposals on drainage in an area mapped by Environment Agency as Flood Risk 3.
- Claim that proposed development could be progressed under permitted development rights incorrect as property pre-dates 1948.

The locations of the properties that have registered individual objections are shown below for context:

The Bryn, Wendy, Home Orchard and the Court House



Oakdene and Wekiva (approx. positions)



### Summary note regarding objections

14 objections letters have been received, these have been made by approximately 10 bodies/neighbouring properties/other properties:

Torquay Neighbourhood Forum (1) (see below)  
Torbay Coast Heritage Trust (2)  
Maidencombe Community Group (3)  
Maidencombe Residents Association (1)

The Bryn (2)  
Wendy (1)  
Home Orchard (1)  
The Court House (1)

Oakdene (1)  
Wekiva (1)

In the interests of transparency Councillors are advised that the resident and objector at The Court House also submitted the response on behalf of the Torquay Neighbourhood Forum and the Maidencombe Residents Association.

### Torquay Neighbourhood Forum:

An objection has been received alleging that the proposals are contrary to the Local Plan Policies: SS1, SS3, SS8, SS9, SS10, C1, C2, C4, NC1, HE1, DE1, DE3, DE4, DE5, ER1, ER2, ER4. And also Torquay Neighbourhood Plan Policies: TS1, TH8, TH10, TH11, TH12, TE5.

**Torbay Development Agency Senior Structural Engineer:** *“Having investigated Building Control records I am satisfied that construction proposals associated with this Plan, including proposed foundation construction detail, are satisfactory. I am further satisfied that new structures have been constructed on site in accordance with engineering requirements.*

*I would suggest therefore that a Planning Condition for ground investigation for purposes of informing structural design, development having reached this stage, would not be appropriate”.*

**Torbay Drainage:** “I would recommend a small amendment to the proposed condition in order to highlight the risk of flooding downstream. This is identified in bold below:

*Notwithstanding the details submitted in the Flood Risk Assessment surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change. Technical details of the soakaway design shall be submitted to and approved in writing by the local planning authority prior to commencement or continuation of any further development. **Due to the topography of the land and the risk of re-emergence of flows downstream, the soakaway design must also demonstrate that flows discharging from the soakaway will not result in an increased risk of flooding to property and land downstream of the proposed development”.***

*If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement or continuation of any further development, details of an alternative means of surface water*

drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. The submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 40% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 40% allowance for climate change" conditions.

The new areas of development shall not be brought into use until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030. These details are required pre-commencement to ensure that a surface water drainage system is designed appropriately to appropriately manage flood risk having regard to the topography of the site.

**Devon County Council Ecologist:** "A Preliminary Ecological Assessment (Green lane Ecology February 2021) and a Bat Survey & Mitigation/Compensation Measures report (Green Lane Ecology, October 2020) has been submitted. The survey methods, presentation of results and recommendations are satisfactory. The survey results from the building inspection confirmed the use of the dwelling by roosting bats consisting of the following:

A single common pipistrelle bat was recorded emerging from the property in 2016. These survey results classified the property as an occasional summer non-breeding day roost for one single Common pipistrelle (*Pipistrellus pipistrellus*) bat. The surveys are now out of date to apply for a bat mitigation licence to disturb/destroy the roost legally and as a result a further two bat emergence/re-entry surveys were conducted in 2020 to update the previous surveys to inform bat mitigation/compensation measures and apply for a bat mitigation licence to ensure the legislation which protects bats is not contravened and the conservation status of the local bat population is maintained. The surveys in 2020 did not observe any bats emerge or re-enter the property; however the classification and conservation significance of the roost remains the same as in 2016. The proposed works will modify and destroy the identified bat roosts, and potentially cause disturbance or injury to any roosting bats present at the time of the proposed works. Therefore a European Protected Species Licence (EPSL) will need to be obtained from Natural England prior to the commencement of works – these works are applicable for the Bat Mitigation Class Licence (BMCL). The authority must consider whether the proposal meets the three derogation tests of the Conservation of Habitats and Species Regulations 2017 (as amended), and accordingly whether Natural England are likely to grant an EPS licence which would permit the proposal to lawfully proceed. The first two tests (below) are essentially planning tests and are for you to conclude as case officer. The third test I have concluded below.

1. Imperative reason overriding public interest Establish the public interest (social, economic) which has some imperative nature (i.e. required soon) for undertaking this proposed development which overrides the retention of the building (and supported roosts) as they are at present
2. There is no satisfactory alternative Consider and discount alternatives – e.g. design/layout that would not require loss of the existing roosts – why these are unfeasible.
3. There will be no significant detrimental population impact (on the bats)



*A detailed mitigation plan sets out the following measures for bats:*

- *A bat box has been installed in a suitable tree since 2016 as a temporary roost location during the alterations and will be retained indefinitely.*
- *On the day which work will commence on the roof; all site operatives will be informed about the legislation which protects bats, how the property is being used by bats, how the work shall proceed with regards to bats and what to do in the event that bats are discovered during the work.*
- *Prior to work commencing a thorough inspection of the roof void and other external features will be carried out looking for bats; if any bats are discovered they will be safely removed by gloved hand and put into the bat box previously installed.*
- *The roost feature will be soft stripped by hand with a licenced bat worker in attendance to ensure that if any bats are discovered they can be safely removed by gloved hand and put into the bat box previously installed.*
- *15-20mm gaps will be created between the fascia board and the external wall with a south westerly aspect. An internal wall will prevent bats from entering the roof void whilst allowing them access to the top of the wall. It is imperative that bats are prevented from coming in to contact with modern breathable roof membrane which becomes lethal to them over time as they become entangled in its fibres.*
- *Two voids with access gaps into wall cavities will be incorporated into a south facing and north easterly facing wall.*
- *Two Schwegler 1FR bat tubes will be incorporated into the walls in two locations, one to face south and west.*

*It is my opinion that the survey results and mitigation measures included in the report satisfy the third test of the Habitats Regulations. If upon consideration of the first two tests you consider them met (I would draw your attention to the low conservation status of this roost which can be taken into account with respect the IROPI test), then it is reasonable to conclude that Natural England would grant a EPS licence. If this is the case, then please apply the conditions below.*

**Consultee recommendation:**

*Condition: The development hereby permitted shall be implemented strictly in accordance with the recommendations and requirements stated in the Preliminary Ecological Assessment (Green Lane Ecology February 2021), the Bat Survey & Mitigation/Compensation Measures report (Green Lane Ecology, October 2020) and Bat Low Impact Licence Method Statement along with any variation required by Natural England under any license it may issue.*

*This should be a condition of any planning consent. The planning condition shall be discharged when the consultant ecologist confirms in writing to the Authority that the recommendations have been implemented”*

**Key Issues/Material Considerations**

1. Principle of Residential Development  
(a) Planning permission P/2016/0472
2. Sustainable growth
3. Environment
4. Transport
5. Countryside, coast and greenspace
6. Nature conservation
7. Historic environment
8. Design

- 9 . Conservation and the historic environment
- 10. Environmental resources
- 11. Special protection for rural village environments

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

The proposal seeks permission for Extensions and renovations to existing house and garage: Single storey lower ground floor extension to rear (SE) with terrace over. Two storey side extension (SW). Single storey upper ground floor extension to side (NE). Raise roof ridge line and change roof profile to form attic room. Changes to fenestration. There are no Local Plan policies indicating that the proposal is not acceptable in principle.

#### **(a) Planning permission P/2016/0472**

Objections have been made that planning permission P/2016/0471 has lapsed and so that statement made in the application form that works have not started without consent is incorrect. Also that the application is invalid because of this and that works already carried out are therefore unauthorised.

The Council believes that planning permission P/2016/0471 has lapsed and has advised the applicant of this, understood to have prompted the current application. Officers are content that the current application is valid. Works have commenced at the site. It is understood that works have been stopped whilst the application is determined.

### **Spatial Strategy and Policies for strategic direction**

#### **2. Sustainable growth**

Policy SS1 (Growth Strategy for a prosperous Torbay) of the Local Plan states that the Local Plan promotes a step change in Torbay's economic performance and identifies Strategic Delivery Areas. Policy TS1 (Sustainable development) of the Torquay Neighbourhood Plan states that states that development proposals should accord with policies in the Torquay Neighbourhood Plan unless material considerations indicate otherwise. Policy SS3 (Presumption in favour of sustainable development) of the Local Plan states that the Council will take a positive approach when considering development proposals and that planning applications that accord with policies in the Local Plan (and where relevant Neighbourhood Plans) will be approved unless material considerations indicate otherwise.

Objections have been made that the proposals are contrary to the Policies above. Reasons include that they do not safeguard the natural/built environment, are contrary to policies in the Torquay neighbourhood Plan and adversely affect the setting of Grade II listed buildings.

Officers have considered these points but do not believe that the proposals are contrary to any of these policies (further details are provided in the discussion below).

The proposals are therefore considered to be in accordance with Policies SS1, SS3 and TS1.

#### **4. Environment**

Policy SS8 (Natural Environment) of the Local Plan sets out that all development should have regard to its environmental setting. Policy SS9 (Green infrastructure) of the Local Plan states that the Local Plan seeks to integrate new development with strategic green infrastructure, and to protect and provide high quality green space at a local level. Policy SS10 (Conservation and the historic environment) of the Local Plan states that development

proposals will be assessed against the need to conserve and enhance conservation areas while allowing sympathetic development within them. Also that proposal that may affect heritage assets will be assessed in view of their impact on listed and historic buildings and their settings.

Objections have been made that the proposals are contrary to the Policies above. Reasons include that excessive glazing will affect dark skies, “removal of trees bordering conservation area” and the impact that the proposals will have on the setting of listed buildings and the Maidencombe Conservation Area, the boundary of which skirts the site.

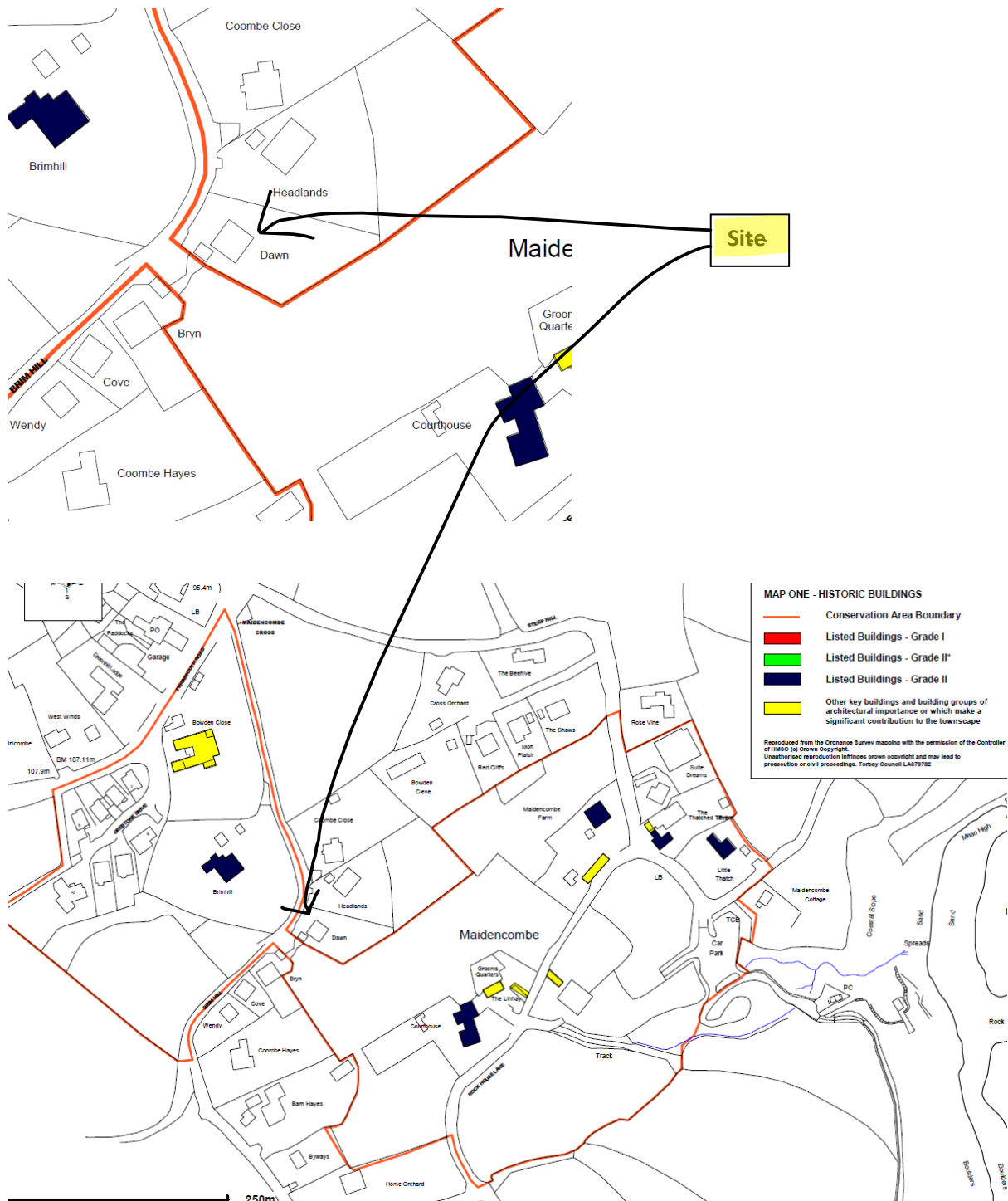
As noted above the proposals are substantially the same as proposals approved in 2016 and 2018. Officers consider that the amount of glazing proposed in the current proposals is substantially the same as in these previously approved schemes and do not consider that any increase is significant to affect dark skies to the extent that a refusal is warranted.

The proposals do not propose the removal of any trees/hedgerows. The Council has previously investigated complaints that trees/hedgerows have been removed at the site without authorisation. Torbay Council’s arboriculture officer visited the site in response to complaints made about unlawful felling in October 2020 and confirmed that Two Cypress trees and a single Ash tree had been removed from an area between the south of the property and the site boundary. The Council’s arboriculture officer was able to verify (by counting rings in the stumps) that these trees had been planted around 2000 and were not protected by the area wide Tree Preservation Order introduced to cover the site on 11/09/1986 (only trees planted before this date are protected). As such the Council is satisfied that no unauthorised felling has taken place.

Officers do not believe that the proposals materially affect the setting of any listed building. Grade II listed buildings are site to the north west (Brimhill) and south east (the Courthouse). There are three other listed buildings towards the centre of Maidencombe village. However these are all significant distances from the site. Brimhill is some 45m distant and is not visible from the site. The Court house sits at the bottom of the hill below the site but is some 90m distant. Officers therefore consider that the proposals do not affect the setting of listed buildings. The other listed buildings in Maidencombe village are not visible from the site.

The Maidencombe Conservation Area boundary skirts the site on three sides so as to exclude not only Dawn, but also neighbouring properties Headlands and Combe Close to the north east. To the south west neighbouring properties Bryn, Cove and Wendy are also fall outside of the conservation area boundary:

## Extracts from Maidencombe conservation area appraisal



Officers have considered whether the proposals would detract from the character of the conservation area but consider that they would not lead to unacceptable harm.

The proposals are therefore considered to be in accordance with Policies SS8, SS9 and SS10.

## **5. Climate change**

Policy SS14 of the Local Plan states that development should be resilient to the local climate commensurate to the use of the proposal and should avoid responses to climate impacts which lead to increases in energy use and greenhouse gas emissions.

The applicant has stated that the proposals will reduce the carbon footprint of the house through the use of triple glazed sliding doors to reduce heat loss and carbon emissions, rather than the bifold doors as approved under P/2016/0471.

It is considered that this approach demonstrates a proportionate response to the minimisation of carbon emissions at the site.

The proposal is therefore considered to be in accordance with Policy SS14.

## **Policies for managing change and development in Torbay**

### **6. Parking**

Policy TA3 (Parking requirements) and Appendix F of the Local Plan states that residential dwellings should be served by two parking spaces and an additional space is required for each two additional bedrooms added by proposals. Policy TH9 of the Torquay 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 arising from the development or, the development is within the town centre and an easy walk of a public car park which will be available to residents for the foreseeable future.

The proposals would add a fourth bedroom to the three existing bedrooms. No additional parking provision is therefore required. There is space for at least two parked cars at the site (including the garaged space)

The proposals are therefore considered to be in accordance with Policies TA3 and TH9.

### **7. Countryside, coast and greenspace**

Policy C1 (Countryside and the rural economy) of the Local Plan states that “...*development in the open countryside away from existing settlements will be resisted where this would lead to the loss of open countryside or creation of urban sprawl ... development outside the main urban areas and Strategic Delivery Areas will normally only be permitted within the established boundaries of villages and hamlets, provided that it is of an appropriate modest scale and consistent with relevant Local Plan Policies, including those relating to landscape, recreation, biodiversity, design and conservation. Suitable in-fill development, refurbishments and conversions will be permitted within these settlements in order to meet the day-to-day needs of local communities ...*” Policy C2 (The coastal landscape) states that the Council will preserve the character of the undeveloped coast and that development in this area will only be permitted where it maintains the unspoilt character of the coastline and coastal landscape. Policy C4 (Trees, hedgerows and natural landscape features) of the Local Plan states that development will not be permitted where it would harm veteran or protected trees.

Objections have been made that the proposals are contrary to the Policies above. Reasons include that the proposals would not be of a modest scale, would not preserve the special character of Maidencombe and would create more light pollution. Also that they would have an adverse visual impact as well as “removal of trees and hedgerows”.

Officers have considered the proposals in relation to these policies and consider that they are of an appropriate modest scale relative to the Maidencombe village boundary. It should be noted in this respect that properties within the Maidencombe village boundary are characterised by being large and very large detached dwellings. It should also be noted that the proposals granted approval in 2016 (P/2016/0471) were approved in relation to policy C1 at that time. The Local Plan doesn't give any guidance as to what is to be understood by the term "appropriate modest scale" and so this is necessarily a matter of judgement. Officers consider that, given that proposals substantially the same as those currently proposed have been approved in relation to Policy C1 comparatively recently (2016) and given that Maidencombe village is characterised by large and very large detached dwellings, the current proposals are of an appropriate modest scale, would not be an overdevelopment as the plot is substantial nor would the scale be out of character with the area.

It should be noted in this respect that the existing footprint of the built elements of the current site i.e. the main dwelling and garage is approximately 162.9 sqm (main dwelling approx. 118.9 sqm + garage structure approx. 52.9 sqm) whereas the footprint of the built structure as proposed would be approximately 216.9 sqm (an addition of approx. 5sqm to the existing porch on the north east of the building, and an addition of approx..44 sqm to the south west side extension). It should also be noted that no changes to the footprint of "existing" decking is proposed (the existing decking has been removed on site) and that the local topography means that the majority of the proposed south west side extension is unlikely to be visible from Brim Hill, whereas the proposed porch extension to the north east is unlikely to be visible from Rock Lane below the site (it appears unlikely that this element would be visible from the public realm except from directly outside of the property. Similarly, it appears that the proposed increase in height to the roof ridge of the existing property would not be particularly noticeable except from directly outside the property on Brim Hill).

The site is within the mapped area of undeveloped coast in the Local Plan and is approximately 385m from the coastline and 340m from the South West coast path. Officers consider that given the distance of the site from the coastline and their relatively modest scale the proposals are unlikely to detract from the character of the coastline or coastal landscape such that a refusal is warranted. As mentioned above, the proposals do not propose the removal of any trees/hedgerows. The Council has previously investigated complaints that trees/hedgerows have been removed at the site without authorisation and has opted not to take enforcement action having concluded that no unauthorised felling has taken place.

The proposals are therefore considered to be in accordance with Policies C1, C2 and C4.

### **8. Nature conservation**

Policy NC1 (Biodiversity and geodiversity) of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy TE5 (Protected species habitats and biodiversity) of the Torquay Neighbourhood Plan state that the development of new homes, or a new commercial property or business premises of any class on an unallocated site that could have an impact on a protected species or habitat must provide an assessment of impacts upon any protected species or habitats.

Objections have been made that the preliminary ecological survey submitted with the application was deficient and out of date and that the proposals involve "hedgerow removal".

The applicant has since provided an updated preliminary ecological survey report dated 2021 together with previous reports carried out in 2016 and 2018 and 2020.

The ecology surveys identified an occasional summer non-breeding day roost for one single Common pipistrelle bat in 2016 only and also identified that the site is within a Landscape Connectivity Zone within the South Hams Special Area of Conservation for Greater Horseshoe bats. (No evidence of nesting birds was found). Report findings did not identify the use of the property by bats at any point after 2016. However, the classification and conservation significance of the roost remains the same as in 2016. Mitigation measures such as bat roost features are incorporated into the design of the new development.

In addition a European Protected Species Licence (EPSL) will need to be obtained from Natural England prior to the commencement of works to the roof – these works are applicable for the Bat Mitigation Class Licence (BMCL).

This means that the local planning authority must consider whether the proposal meets the three derogation tests of the Conservation of Habitats and Species Regulations 2017 (as amended), and accordingly whether Natural England are likely to grant an EPS license which would permit the proposal to lawfully proceed. Advice from Natural England is that a proportional approach is to be taken depending on the extent of likely impact. In addition officers have consulted an ecologist at Devon County Council who has advised that the third test is met: .

*“It is my opinion that the survey results and mitigation measures included in the report satisfy the third test of the Habitats Regulations. If upon consideration of the first two tests you consider them met (I would draw your attention to the low conservation status of this roost which can be taken into account with respect the IROPI test), then it is reasonable to conclude that Natural England would grant a EPS licence. If this is the case, then please apply the conditions below.*

**Consultee recommendation:**

*Condition: The development hereby permitted shall be implemented strictly in accordance with the recommendations and requirements stated in the Preliminary Ecological Assessment (Green Lane Ecology February 2021), the Bat Survey & Mitigation/Compensation Measures report (Green Lane Ecology, October 2020) and Bat Low Impact Licence Method Statement along with any variation required by Natural England under any license it may issue.*

*This should be a condition of any planning consent. The planning condition shall be discharged when the consultant ecologist confirms in writing to the Authority that the recommendations have been implemented”*

Officers’ consideration of the derogation tests are as follows:

**1. Imperative reason of overriding public interest –**

Benefits to the local economy would be gained through the employment of local companies and tradesmen to undertake the construction and renovation works. The building is also to be extended and renovated in accordance with the current specifications for energy efficiency, thus providing environmental benefits. The development will modernise and improve the condition of the dwelling securing its long-term use.

The proposed mitigation measures include building design to create favourable roosting potential for bats behind the South West facia and also include 2 specific bat roosting tubes.

This will improve the long-term roosting potential of the building to the benefit of bat conservation and as such is in the public interest.

## **2. There is no satisfactory alternative**

It would not be possible to provide the additional accommodation proposed in the roofspace without potential disturbance of the roost. To provide the additional accommodation elsewhere could increase the bulk of the building in ways that may increase visual impacts.

## **3. There will be no significant detrimental population impact (on the bats)**

As advised by Devon County Council Ecologist The mitigation measures set out in the Ecology report mitigate any significant detrimental population impact on bats

It is reasonable therefore to conclude that Natural England would grant an EPS licence.

In reaching this conclusion it is acknowledged that as advised by our ecological consultant the low conservation status of this roost can be taken into account with respect to the IROPI (derogation) test given that Natural England recommend a proportionate approach is taken .

In summary, officers consider that the submitted information is adequate and that the recommendations and measures set out within it represents a proportionate response to the issues identified. The planning condition recommended by Devon County Council Ecologist is included in the list of conditions at the end of this report.

As mentioned above, the proposals do not propose the removal of any trees/hedgerows. The Council has previously investigated complaints that trees/hedgerows have been removed at the site without authorisation and has concluded that no unauthorised felling has taken place.

The proposals are therefore considered to be in accordance with Policies NC1 and TE5.

## **9. Historic environment**

Policy HE1 (Listed buildings) states that development proposals should have special regard to the desirability of preserving any listed building and its setting. Policy TH10 (Protection of the historic built environment) of the Torquay Neighbourhood Plan states that alterations to listed buildings will be supported where they safeguard and enhance their historic qualities.

Objections have been made that the proposals are contrary to these policies as they would have adverse effect on the setting of Grade II listed buildings.

As noted above, officers do not believe that the proposals affect the setting of any listed building such that refusal is warranted. Grade II listed buildings are sited to the north west (Brimhill) and south east (the Courthouse). There are three other listed buildings towards the centre of Maidencombe village however these are all significant distances from the site. Brimhill is some 45m distant and is not visible from the site. The Court house sits at the bottom of the hill below the site but is some 90m distant.

Having regard to the modest scale of the development and the separation distances between the site and the Listed Buildings Officers consider that the proposals do not materially affect the setting of listed buildings. The other listed buildings towards the centre of Maidencombe village are not visible from the site.

The proposals are therefore considered to be in accordance with Policies HE1 and TH10.



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.

## **10. Design and development**

Policy DE1 (Design) of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy DE3 (Development amenity) of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. Policy DE4 (Building heights) of the Local Plan states that the height of new buildings should be appropriate to the location, historic character and the setting of development. Policy DE5 (Domestic extensions) 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. Policy TH8 (established architecture) 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.

Objections have been made that the proposals are contrary to these policies – see summary above and objections on file for reasons. Reasons include that the proposals would create a very large building across four levels, with terraces at three levels (roof, upper ground floor and lower ground floor) out of character with the local area and neighbouring properties. Also that it would be over-dominant. Objections have also been made that the proposals would overlook neighbouring properties, be overbearing, and lead to light pollution. Also that a decision to grant planning permission would be inconsistent with the treatment of other proposed developments in the vicinity of the site and would create a precedent for further inappropriate development.

Objections have also been made about the veracity of the submitted plans and about the legitimacy of a proposed “fall back” scheme that the applicant has asserted could be built without planning permission under the provisions of the General Permitted Development Order 2015 (as amended).

### Submitted plans

Objections have been made about perceived inaccuracies between submitted plans, lack of detail of floor levels and a notation present on all plans which previously read “Do not scale from this drawing”. The applicant has confirmed that the submitted plans are to scale and has removed the notation above:

**“Scaling of plans.** *The submitted drawings are to scale, as indicated. The note on former documents stating ‘do not scale from this drawing’ is directed at contractors and is one generally applied to architects’ drawings which are not for construction purposes. However, I have removed this note from all drawings for the avoidance of doubt. We have no issue with disclosing heights or levels of the building”* (extract from applicant’s agent letter”).

It should be noted that there is no expectation or requirement for drawings to contain measurements since they are drawn to scale meaning that measurements can be taken independently.

Floor level details have been added.

Officers agree with comments made about an inaccurate existing ridge heights shown on a number of drawings which would indicate the building to be 10m taller than it is it – this error is to be rectified. Clarification on the height of the proposed rear decking has also been sought but it appears to be some 400- 500mm higher than the old deck which was recently removed. With these exceptions officers are satisfied that the plans are accurate. Proposed section drawings supplied by the applicant also confirm that the proposed loft conversion and raised roof ridge would provide adequate internal floor to ceiling height.

#### Fall Back position

The applicant has provided details of a “fall back” scheme, incorporating side extensions, a rear extension a front porch and a rear outbuilding that he argues could be implemented as permitted development. Officers have not assessed whether or not this scheme would constitute permitted development, although it is clear that fairly significant works could be carried out under permitted development rights.

The proposed development is not permitted development however and should be assessed on its own merits

#### Visual appearance

Officers consider that the proposals are acceptable in relation to their visual appearance.

The proposals do not include four stories as referred to in some objections. At the front the proposals would maintain the appearance of a single storey bungalow. At the rear the proposals would remain two stories in height. The roof would be converted into a bedroom with a small inset balcony (similar in size to the rear dormer extension in the neighbouring property known as Bryn) but, asides from the addition of the proposed two storey side extension, the appearance of the rear elevation would otherwise remain largely unchanged. As noted above (Description of proposals) there is already a terrace across the full width of the main dwelling at upper ground floor level. The proposals would involve extending this across the proposed side extension and filling in the gap under the existing terrace with a 1.4m deep extension to the existing lower ground floor. As the ground slopes down steeply from the rear of the main dwelling the existing decking to be replaced is approximately 2m above ground level at the rear. In an earlier iteration of the plans the applicant intended to use the space under the decking as a store, however the plans have since been amended to remove this store and show the gap between the decking and the ground boarded up with vertical timber boards approximately 2m high.

As noted above the proposals are substantially the same as those granted planning permission in 2016 and 2018.

Officers consider that the proposals would be subservient to the main dwelling without detracting from the existing street scene. It should be noted in this respect that ground levels mean that the proposed single storey extension at the rear is unlikely to be visible from outside the front of the property and that the proposed two storey side extension is unlikely to feature prominently from the front of the building due to differences in levels. Officers

consider that the proposed rise in the roof ridgeline is acceptable and that the size of the plot means that the proposals would not represent overdevelopment.

#### Amenity

Officers have considered the issue of neighbour amenity and consider that the proposals would not be overbearing or lead to significant overlooking, overshadowing, loss of light or light pollution such that planning permission should be refused.

Openings in the side of the proposed side extension facing Bryn would be obscure glazed at first floor level. Officers consider that the distance from the site to Bryn, in the region of 24m, means that the proposals would not be unacceptably overbearing. The distance from the site to Headlands, in the region of 20m, is considered to be sufficiently distant such that no significant overlooking would occur in this direction either. Properties to the south east, at the bottom of the hill are considered to be sufficiently distant such that no amenity issues are likely to arise. It should be noted in this respect that officers have considered the objection made by the occupant of the property known as Home Orchard that the proposals would overlook their garden and swimming pool. However, as above, Dawn and Home Orchard are a significant distance apart and it should be remembered that Dawn already has an “existing” rear terrace at first floor level. Officers have considered the issue of light pollution. The property is already heavily glazed to the rear at upper and lower ground floor levels and officers consider that the proposed increase in glazing is unlikely to lead to any significant increase in light spillage from the property.

#### Precedent and other applications

Each application is considered on its merits and officers do not consider that an approval would set a precedent for any future development proposals. Officers do not consider that it is appropriate to compare previous decisions to refuse planning permission for proposals at nearby sites with the proposals under consideration.

Given the siting, scale, and design of the proposal it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality or neighbour amenity.

The proposal is therefore considered to be in accordance with Policies DE1, DE3, DE4, DE5 and TH8.

#### **10. Environmental resources**

Policy ER1 (Flood risk) of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy ER2 (Water management) of the Local Plan states that all development should seek to minimise the generation of increased run-off having regard to the drainage hierarchy. Policy ER4 (Ground stability) of the Local Plan states that appropriate investigations will need to be agreed with the Council where identified or suspected ground instability presents a risk to public health and safety, buildings, structures or the natural environment.

Objections have been made that the proposals would lead to increased surface water run off with the potential to affect foundations of properties further down the hill (specifically the Courthouse) and the operation of their septic tanks, also that there is potential for ground instability due to the steep sloping nature of the site.

### Flood risk and water management

After discussions with Torbay's Drainage engineer Officers understand that properties in Maidencombe in the vicinity of the site are not served by the Combined Sewer. As a result, while potable water is piped into these properties, foul water is not piped away and is instead stored in septic tanks before soaking away into the ground. Solids should be emptied periodically via tanker. It is assumed that surface water drainage (i.e. rain) for existing properties, including Dawn and neighbouring properties, is managed through soakaways provided when these properties were built but this cannot be verified due to the age of the properties concerned.

The site is not within the critical drainage area for Torbay. The applicant has submitted a flood risk assessment identifying that sustainable drainage systems will be used (i.e. soakaways). Officers have consulted Torbay Drainage department who have advised that a planning condition should be added requiring the technical detail of the proposed soakaway design to be approved in writing by the LPA before works re-commence. The design must demonstrate that flows discharging from the soakaway will not result in an increased risk of flooding to property and land downstream of the site due to the topography of the land (i.e. as the site is on a steep hill) and the risk of re-emergence of flows downstream. Officers have included the condition recommended by Torbay Drainage in the list of conditions at the end of this report.

It should be noted in this respect that the previous approval for the 2016 proposals (P/2016/0471) contained a similar condition<sup>1</sup>.

It is relevant to note that Dawn, and neighbouring properties already exist and are, it is assumed (based on discussions with Torbay Drainage department), all served by existing soakaways.

There is no evidence of ground instability presenting a risk to public health. Officers have consulted a Senior Structural Engineer at Torbay Development Agency who has examined Building Control records for the proposed development as constructed so far and advised that the proposals are acceptable in geotechnical terms such that a planning condition in relation not geotechnical is not needed.

It should again be noted in this respect that Dawn already exists, as do the other properties either side of it, and that the proposed side extension to the south west would be set back from the building line of the rear of the main dwelling.

The proposal is therefore considered to be in accordance with Policies ER1, ER2 and ER4.

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<sup>1</sup> "Surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.

*Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan "A landscape for success" 2012-2030 and beyond and paragraph 103 of the NPPF"*

## 11. Special protection for rural village environments

Policy TH11 (Rural village conservation areas) of the Torquay Neighbourhood Plan states that:

*“Within the Maidencombe and Cockington Village designated Conservation Areas, subject to other policies in this Plan, development proposals consisting of sensitive conversions, extensions and alterations will be supported where this would protect or enhance the character and setting of the designated Conservation Area and also have regard to the significance of existing open spaces in terms of their contribution to the Conservation Area”.*

Policy TH12 (Maidencombe area) of the Torquay Neighbourhood Plan states that:

*“Any proposal for development within Maidencombe Village Envelope must demonstrate that it respects local character and it conserves or enhances heritage and landscape assets where it might impact on those assets.*

*To achieve this, any development must be of a scale, height, footprint, location and massing in keeping with its built surroundings and the overall physical characteristics within the Village Envelope; and to protect the amenity of existing homes.*

*Designs and construction materials must draw from and be in keeping with local features and design characteristics and be appropriate in relation to its landscape sensitivity.*

*Development must take into account the value of the rural landscape and comply with the Local Plan policies in the designated Countryside Area (C1) and Undeveloped Coast (C2). Major developments in C1 countryside, outside the Village Envelope, will not be supported and any green-field development will be resisted unless it is compatible with the rural character and setting and it fits within the constraints of the existing landscape and visual character of the area”.*

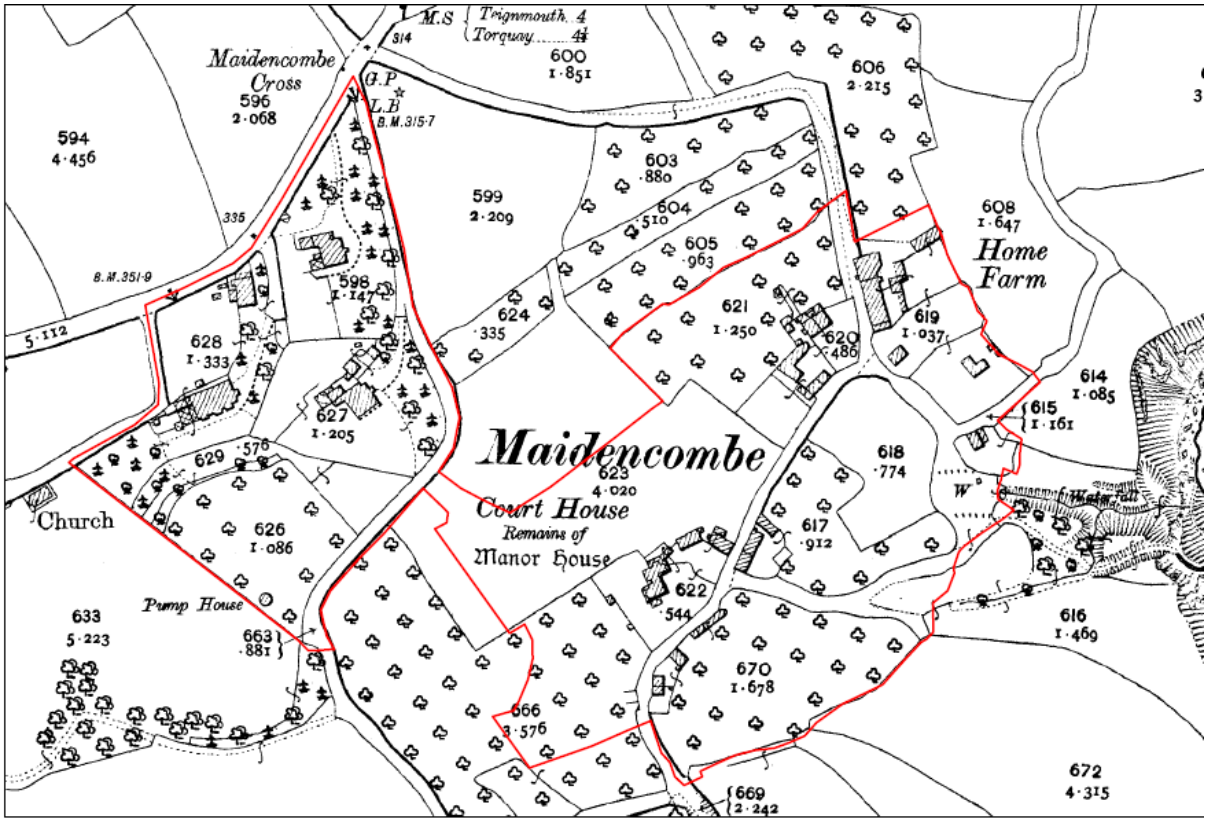
Objections have been made that the proposals are contrary to these policies. Reasons include that the proposals would have an adverse impact on the Maidencombe Conservation Area, would be out of keeping with the local area (scale, height, footprint location, massing) and would not conserve or enhance heritage and landscape assets.

Policy TH11 applies to development “within the .. Conservation Area” only. The site is outside the boundary to the Conservation Area and so Policy TH11 is not relevant. Officers nevertheless consider that the proposals represent sensitive extensions.

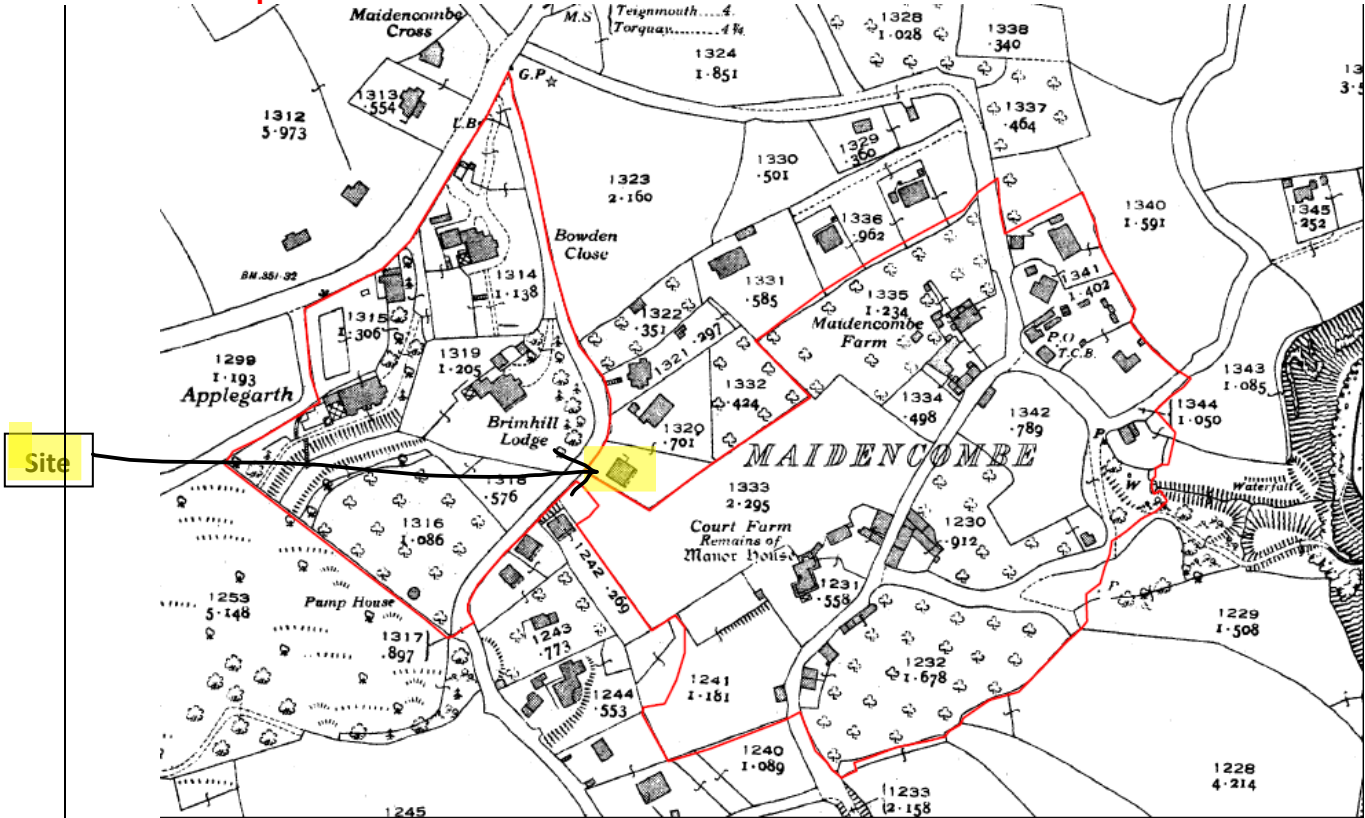
Policy TH12 refers to the need for proposals to conserve or enhance heritage and landscape assets where they might impact on those assets. In this case officers do not consider that the proposals impact on heritage/landscape assets and nevertheless consider that the proposals are *“of a scale, height, footprint, location and massing in keeping with its built surroundings and the overall physical characteristics within the Village Envelope; and to protect the amenity of existing homes”.*

It should be noted in this respect that whilst the Maidencombe village includes 5 Grade II listed buildings the vast majority of buildings carry no heritage designation and are comparatively modern in character. This can clearly be seen by comparing the following map extracts from 1904 and 1933 taken from the Maidencombe Conservation Area Appraisal (obviously the 1933 extract does not show housing built after this date). It can be seen from this that the vast majority of housing in the vicinity of the site (including the site itself and properties that objections have been registered from i.e. Bryn, Wendy and Home Orchard) were all built comparatively recently. (As were the properties known as Oakdene and Wekiva, further away from the site and properties neighbouring them):

**Development in Maidencombe in 1904**



**Development in Maidencombe in 1933**



As set out above under “Design and development”, officers do not consider that the proposals would detract significantly from neighbour amenity. The proposal would make use of local limestone from Stoneycombe quarry. Officers consider that the proposals accord with policies C1 and C2.

The proposal is therefore considered to be in accordance with Policies TH11 (as officers do not consider that policy TH11 is relevant) and TH12.

### **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 key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development and it is in accordance with the Development Plan, including the Torquay Neighbourhood Plan.

It is noted that many of the objections refer to the proposal being contrary to a number of Development Plan policies. Many of these policy assessments require subjective interpretation however. Following a detailed assessment of the scheme Officer opinion is that the proposal does not conflict with the development plan

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. 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. The extensions hereby approved shall be constructed in accordance with the Materials Schedule drawing 586-M1 dated 20/04/16 and the Stone facing wall specification drawing 586-M2 dated 23/07/18. The natural stone walls shall be constructed from stone laid on its natural bed in a sand/lime mortar. Development shall be carried out in accordance with the approved details.

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

2. The two upper ground floor windows (utility and W/C) on the south west facing side elevation facing Bryn, Brim Hill, and the south west facing lower ground floor en-suite window also facing Bryn, Brim Hill shall be fitted with obscure glazing to a level at least equivalent to Pilkington Level 3 and fixed shut or fitted with a 100 mm opening restrictor. The windows shall be permanently retained in that condition thereafter.

Reason: To protect residential amenity and the privacy of neighbouring properties; in accordance with the requirements of policies DE1, DE3 and DE5 of the Torbay Local Plan 2012 - 2030.

3. The upper ground floor windows (bathroom) in the side extension on the south east side of the building facing south east towards Headlands, Brim Hill and north east shall be fitted with obscure glazing to a level at least equivalent to Pilkington Level 3 and fixed shut or fitted with a 100 mm opening restrictor. The windows shall be permanently retained in that condition thereafter.

Reason: To protect residential amenity and the privacy of neighbouring properties; in accordance with the requirements of policies DE1, DE3 and DE5 of the Torbay Local Plan 2012 - 2030.

4. Before the first use of the upper ground floor terrace hereby permitted the obscure glazed privacy screen shown on the approved plans in the south west elevation facing Bryn, Brim Hill shall be installed to a height of 1.7m to at least the equivalent of Pilkington Level 3. The privacy screen shall be permanently retained in that condition thereafter.

Reason: To protect residential amenity and the privacy of neighbouring properties; and in accordance with the requirements of policies DE1, DE3 and DE5 of the Torbay Local Plan 2012-2030.

5. Notwithstanding the details submitted in the Flood Risk Assessment surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change. Technical details of the soakaway design shall be submitted to and approved in writing by the local planning authority prior to commencement or continuation of any further development. Due to the topography of the land and the risk of re-emergence of



flows downstream, the soakaway design must also demonstrate that flows discharging from the soakaway will not result in an increased risk of flooding to property and land downstream of the proposed development”.

If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement or continuation of any further development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. The submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 40% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 40% allowance for climate change" conditions.

The new areas of development shall not be brought into use until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030. These details are required pre-commencement to ensure that a surface water drainage system is designed appropriately to appropriately manage flood risk *having regard to the topography of the site*.

5. No destructive works are to be carried out to the roof between 1<sup>st</sup> June and 31<sup>st</sup> August of any year.

Reason: For the protection of legally protected bats and in accordance with Policy NC1 of the Torbay Local Plan, Policy TE5 of the Torquay Neighbourhood Plan and the advice contained within the NPPF. The development hereby permitted shall be implemented strictly in accordance with the recommendations and requirements stated in the Preliminary Ecological Assessment (Green Lane Ecology February 2021), the Bat Survey & Mitigation/Compensation Measures report (Green Lane Ecology, October 2020) and Bat Low Impact Licence Method Statement along with any variation required by Natural England under any license it may issue. **The applicant's consultant ecologist shall confirm in writing to the Authority that these recommendations have been implemented**

Reason: For the protection of legally protected bats and in accordance with Policy NC1 of the Torbay Local Plan, Policy TE5 of the Torquay Neighbourhood Plan and the advice contained within the NPPF.

6. Prior to the first occupation of the development hereby approved, in-line with the recommendations of the approved Bat Activity/Emergence Survey Mitigation & Compensation report dated July 2016, the bat roosting opportunities shown on the ecology mitigation plan reference: 589-EC1(B) will be provided. These enhancements shall include:

- 15-20mm gaps will be created between the fascia board and the external wall with a south westerly aspect. An internal wall will prevent bats from entering the roof void whilst allowing them access to the top of the wall. It is imperative that bats are prevented from coming in to contact with modern breathable roof membrane which becomes lethal to them over time as they become entangled in its fibres.
- Two voids with access gaps into wall cavities will be incorporated into a south facing and north easterly facing wall.
- Two Schwegler 1FR bat tubes will be incorporated into the walls in two locations, one to face south and west.
- Two gaps in the stone work to allow crevice dwelling bats to inhabit the stone wall.

The approved enhancements shall thereafter be retained for the life of the development unless otherwise agreed in writing with the Local Planning Authority.

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

7. External lighting shall be installed in strict accordance with the approved lighting plan (plan reference: 589-05B dated 16/10/20) and lighting specification (drawing 589/M3, dated 23/07/18). No additional external lighting shall be installed on, or in association with, the building except for low-intensity, PIR motion-activated lights on a short timer (maximum 1 minute), sensitive to large objects only (to avoid triggering by bats or other wildlife). Any lights should be mounted at a height no greater than 1.9m from ground level, directed/cowled downward and away from the site hedges and trees. The lights should produce only narrow spectrum, low intensity light output, UV-free, with a warm colour-temperature (2,700K or less) and a wavelength of 550nm or more.

Reason: For the protection of legally protected bats and in accordance with Policy NC1 of the Torbay Local Plan, Policy TE5 of the Torquay Neighbourhood Plan and the advice contained within the NPPF.

### **Development Plan Relevant Policies**

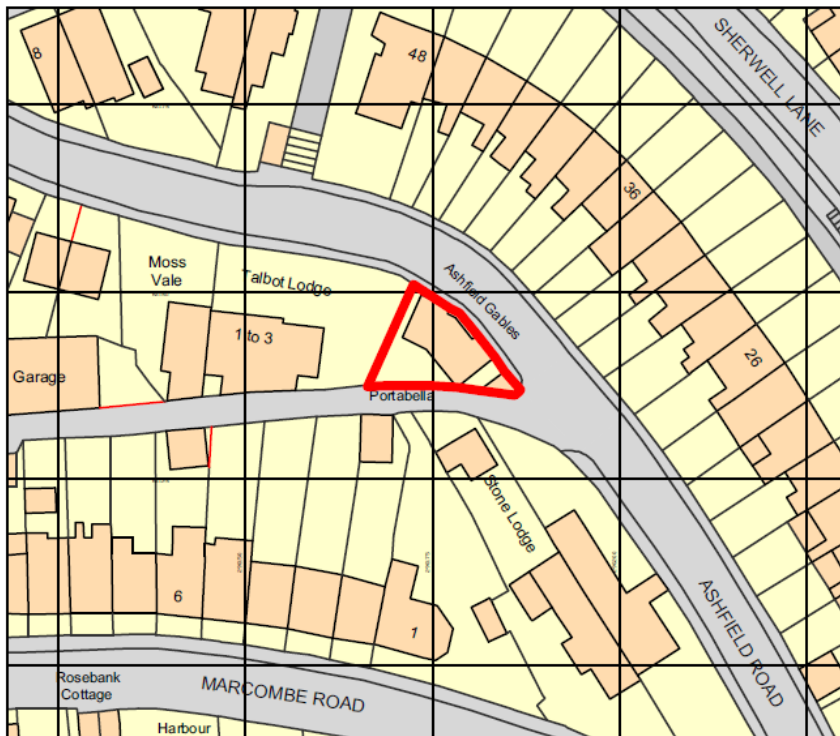
SS1 Growth Strategy for a prosperous Torbay  
 SS3 Presumption in favour of sustainable development  
 SS8 Natural Environment  
 SS9 Green infrastructure  
 SS10 Conservation and the historic environment  
 TA3 Parking requirements  
 C1 Countryside and the rural economy  
 C2 The coastal landscape  
 C4 Trees, hedgerows and natural landscape features  
 NC1 Biodiversity and geodiversity  
 HE1 Listed buildings  
 DE1 Design  
 DE3 Development amenity  
 DE4 Building heights  
 DE5 Domestic extensions  
 ER1 Flood risk  
 ER2 Water management  
 ER4 Ground stability

TS1 Sustainable development  
TH8 Established architecture  
TH9 Parking facilities  
TH10 Protection of the historic built environment  
TH11 Rural village conservation area  
TH12 Maidencombe area  
TE5 protected species and habitats

## TORBAY COUNCIL

Application Site Address	Ashfield Gables Ashfield Road Torquay TQ2 6HE
Proposal	Installation of a window and a door.
Application Number	P/2021/0460
Applicant	Mr Rob Finch – Torvista Homes Ltd
Agent	Mr Jonathan Ling-Cotley – MTA Chartered Architects Ltd
Date Application Valid	23/04/2021
Decision Due date	18/06/2021
Extension of Time Date	Not applicable.
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

### Location Plan:



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### **Site Details**

The site is a two storey detached residential property with an integral garage located on Ashfield Road, with a private service lane that lies to the south of the site. 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 proposal seeks permission for the insertion of a window on the northern elevation at ground floor to serve an en-suite, as well as the insertion of a door to the south-eastern elevation to serve the existing garage. The proposal also includes a number of internal alterations, however internal alterations to this site do not require planning permission.

### **Pre-Application Enquiry**

None sought.

### **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 Adopted Torquay Neighbourhood Plan 2012-2030

### **Material Considerations**

- 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**

P/2021/0404: Certificate of Lawfulness for proposed change of use from C3 (Dwellinghouse) to C4 (HMO). Pending consideration.

P/2008/0025: Alterations; First Floor Bedroom And Ground Floor Garage Extension. Approved 22/02/2008.

P/2004/1335: Erection Of Dwelling With Garage And Vehicular/ Pedestrian Access (Revised Scheme). Approved 15/12/2004.

## **Summary of Representations**

The application was publicised through neighbour notification letters. Approximately 14 letters of objection have been received, it should be noted that this number reflects 12 objectors as some have made more than one objection.

Concerns raised include:

- Planning history
- Overdevelopment
- Not in keeping with local area
- Privacy/overlooking
- Residential amenity
- Sets precedent
- Impact on local area
- Noise
- Traffic and access

## **Summary of Consultation Responses**

### **Torquay Neighbourhood Forum:**

No comments received.

## **Planning Officer Assessment**

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

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Flood Risk and Drainage

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

The proposal is for the insertion of a window on the northern elevation at ground floor to serve an en-suite, as well as the insertion of a door to the south-eastern elevation to serve the existing garage. In the context of householder development within the built up area there are no Development Plan policies indicating that the proposal is not acceptable in principle. It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

A number of objectors have raised concerns regarding the planning history of the site and the potential use of the site. It should be noted that the site is also subject of a certificate of lawfulness for proposed use which is separate to this application.

The proposed development requires planning permission, as the original planning permission for the dwelling removed permitted development rights for all types of development described in Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order, 2015 (as amended).

## **2. Impact on Visual Character**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy 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 proposal seeks permission for the insertion of a window on the northern elevation at ground floor to serve an en-suite, as well as the insertion of a door to the south-eastern elevation to serve the existing garage.

Objectors have raised concerns that the proposal would have a negative impact on the local area, would not be in keeping with the local area, would set a precedent and constitute overdevelopment.

Officers consider that these very minor changes to the external appearance of the dwelling will have no significant adverse impact on the appearance of the dwelling or the street scene. A planning condition is proposed to ensure that the proposal matches the materials used in the existing windows. It is considered that the proposal is acceptable with regards to its impact on the character and appearance of the existing dwelling and streetscene.

The proposal is considered to be in accordance with Policy DE1 of the Local Plan, and Policy TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

## **3. Impact on Residential Amenity**

Paragraph 127 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development should not unacceptably impact upon the amenities of neighbouring occupiers in terms of their outlook, privacy, or access to natural light.

Objectors have raised concerns regarding residential amenity, in particular noise and privacy/overlooking. The proposal is for a window to serve the ground floor en-suite, which will be conditioned to be obscurely glazed to protect the privacy of the occupiers. The proposal also includes the insertion of a door to serve the existing garage. It is deemed that the proposal would not result in any notable increase in overlooking of neighbouring properties than the existing situation.

The proposal is not considered to result in any serious detriment to amenities of neighbours by loss of privacy, outlook or access to natural light and therefore the proposed alterations are considered acceptable given the context. The proposal is considered to comply with Policy DE3 of the Local Plan.

#### **4. Impact on 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 the application has been accompanied by a flood risk assessment. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

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

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

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

#### **Local Finance Considerations**

S106: Not applicable.

CIL: Not applicable.



### **EIA/HRA**

ERA: 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 key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development and it is in accordance with the Development Plan, including the Torquay Neighbourhood Plan. As such it is concluded that the planning balance is in favour of supporting this proposal.

### **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 flood risk. 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. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director for Planning, Housing and Climate Emergency.

### **Conditions**

#### **Materials**

The external appearance of the new window and door hereby approved shall match 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 Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan 2012-2030.

#### **Obscure Glazing**

The new window hereby approved on the ground floor, northern flank elevation shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. The window shall thereafter be permanently retained in that condition for the lifetime of the development.

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

**Informative(s)**

1. 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.

**Relevant Policies**

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

SS3 – Presumption In Favour Of Sustainable Development

SS14 – Low Carbon Development and Adaptation to Climate Change

TH8 – Established Architecture

## TORBAY COUNCIL

Application Site Address	Cherry Trees 142 Newton Road Torquay TQ2 7AD
Proposal	Alterations and extensions to existing dwelling to form five residential flats. Alterations include the formation of a two storey side extension over existing garage, the enlargement of a rear dormer (revised plans received on 14.04.2021)
Application Number	P/2020/0866
Applicant	Mr Maddock
Agent	Box Architecture
Date Application Valid	28.09.2020
Decision Due date	23.11.2020
Extension of Time Date	21.12.2020 an extension of the determination period until 18 <sup>th</sup> June 2021 has been agreed
Recommendation	<p>Approval subject to:</p> <ol style="list-style-type: none"> <li>1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.</li> </ol> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Councillors requested consideration by Committee as a result of objections received over the height of the building, proximity to the boundaries and loss of light.
Planning Case Officer	June Pagdin

## Site Location Plan



### **Site Details**

The site comprises a two-storey, semi-detached dwelling house and its curtilage on the south side of Newton Road. It is in a pair with No 140 to the south east. The house has a deep front garden and a garage on the boundary with No 144. There is a mature tree on the footway adjacent to the existing vehicle access from Newton Road.

The property to the north-west at No 144 Newton Road is also a semi-detached house (in a pair with No 146). The house is set in from the shared boundary by some distance (approx. 10m); while a side conservatory is set in 6m and the garage is adjacent to the shared boundary. A previous planning permission was granted to extend the house to the side (P/2019/1138).

The application property has been previously extended with a side and a rear dormer in the roof and a single storey rear extension. The property has a rear garden;

varying in depth between approximately 4m and 7m, which backs onto the rear of residential properties at No. 17 Cadewell Crescent.

No 17 Cadewell Crescent is also a two-storey, semi-detached house. It is positioned on the bend of the Crescent and the house is set at 45 degrees to No 142 Newton Road. The rear garden is triangular in shape and approximately 7m deep at ground floor; the upper rooms are approximately 3m further back. It is on slightly higher land than No 142 Newton Road

Newton Road is an established residential area with surrounding properties having similar character and appearance. The neighbouring property was been converted from a guest house to four flats (Ref No P/2017/1034). There is a mix of residential and commercial uses on the far side of Newton Road and further south on the application side.

### **Description of Development**

Full planning permission is sought for extension and subdivision of the property. During the course of the application the proposal has been amended and now involves:

- A two-storey side extension to the north-western side of the property (in place of the garage) with a half-hipped roof
- Enlarging the rear dormer extension in the roof
- Hip to gable widening of roof ridge line on original house
- Alterations internally to subdivide building into five flats (4 x 1 bed, 1 x 2 bed)
- Installation of five roof-lights in the roof and two windows in the rear dormer
- Creation of 6 car parking spaces and refuse storage area in front garden
- Provision of amenity space to the flats.

The proposal would be finished with white render to the ground floor of the extension to match the existing house and cement boarding to the first floor of the side extension and the dormer window. The existing red roof tiles would be changed to grey concrete tiles. Proposed new windows would be upvc (colour to be agreed).

The built form would be as approved under planning application reference number P/2019/1138 for a two storey extension and subdivision into one maisonette at first and second floors and an ancillary ground floor annexe.

### **Pre-Application Enquiry**

None.

### **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 ("The Neighbourhood Plan")

#### Material Considerations

- 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**

P/2011/0527 – Formation of single storey extension at rear. Approved 04.07.2011.

P/2011/0953 - Non material amendment - removal of dormer/chiquette over the new rear entrance door at the NW elevation; insertion of 2 roof lights in new roof SE and NW elevations; removal of high level window at SE elevation – Approved 4.10.2011.

P/2019/1138 - Formation of 2 storey extension to side over existing garage, dormer to rear (amended plans received). Approved 22.06.2020.

#### **Summary of Representations**

Approximately 5 objections were received to the original proposal in which the following matters were raised:

- The intensification of use would result in up to ten people living in five tiny flats;
- Overdevelopment - cramming in front garden of car parking and bins;
- Inadequate size of outdoor space provision;
- Loss of privacy due to overlooking of neighbours to rear and side – especially the bi-fold doors to first floor lounge;
- Loss of natural light;
- Noise from future occupiers;
- Future maintenance of building would require access to land at No 144 Newton Road.

One neutral comment was received:

- requesting better sound insulation between flats. Currently not adequate for so many people in one building.

Sound insulation between residential flats is subject to control through Building Regulations matter and not a material planning consideration.

Neighbouring occupiers were consulted on the amended scheme and four responses were received. The following comments were made:

- Overdevelopment;
- Too close to neighbouring properties;
- Loss of privacy due to overlooking;
- Loss of light to neighbouring properties;
- Inadequate amenity spaces;

- Inadequate parking layout;
- Dust and noise during construction.

## **Summary of Consultation Responses**

### **Torquay Neighbourhood Plan Forum:**

Objection. Concern at conversions of large properties in to small poor quality living spaces without access to outside space. A key principle of Torquay Neighbourhood Plan requires new housing developments to include adequate outdoor space, such as a front or back gardens or balconies. Policy THW4 (outside space provision) requires flats or apartments to have either a balcony of not less than 10 sqm and as appropriate to the size of the home or a communal green area of not less than 10 sqm per unit within the curtilage of the property. Where there are compelling opportunities to enhance nearby spaces that can be served by the new development, in lieu of providing sufficient open space within the development site, this will be considered on its individual merits on a case-by-case basis.

### **Highways**

No objection.

### **Arboriculture**

Further information will be required on the proposed make-up of the driveway and how the electric charging point is going to be serviced. A permit will be needed for excavation works near roots of the Council-owned street tree for EV cabling.

### **Community Safety**

No objection subject to condition requiring a Construction Management Plan.

## **Planning Officer Assessment**

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

1. Principle of development
2. Visual Impact
3. Impact on Residential Amenity
4. Impact on Highways
5. Flood Risk and Drainage
6. Ecology and Arboriculture
7. Statement on Human Rights and Equalities Issues
8. Local Finance Considerations

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

Full planning permission is sought for alterations and extensions to the house and subdivision into five flats.

Policy H1 of the Local Plan states that proposals for new homes within the built up area will be supported subject to consistency with other Policies and that proposals

for new homes on unallocated sites will be assessed according to a range of criteria proportionate to the scale of the proposals including the capacity of physical infrastructure, including highways to accommodate development. The Council cannot demonstrate a 3 year housing land supply. The site is within the built up area and would retain residential use, providing four additional self-contained units. It would help to address the need to provide homes and would not detract from housing delivery. Therefore, in principle, the proposals are considered to be in accordance with Policy H1.

## **2. Visual Impact**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'. Paragraph 130 of the NPPF states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy DE5 of the Local Plan states that domestic extensions will be assessed against their impact on the character or appearance of the original property, neighbouring properties, and the street scene. Policy TH8 of the Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The visual impact of the proposed extensions was assessed under the previous Planning Application (reference number P/2019/1138) and found to be acceptable in the context. The proposed two-storey side extension would extend above an existing garage and maintain the existing distance from the boundary treatment of approximately 0.6 metres. The proposed extension has a Dutch hip roof which is set down from the ridge of the original property and is set back from the principal elevation of the original property. The side extension would be finished in render at ground floor and cladding at first floor. The colour of the roof tiles is grey but the colour of the cladding is to be determined.

The design and appearance of the proposed extension takes reference from the properties within the surrounding street scene and the proposed extension is considered to be of a size, scale and design that is acceptable given the building's set back from the site frontage and style, reflecting other extensions within the street scene. Given the character of the surrounding area, and the proposal's siting, scale, and design. It is considered that the development would not result in unacceptable harm to the character or visual amenities of the locality.

Subject to a condition to secure the use of suitable materials, the proposal is considered to be in accordance with Policies DE1 and DE5 of the Local Plan, Policy TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.



### 3. Impact on Residential Amenity

Paragraph 127 of the NPPF requires developments to create places that promote a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development should strike an appropriate balance between making good use of land whilst avoiding town cramming or harm to neighbour's amenities. Residential proposals should provide a good level of amenity for future residents and should not unduly impact upon the amenity of neighbouring properties and surrounding uses.

#### Future occupiers

Policy DE3 requires new residential developments to provide adequate amenity for the future occupiers. The internal space standards are set out in Table 23 of the Local Plan.

The proposed flats would provide sufficient space to meet the standards for the submitted number of occupants.

Flat No	Flat type	Required Space IGA (Table 23 TLP)	Floor space proposed (IGA)
1	2 bedroom 3 person	61	61
2	1 bedroom 1 person	37	39
3	1 bedroom 1 person	37	45
4	1 bedroom 1 person	37	39
5	1 bedroom 1 person	37	46 (full height)

The building would accommodate up to seven people in five households.

Adequate day-lighting to internal spaces would be provided. Amended plans show the side windows of Flat No 4 have been removed from the proposal and the layout amended to ensure adequate daylight to habitable rooms.

The external communal amenity area measures 61sqm (excluding the bicycle stores). This provides for the minimum required under Policy THW4 of the Torquay Neighbourhood Plan 2019 of 10sqm per unit. Amended plans show discreet areas allocated to the two ground floor flats and a shared area for the upper flats to provide 10sqmm per flat. Access to the bicycle stores is separate from these areas.

The arrangement of the space has been amended to avoid communal access to the areas directly outside the living room windows and doors and a bedroom window of Flats 1 and 2 in order to provide some protection of privacy of those internal spaces.

The front bedrooms of Flats No 1 and 2 have windows onto the car parking area at the front of the site. Amended plans show planters and separation from the parking area and allocation of the two parking spaces closest to the house to the occupiers of those flats in order to protect the amenity of those occupiers with regard to noise and light nuisance from car parking manoeuvres.

The amended scheme addresses earlier concerns over the levels of amenity for future occupants and is considered to be in accordance with Policy DE3 of the Torbay Local Plan and THW4 of the Torquay Neighbourhood Plan and paragraph 127 of the NPPF.

#### Neighbouring occupiers

While the proposed side extension would bring two-storey development closer to the shared boundary with No.144 the previously submitted day and sun-lighting report and Officer assessment (P/2019/1138) concluded that the proposal would not result in an unacceptably overbearing impact or overshadowing.

The amended scheme removes the original proposal for a full-length first floor window with Juliet balcony on the rear elevation of the proposed two-storey side extension and replaces it with a normal sill height (1.2m). The potential for overlooking was carefully assessed in the previous proposal (2019/1138) where this window was shown as serving a bedroom. Under the current proposal this window would also serve a bedroom as the floor plan to Flat 4 has been revised in amended plans.

The layout of this residential area is such that relationships between neighbouring properties are already characterised by some level of overlooking towards neighbouring gardens and inter-visibility between rear elevations. The ground floor of the rear elevation of No 17 Cadewell Crescent would be approximately 14m away. The distance between first floor windows would be approximately 17m. The building at No 17 is set at a 45 degree angle to No 142 Newton Road. The initial proposal or a Juliet balcony to a lounge at first floor level would have resulted in a considerable increase in the amount of overlooking throughout the day and evenings compared to a bedroom window. The revised scheme addresses this issue of overlooking and loss of privacy by reducing the size of window and amending the flat layout so that this window would serve a bedroom and the living/dining/kitchen area would be at the front of the property. The resulting degree of overlooking would not be increased significantly over and above the previously approved application (P/2019/1138).

Amended plans omit the kitchen window for Flat 4 that faced north from the side boundary facing No 144 Newton Road and would have allowed views over the side and rear amenity spaces of that neighbour. This amendment addresses concerns of overlooking to the side over the property at No 144 Newton Road.

All other new windows and doors would face towards the street or be sited at ground floor level where they would not result in any unacceptable impact on privacy, with due regard to the existing boundary treatment.

The amended scheme is considered to adequately address previous concerns of overlooking such that the proposal would not result in a significant increase in

overlooking and consequent loss of privacy to the detriment of the amenity of the neighbouring occupiers. The proposal is not considered to result in unacceptable harm to the amenities of neighbours in terms of their outlook or access to natural light and, therefore, to be in accordance with Policy DE3 of the Local Plan and paragraph 127 of the NPPF.

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

Policy TA3 and Appendix F of the Local Plan states that each flat should be provided with 1 on-site parking space for motor vehicles, 1 on-site cycle storage space and provisions for the storage of refuse bins and recycling boxes. Policy TH9 of the Neighbourhood Plan states that the parking requirements set out in the Local Plan must be complied with, and that applications for additional residential accommodation should be assessed for their parking demand.

The subject property is currently served by a garage and a driveway at the front of the property. Consultation responses have raised concerns that car parking will be crammed in and inadequate. The proposal would remove existing landscaping at the front of the house and extend the driveway to provide six car parking spaces (1 per flat and 1 visitor space). A small planter is proposed on each side of the vehicle access point to the site. While the site layout is tight, it allows for parking spaces of an adequate size and 6m deep turning area behind the spaces, which meets the Standing Advice requirements. The Highway Authority has no objection to the proposed layout.

The Parking Standards require 20 % of the spaces to have Electric Vehicle Charging Points. One is required on this site. However, concern was expressed by the Arboricultural Officer that the cabling should not be within the root zone of the mature street tree, which is of significance in the streetscene. Provision of the EVCP and appropriate cable routing can be secured by condition on any permission.

Subject to a condition to ensure provision prior to occupation of the parking spaces and an EVCP (with cabling to avoid the street tree root zone), the proposal is considered to be in accordance with Policy TA3 of the Local Plan and Policy TH9 of the Neighbourhood Plan.

The positioning of the refuse bins on the site frontage could introduce clutter and detrimentally affect the appearance of the site frontage. However, amended plans show refuse bin stores set behind a planting area when viewed from the street. Details of the bin store appearance and the planting can be secured through conditions to ensure that adequate screening is provided and maintained.

Subject to the identified conditions the proposal is considered to be acceptable with regard to Policies TA3 and DE1 of the Local Plan.

#### **5. 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 previous application was approved and due to the small footprint of the proposed extension being under 20sqm, it was not considered necessary to require a sustainable form of drainage. However, site is located within the Critical Drainage Area and the current proposal includes hardstanding areas. The submitted Flood Risk Assessment states that surface water would be discharged at a controlled rate to a combined sewer to be approved by the Water Company. However, the Standing Advice advises that a condition seeking consideration of sustainable drainage systems is reasonable in these circumstances. This condition is recommended.

## **6. Ecology**

The application is accompanied by an Ecological Impact Assessment report provided by an ecologist (October 2019). The submitted report relates that a site inspection did not reveal any evidence of use of the property by bats or nesting birds, and concluded that the proposal would not impact negatively on bats or nesting birds and no further survey is required. Issues relating to the street tree are covered in the Highways Section (section 4 above). The proposal is therefore considered to be in accordance with Policy NC1 of the Local Plan which seeks to conserve Torbay's biodiversity and geodiversity.

## **7. Low Carbon Development**

Policies SS14 and ES1 of the Local Plan seeks to promote a low carbon form of development with adaptations to climate change so as to minimise carbon emissions and the use of natural resources.

The proposal would make a contribution to housing delivery in Torbay through the conversion of an existing vacant building within the built up area in a sustainable location. Proposals for residential development within the existing built up area help meet Torbay's housing need in a manner that reduces the need for greenfield development in unsustainable locations, which increase the need for car ownership. The proposal therefore makes efficient use of existing brownfield land and infrastructure capacity.

The submitted Low Carbon Energy Statement sets out that the retention and conversion of the existing building ensures that the embodied carbon contained within the building is retained, thereby minimising the carbon emissions associated with the production of new building materials and the carrying out of construction works. The intention is to install high efficiency water heating and space heating and compliance with the standards required by the Building Regulations. In addition, the proposed installation of roof-lights contributes to passive solar heat gain during daylight hours.

The proposal is considered to be in accordance with Policies SS14 and ES1 of the Local Plan.

## **8. 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.

## **9. Local Finance Considerations**

S106: Not Applicable

CIL: A CIL liability form was not submitted with this proposal. The site falls within Charging Zone 2 (CIL Map 8). Charging Zone 2 is defined as areas outside the Policy C1 "Countryside and rural economy" area of Policy 2 "Undeveloped coast area" in the adopted Torbay Local Plan 2012-2030 that are not within Zone1 or a future Growth Area. Residential development of more than 100sqm internal floorspace that creates more than three dwellings will be liable. The proposal would create less than 100sqm additional internal space. Therefore, CIL is not liable.

### **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 positive impact overall and help with the supply of much needed housing.

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

The proposal as amended, is considered to be acceptable in terms of the principle of the use and its, visual impact, impacts on amenities of future and neighbouring occupants and in terms of on-site provision of parking, bin storage and landscaping. Subject to conditions, the proposed development is, considered to be in accordance with the policies of the NPPF, the Local Plan and the Neighbourhood Plan.

### **Officer Recommendation**

That planning permission be granted, subject to:

The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency

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

### **Conditions**

1. No development shall take place until a site specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust.

The plan should include, but not be limited to:

- o Procedures for maintaining good neighbour relations including complaint management.
- o All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:  
08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.
- o Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- o Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- o Control measures for dust and other air-borne pollutants.

The development shall be implemented in accordance with the approved details.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development.

2. Prior to the commencement of above-ground works of the development hereby permitted, details of colour, type and texture of all external materials, including hard-surfaced areas, to be used in the construction of the proposed development shall be submitted to and approved by the Local Planning Authority. The development shall, thereafter, be implemented in accordance with the approved details.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1 and DE5 of the Torbay Local Plan 2012, Policy TH8 of Torquay Neighbourhood Plan 2019 and the National Planning Policy Framework.

3. FRA Notwithstanding the submitted flood risk assessment, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change.

If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement of the development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 40% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 40% allowance for climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream. The development shall not be utilised until the approved surface water drainage system has been completed as approved and it shall be continually maintained thereafter.

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

4. Prior to the first occupation of the development hereby permitted the amenity spaces and planters shall be provided on the site in accordance with the plans hereby approved and shall thereafter be retained for their intended use with the associated dwellings for the lifetime of the development.

Reason: In the interests of residential amenity, and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy THW4 of the Adopted Torquay Neighbourhood Plan 2012-2030.

5. Prior to the first occupation of the development hereby permitted details of the boundary walls and fences to the site and the amenity spaces shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with approved details prior to occupation and retained in that condition thereafter.

Reason: To ensure a satisfactory completion of development and protect the privacy of future and neighbouring occupants in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

6. Prior to the first occupation of the development hereby permitted six car parking spaces shall be provided on the site in accordance with the plans hereby approved and shall thereafter be retained. The car parking spaces shall be allocated to the flats as shown on the Drawing No 5961/209/A and made available for the free use of residents of the development for their

intended use for the lifetime of the development. Notwithstanding the approved plans the surface of the parking area shall be fixed/bonded to prevent spillage onto the highway.

Reason: In accordance with highway safety and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Adopted Torquay Neighbourhood Plan 2012-2030.

7. Prior to the first occupation of the development hereby permitted details of at least one electric vehicle charging point (EVCP) and its cabling shall be submitted and agreed in writing by the Local Planning Authority. The EVCP shall be provided in accordance with the approved details prior to first occupation of the development and retained in a satisfactory working condition thereafter. The cabling shall avoid the root protection zone of the street tree adjacent the application site.

Reason: In the interests of carbon reduction and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Adopted Torquay Neighbourhood Plan 2012-2030.

8. Prior to the first occupation of the development hereby permitted details of weatherproof and secure cycle storage for five cycles shall be submitted and agreed in writing by the Local Planning Authority. The bicycle storage enclosure shall be provided in accordance with the approved details prior to first occupation and retained thereafter.

Reason: To ensure a satisfactory completion of development and ensure the provision of facilities to support the use of sustainable transport modes in accordance with Policies DE3 and TA3 of the Torbay Local Plan 2012-2030.

9. Prior to the first occupation of the development hereby permitted details of the proposed refuse and recycling bin enclosure shall be submitted and agreed in writing by the Local Planning Authority. The bin enclosure shall be provided in accordance with the approved details prior to first occupation and retained thereafter.

Reason: To ensure a satisfactory completion of development and protect the amenity of future and neighbouring occupants and the appearance in the area in accordance with Policy DE3 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

10. Prior to the first occupation of the development hereby approved, a scheme of hard and soft landscaping shall be 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 8 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 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

#### 11. Tree Protection for street tree

(i) Any work carried out to the street tree on Newton Road adjacent to the site shall be with the written approval of the Local Planning Authority. Such work will be to British BS 3998: 1989 as a minimum standard.

(ii) The development hereby approved shall not commence, and no materials shall be brought onto site, until the street tree is protected by fencing within the application site as per BS 5837: 2005. This will either be chestnut pale fencing or a scaffold structure 2.4 metres high supported durable man-made sheeting (either plywood or OSB of an exterior grade). Chestnut pale fencing will be to BS 1722: Part 4: 1989, as a minimum standard. This will consist of 1.200 mm pales, wired together as per standard, supported on three line wires, secured to fencing posts to a minimum standard of: 1800 mm long, 7 mm (3") top, driven 500 mm into the ground. In addition, straining posts, 1800 mm long by 100 mm (4") top, strutted where a change of direction occurs, will be installed at all ends and corners, at changes of direction, or acute changes of level, and at intervals no exceeding 50 m in straight lengths of fence. The fence will be installed upright, with all posts firmly bedded in the ground and line wires tensioned, and shall be maintained in such a condition throughout the duration of the development.

(iii) The fence shall be installed no closer to the trunk of the retained tree than the edge of the canopy or a distance equivalent to half the height of the tree, whichever is the greater.

(iv) The area beneath the tree and between the trunk of the tree and the fence will be kept clear and undisturbed at all times. No materials shall be stored within the fenced area; the levels of the land within the fenced area shall not be altered, and no seepage of oils, fuels or chemicals (including cement and cement washings) which may be harmful to trees shall be allowed onto the fenced area.

(v) No trenches for service runs, or any other excavations shall take place within the fenced area.

(vi) No soil or other surface material shall be removed from the fenced area except by written permission of the Local Authority. Where such a permission is granted, materials shall be removed manually, without powered equipment, taking adequate precautions to prevent damage to tree roots.

Reason: To ensure that all existing trees on and adjacent to the site are adequately protected while development is in progress.

**Relevant Policies**

*Torbay Local Plan:*

H1 – Applications for New Homes

DE1 - Design

DE3 – Development amenity

DE5 – Domestic Extensions

TA2 - Development access

TA3 - Parking requirements

ER1 - Flood Risk

NC1 - Biodiversity and Geodiversity

C4 – Trees, hedgerows and natural landscape features

SS3 – Presumption in favour of sustainable development

SS14- Low carbon development and adaptation to climate change

ES1 - Renewable and low-carbon infrastructure

*Torquay Neighbourhood Plan:*

TH8 - Established architecture

THW4 – Outside Space Provision

TH9 - Parking Facilities

## TORBAY COUNCIL

Application Site Address	Mayfield School Moor Lane Torquay TQ2 8NH
Proposal	Formation of new staff & teaching block.
Application Number	P/2021/0357
Applicant	Torbay Council
Agent	Mr Jonathan Ling-Cotter – MTA Chartered Architects Ltd
Date Application Valid	23/04/2021
Decision Due date	18/06/2021
Extension of Time Date	Not applicable.
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

### Location Plan:



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SITE LOCATION PLAN  
scale 1:1250

### **Site Details**

The site contains an established school complex that dates from the mid/late 20th Century but features quite large-scale latter-day 21st Century additions. The school buildings are modern in design, with low-lying one and two-storey buildings with flat and pitched roofing, rendered walls and aluminium casement windows. The site lies to the north of Moor Lane on the outskirts of Torquay and sits within the Watcombe Park Conservation Area. The proposal would fall within the cusp of the Steps Cross Urban Landscape Protection Area as defined by Policy C5 of the Torbay Local Plan and is within the Watcombe Community Investment Area as defined by Policy SS11 of the Torbay Local Plan.

The proposal would be sited on sloping land within the school site that ranges between 93.73-96.53 (AOD).

### **Description of Development**

The proposal seeks permission for the formation of a new staff and a teaching block, which would provide a staff room, a training room, a number of office spaces, water closets and kitchenettes. The proposed development would result in 353 square metres of new gross internal floorspace. The proposal would also include a new pedestrian access into the site from Steps Lane.

The proposal would have a principle storey elevated above ground on its southern side to take into account the topography of the land whilst being supported by a bank of coloured columns. The proposal is sited in this location, as it is identified as the last remaining area of open ground within the school which has the potential for future expansion. The proposal is located on the western edge of the existing school grounds bordering Steps Lane and as such the proposed development is positioned to address both the orientation of the main school buildings and the alignment of Steps Lane. The principal level of the building is elevated to meet the adjacent block that was approved in 2011, and a new enclosed bridge links the proposed and existing blocks whilst providing complete accessibility.

Each block is finished in a lightweight cladding material; self-finished metal and fibrous cement. These materials have been chosen to create a strong planar quality emphasising the solidity of the blocks as well as providing low maintenance and longevity. The external windows to the north and south elevations are full height low-e coated glass with polyester powder coated aluminium frames providing good visibility out into the school grounds. Self-finished coloured cladding panels are interspersed and set back into the window reveals. The bridge link between the 2011 building and the new block is encased in glass to accentuate the separation. The space beneath the building is part buried, part exposed with the buried portion housed in metal cladding with a Forticrete Linear concrete block plinth course and retaining structure. The exposed columns are to be encased in coloured cladding.

### **Pre-Application Enquiry**

DE/2021/0015: New staff and training block. Pre-application enquiry response given:

- Principle of development → Impact on ULPA designation and outdoor sports facility is likely to be considered acceptable.
- Visual impact → Broadly acceptable subject to detailed design.
- Residential amenity impact → Limited impact on adjacent neighbours given separation distance.
- Highways impact → Would not result in additional staff or pupils attending the school, so it would not directly result in additional trips onto the highway network once operational. Additional information required should a formal submission be made: confirm the proposals do not directly result in an increase in school size in terms of pupil or staff numbers over that which was in place in 2020; demonstrate that the site can safely be accessed by pupils, staff and visitors; demonstrate the model split of pupils and staff; demonstrate the proposals would not have an adverse impact on the existing parking provision; and; provide details of the access strategy used at the school and how the proposals tie into this.
- Arboricultural impact → Satisfied with the Arboricultural statement and its findings/conclusions.

### **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 Adopted Torquay Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan")

#### **Material Considerations**

- 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**

P/2011/1319: Alterations and formation of four classroom extension and related facilities with plant and stores in undercroft. Approved 20/02/2012.

P/2011/1099: Installation of solar panels on roof(s) of building(s). Approved 10/11/2011.

P/2010/1272: Removal of one timber shed and replace with new timber lodge with pitched roof; installation of 2 gazebos to form a covered area for pupils. Approved 17/12/2010.

P/2009/0167: Single storey extension. Approved 07/04/2009.

P/2005/0559: Formation Of Additional Car Parking; Reposition Entrance. Approved 24/05/2005.

P/2003/1557: Erection Of Additional Classroom (And Minor Amendments To Existing Application Ref App.No P/2001/0255/R3). Approved 03/11/2003.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Approximately 3 letters of objection, 2 letters of support and 1 letter of neutral representation has been received.

Concerns raised include:

- Traffic and access

Comments include:

- Provides educational facilities

An update on representations will be given to Members at Planning Committee.

### **Summary of Consultation Responses**

#### **Torquay Neighbourhood Forum:**

No response received.

#### **Sport England:**

The proposed development does not fall within either our statutory remit (Statutory Instrument 2015/595), or non-statutory remit (National Planning Policy Guidance (PPG) Par. 003 Ref. ID: 37-003-20140306), therefore Sport England has not provided a detailed response in this case, but would wish to give the following advice to aid the assessment of this application.

General guidance and advice can however be found on our website:

[https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport#planning\\_applications](https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport#planning_applications)

If the proposal involves the loss of any sports facility then full consideration should be given to whether the proposal meets Par. 97 of National Planning Policy Framework (NPPF), link below, is in accordance with local policies to protect social infrastructure and any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

If the proposal involves the provision of a new sports facility, then consideration should be given to the recommendations and priorities set out in any approved Playing Pitch Strategy or Built Sports Facility Strategy that the local authority may have in place. In addition, to ensure they are fit for purpose, such facilities should be designed in accordance with Sport England, or the relevant National Governing Body, design guidance notes:

<http://sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/>

If the proposal involves the provision of additional housing (then it will generate additional demand for sport. If existing sports facilities do not have the capacity to absorb the additional demand, then new and/or improved sports facilities should be secured and delivered in accordance with any approved local policy for social infrastructure, and priorities set out in any Playing Pitch Strategy or Built Sports Facility Strategy that the local authority has in place.

In line with the Government's NPPF (including Section 8) and PPG (Health and wellbeing section), consideration should also be given to how any new development, especially for new housing, will provide opportunities for people to lead healthy lifestyles and create healthy communities. Sport England's Active Design guidance can be used to help with this when developing or assessing a proposal. Active Design provides ten principles to help ensure the design and layout of development encourages and promotes participation in sport and physical activity.

NPPF Section 8: <https://www.gov.uk/guidance/national-planning-policy-framework/8-promoting-healthy-communities>

PPG Health and wellbeing section: <https://www.gov.uk/guidance/health-and-wellbeing>

Sport England's Active Design Guidance: <https://www.sportengland.org/how-we-can-help/facilities-and-planning/design-and-cost-guidance/active-design>

**Torbay Council's Senior Strategy and Project Planning Officer:**

I refer to the above application for new office and teaching block at Mayfield Special School. There were detailed pre-application emails between ourselves and Richard Sutton of the TDA, which I attach for information. The supporting information indicates the need for the additional buildings and that the field in question is too steep to be used as a playing area. Whilst it is within the Watcombe Park Conservation Area, the extension will be seen in the context of the modern school buildings, and any (less than substantial) impact will need to be balanced with the need to give great weight to the need to expand or alter schools (NPPF 94). Policies SC3 and SC5 of the Local Plan also support the proposal.

I note that on-street parking is an issue in the vicinity of Moor Lane due to the proximity of three schools. No additional parking spaces are proposed. Although the submitted

details indicate that no additional staff or pupils are proposed, this may be difficult to ensure (and there may be other desirable reasons to increase staffing or pupil numbers). Whilst the scope to ensure sustainable modes of transport is likely to be limited by the nature of the school, I think it would be desirable to require an updated Travel Plan, via planning condition, to seek to reduce single occupancy car use by staff and mitigate any tensions with nearby residents. (Note that I am making this suggesting in a Planning rather than Highways Authority, and as such can acknowledge the wider public interest benefits of the school extension. WSP may be providing a highways specific response).

I included the NPPF advice that the LPA needs to give “great weight” to meeting schools needs to expand. I would suggest that the information supporting an application makes it clear that the land is too steep to be used as playing field.

As far as I understand it, the ULPA was designated to protect the woodland and backdrop associated with Brunel Woods. Proposals should not “undermine the value of the ULPA as an open or landscaped feature within the urban area” (Policy C5 of the Local Plan). However, it doesn’t appear to me that the proposal would have significantly greater impact on the setting of Brunel Woods than the recent 2 storey school buildings. In any event the need to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area is the bigger policy test. Because it is in a conservation area (etc), it would be worth setting out why the extension is needed to improve teaching and learning outcomes (etc.), so that any “less than substantial” harm to the significance of the CA can be weighed against the public benefits.

On the basis of the above (and the attached emails) I support the proposal.

**Torbay Council’s Senior Environmental Health Officer:**

No objections subject to the inclusion of the following condition:

Construction Management Plan:

No development shall take place until a site specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust. The plan should include, but not be limited to:

- Procedures for maintaining good neighbour relations including complaint management.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:



08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.

- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust and other air-borne pollutants.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development.

**Torbay Council's Drainage Engineer:**

The developer has failed to indicate on the submitted flood risk assessment how surface water is to be discharged from the development. As the site is located in Flood Zone 1 and providing the developer is proposing to use sustainable drainage for his surface water drainage, please use the recently agreed standing advice for this planning application.

**Torbay Council's Senior Tree and Landscape Officer:**

The arboricultural planning statement represents a fair reflection the site and the impact the proposal is likely to have on any retained vegetation. The ecological report indicates that a couple of metres of poor quality hedge will be lost along with the internal scrub and shrubs. No objection is raised to the proposal but it a pre-commencement landscape condition should be in place to mitigate the loss of 'green' from the site.

**Torbay Council's Highways Engineer:**

An update will be given to Members at Planning Committee once in receipt of the Local Highway Authority's response.

**Planning Officer Assessment**

Key Issues/Material Considerations

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Highways
5. Impact on Ecology and Trees
6. Impact on Flood Risk and Drainage
7. Low Carbon Development

## **1. Principle of Development**

The proposal seeks permission for the formation of a new staff and a teaching block at Mayfield School, Moor Lane, Torquay.

Paragraph 94 of the NPPF states that local planning authorities should give great weight to the need to expand or alter schools through the decisions on applications.

Policy SC3 of the Local Plan specifies that the Local Plan will support the improvement of existing and provision of new educational facilities to meet identified needs in Torbay. Policy SC3 notes further that this includes the expansion of schools to meet identified short to medium-term needs. Policy SC5 of the Local Plan states that new development will be assessed for its contribution towards reducing child poverty, proportionate to the scale and nature of the proposal. This includes the need to support investment in existing schools and make appropriate contributions, and improve equality of access to high quality education provision for all, including early-years education. The proposed development would improve the education facilities in the area. As such, it is considered that the principle of the development would accord with Policies SC3 and SC5 of the Local Plan.

The proposal would utilise land that is steeply sloping and not used for sporting facilities by the school, the supporting information for this application makes it clear that the land cannot be used as playing field.

The site is within the Watcombe Community Investment Area as defined by Policy SS11 of the Local Plan. Policy SS11 states that that development proposals should promote social inclusion including based on access to education, as well as meeting the needs of residents and enhancing their quality of life. The proposal would assist at enhancing the provisions of an existing school, therefore it is considered that the proposal complies with Policy SS11 of the Local Plan.

It should be noted that the Council's Senior Strategy and Project Planning Officer supports the proposed development. In the context of the proposed development it is within the built up area there are no Development Plan policies indicating that the proposal is not acceptable in principle. It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

## **2. Impact on Visual Character**

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and

quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the 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 proposal is for the formation of a new staff and a teaching block. The proposal is positioned to address both the orientation of the main school buildings and the alignment of Steps Lane. The result is the building is seen as two interconnecting blocks and the space between the two opens up to create a widened circulation space that directs the flow of movement through the building. The alignment with Steps Lane is seen as an important juxtaposition which defines the edge of the development. The rotation of the plan signifies the closure of the school quadrangle.

The principal level of the building is elevated to meet the adjacent 2011 block and a new enclosed bridge links the two blocks whilst providing complete accessibility. The inclusion of two access points is dual purpose; life safety, providing two means of escape and the other to provide a distinct entrance to the Steps Lane access link. This allows the school to manage the building independently from the other parts of the school outside of school hours for community and other such uses. The school was also keen for the building to appear as a stand-alone facility with the staff and training rooms sufficiently distanced from the main campus which will allow them the space and environment to recuperate from their daily demanding responsibilities.

The interconnecting blocks are both additive and subtractive in their relationship which is expressed through the elevations and sections. The principal storey is elevated above ground on its southern side on account of the topography and this is celebrated with a bank of coloured columns. The space beneath provides a sheltered and protected outside space for play and teaching connecting it with the landscape. Each block is finished in a lightweight cladding material; self-finished metal and fibrous cement. These materials will create a strong planar quality emphasising the solidity of the blocks as well as providing low maintenance and longevity. The external windows to the north and south elevations are full height low-e coated glass with polyester powder coated aluminium frames providing good visibility out into the school grounds. Side windows are half height to allow work surfaces, cisterns and cable trunking to be fixed beneath. Self-finished coloured cladding panels are interspersed and set back into the window reveals. The bridge link between the 2011 approved building and the new block is encased in glass to accentuate the separation. The space beneath the building is part buried, part exposed with the buried portion housed in metal cladding with a Forticrete Linear concrete block plinth course and retaining structure. The exposed columns are to be encased in coloured cladding.

The proposed building would have a gross internal floorspace of 353 square metres. The proposal would have a lower ground floor and ground floor. The lower ground

floor of the proposal would provide an area for outside play and teaching space and an enclosed void. The ground floor would provide a staff room, a training room, a number of office spaces, water closets and kitchenettes. The proposed finished floor level for the ground floor of the building would be 97.06 (AOD). Given the topography of the land, the proposal has varying measurements. The width varies between approximately 18.1 metres to 20.4 metres, the length varies between approximately 19 metres to 24.3 metres and the height varies between 5.1 metres to 8.1 metres, however the blocks would have a similar height, given how the proposal adapts to the topography.

The surrounding area is somewhat urban in character, but development is at a lower density at this end of Moor Lane. The site is within the Watcombe Park Conservation Area as defined by Policy SS10 of the Local Plan. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas, whilst allowing sympathetic development within them. Section 72 of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty on the LPA when making a decision on the application to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. It is considered that the proposed development will be seen within the context of the existing modern school buildings, and would be considered to result in a neutral impact when considering the impact the proposal would have upon the heritage asset, given that the proposal would not make the site any more visually prominent, nor would the loss of open space within the school site be harmful to the setting of the heritage asset, as the proposal is well-designed and complements the existing modern school site. Therefore, it is considered that the proposal would sustain the character and appearance of the heritage asset. It should be noted that the impact on the heritage asset will need to be balanced with the need to give great weight to the need to expand or alter schools.

It is also important to give consideration to the Urban Landscape Protection Area (ULPA) designation on site in relation to the potential impact the proposal may have.

The site is located within an area designated as an ULPA as defined by Policy C5 of the Local Plan. Policy C5 specifies that development within an ULPA will only be permitted where:

1. It does not undermine the value of the ULPA as an open or landscaped feature within the urban area; and
2. It makes a positive contribution to the urban environment and enhances the landscape character of the ULPA.

In terms of landscape impact it is relevant to consider the cumulative effects of the existing buildings within the school site. The Council's Senior Strategy and Project

Delivery Planning Officer has stated that the ULPA was designated to protect the woodland and backdrop associated with Brunel Woods. It is considered that the application site is visible from Moor Lane and other public realm vantage points. However, the proposal would provide a continuation of the existing built form on site and would not protrude beyond the existing building line. It is considered that the proposed development would not have a significant adverse impact on the special qualities and characteristics of the ULPA. It is considered that it is possible to develop the site for the type and quantum of development as set out in the proposal without having an unacceptable adverse impact on the ULPA in terms of the proposal not undermining the value of the ULPA as an open or landscaped feature within the urban area and making a positive contribution to the urban environment and enhance the landscape character of the ULPA, subject to a suitable landscaping scheme.

Given its siting, scale, and design of the proposal, it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality or the wider heritage asset. It is considered that the proposal would result have a neutral impact on the setting and character of the Watcombe Park Conservation Area and therefore would sustain and preserve the character and appearance of the heritage asset, given that the proposal is well-designed and in keeping with the existing modern school buildings. It is also considered that the proposal would not have a significant adverse impact upon the Steps Cross ULPA.

The proposal is considered to accord with Policies DE1, C5 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained in the NPPF.

### **3. Impact on Residential Amenity**

Paragraph 127 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. The Neighbourhood Plan is largely silent on the matter of amenity.

The site has Steps Lane and residential properties to the west, existing school buildings and beyond that further residential properties to the north and east, and Moor Lane and Steps Cross Park to the south. The representations received do not raise concerns regarding residential amenity. The Council's Senior Environmental Health Officer raises no objection to the proposal, subject to a planning condition to secure a Construction Method Statement. It is considered that there will be limited impact on adjacent residential properties given the separation distances.

Given its siting, scale, and design of the proposal, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours in terms of

their outlook, privacy, or access to natural light. The proposal is therefore considered to be in accordance with Policy DE3 of the Local Plan.

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

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. The Neighbourhood Plan is largely silent on the matter of parking in relation to non-housing development.

Letters of objection and representation have raised concerns regarding traffic and access. The proposed scheme seeks to expand on the principles of whole-school accessibility and as such adopts the level access strategy used throughout. All rooms are fully accessible. All thresholds are level. There are two new mobility washrooms provided within the building and two new accessible kitchens; one for general use and one for training purposes. Group session rooms, training room, staff room, review room and 1-1 office and session rooms all include full height glazing or vision screens for sedentary views. There is a proposed new personnel entrance from Steps Lane providing modern fit for purpose pedestrian and disabled access to the site, the new block and the courtyard. This would be provided with a new gate in the perimeter of the site, together with steps and an access ramp. An existing larger access will be blocked up after the works along with improved perimeter landscaping.

It is not proposed to include any additional parking areas with this proposal. There is no anticipated increase in vehicle numbers as this development aims to address the existing pupil capacity issues and alleviate the current spatial constraints. The proposal would not alter the number of employees. As with all schools, the site (including the proposed new block) has the capacity to accommodate the usual activity outside of the traditional school hours including staff training, extending learning, meetings, third party evening classes and sports. This modest activity can be comfortably accommodated from the existing vehicle and personnel entrances, and the vehicle and cycle spaces. In addition, the applicant has stated that modest weekend use can be accommodated (e.g at present there is a Waterbabies event in the Hydro pool on Saturdays), although Sunday and Bank Holiday activities would be extremely rare.

There is an existing on-street parking issue in the vicinity of Moor Lane due to the proximity of three schools. The submitted information states that no additional staff or pupils are proposed, however the Council's Senior Strategy and Project Delivery Planning Officer has recommended that the existing Travel Plan is updated to seek to

reduce single occupancy car use by staff and mitigate any tensions with nearby residents, this recommended condition shall be included in the list of conditions at the end of this report. The main concerns regarding the impact on highways is during the construction phase of the proposed development. Therefore, a planning condition is recommended to secure a construction method statement that includes the applicant providing details of the parking of vehicles of site operatives and visitors and the loading and unloading of plant and materials. The Local Highway Authority have been consulted on the proposal, an update will be provided to Members upon receipt of this response.

## **5. Impact on Ecology and Trees**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

The application is supported by an Ecological Impact Assessment. The site is just outside the Landscape Connectivity Zone for the South Hams Special Area of Conservation for the Greater Horseshoe Bat.

The site is approximately 0.09 hectares (ha) and comprised amenity grassland, hardstanding, species poor hedge and scattered scrub. The site was found to be of low ecological interest, but the short section of species-poor hedgerow offered some limited opportunities for nesting birds and dormice. The proposed development will result in the temporary loss of 0.02ha and permanent loss of 0.07ha of amenity grassland and -2 metres of hedgerow.

There is possibility for temporary foraging disruption during construction and through the loss of -2 metres of species poor hedgerow. The report states that the Ecologist considers the impact to be low, and the loss of 2 metres of foraging habitat will be compensated by the filling up of existing gaps in the hedge. The removal of -2 metres of hedgerow will have negligible impact on nesting birds if carried out outside of the bird nesting season. Due to the isolation of the site within the wider landscape, and the negligible chance of the hedgerow supporting a dormouse population, habitat loss on site will be of negligible impact for dormouse and will not affect the favourable conservation status of this species. No further ecological survey work is considered necessary.

The report sets out the mitigation and compensation measures to minimise the impacts on important ecological features, including carrying out hedgerow removal outside of the bird nesting season, with a pre-start check by a suitably experienced ecologist; the protection and enhancement of retained hedgerow on site; and no overall increase in exterior lighting. The report includes recommendations which are recommended as a planning condition to enhance the site for biodiversity post-development. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy NC1 of the Local Plan.

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm, either directly or indirectly, protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. Policy C4 goes on to state that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

The site is within the Watcombe Park Conservation Area. The Council's Senior Tree and Landscape Officer has been consulted on the proposal. The Officer has stated that the submitted arboricultural statement represents a fair reflection the site and the impact the proposal is likely to have on any retained vegetation. The ecological report indicates that a couple of metres of poor quality hedge will be lost along with the internal scrub and shrubs. The Officer therefore raises no objection to the proposal, subject to the inclusion of a planning condition for a landscaping scheme to be submitted prior to commencement to mitigate the loss of 'green' from the site. Therefore, subject to the aforementioned planning condition, the proposal is considered to accord with Policy C4 of the Local Plan.

## **6. Impact on 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 the application has been accompanied by a flood risk assessment. The Council's Drainage Engineer was consulted on the proposal, the adopted Standing Advice applies to the proposal as it is within Flood Zone 1. A planning condition is recommended to ensure that a sustainable surface water drainage method is secured. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy ER1 of the Local Plan.

## **7. Low Carbon Development**

Policy SS14 of the Local Plan seeks to promote a low carbon form of development with adaptations to climate change so as to minimise carbon emissions and the use of natural resources.

In regard to the Mechanical and Electrical Strategy, the heating proposals include an Air Source Heat Pump system which was chosen in place of extending the school's existing gas boiler system. The electrical specification includes energy efficient sensor controlled LED light fittings and minimal reliance on mechanical ventilation as the building is naturally ventilated. In addition, the applicant has chosen a lightweight metal structural frame and mineral fibre rainscreen cladding with mineral wool insulation all of which provides a sustainable method of construction with high recyclable content.



Further details include the overall design solution which considered minimum ground excavation reducing the reliance on retaining reinforced concrete structures. The applicant has also adopted an efficient single storey flat roof solution to the site and removing the need for extraneous structures and roof void areas. With such measures in place, the proposal is considered to be in accordance with Policy SS14 of the Local Plan.

### **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

#### **The Economic Role**

Educational development is important for individual growth and the economy and there would be economic benefits to the construction industry from the proposed development.

There are no adverse economic impacts that would arise from this development.

In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

#### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional educational facilities. Given the NPPF, great weight should be given to the expansion of schools and therefore the proposal must carry great weight in this balance.

Impacts on neighbour amenity have been discussed above where it is concluded that it would possible to develop this site as proposed without significant harm to residential amenity.

On balance, the social impacts of the development weigh in favour of the development.

#### **The Environmental Role**

With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on the landscape in particular the urban landscape protection area; ecology and biodiversity; and surface and foul water drainage. These matters are considered in detail above.

The environmental benefits identified are either marginal in the case of any biodiversity net gain or essentially mitigation as in the case of any landscape/ecological measures to be applied to the development.

The proposed development is in a sustainable location inasmuch as it is within the existing urban area.

It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is considered to represent sustainable development.

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

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

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

### **Local Finance Considerations**

S106: Not applicable.

CIL: Not applicable.

### **EIA/HRA**

ERA: 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 key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development and it is in accordance with the Development Plan, including the Torquay Neighbourhood Plan. As such it is concluded that the planning balance is in favour of supporting this proposal.

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

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

### **Officer Recommendation**

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

### **Conditions**

#### **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, dirt and other air-borne pollutants 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. Procedures for maintaining good neighbour relations including complaint management. Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009

Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.

- i) All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:  
8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.
- j) Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.

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

This pre-commencement condition is required to ensure that neighbour amenity is duly protected.

### **Removal of Vegetation**

No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive in any given year, unless prior to the commencement of works a detailed biodiversity survey by a competent ecologist has been submitted to and approved in writing by the Local Planning Authority. The survey shall include the details of the check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds on the site. The development shall then be carried out in accordance with the details submitted.

Reason: In the interests of protected species and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

### **Ecology Report**

The development hereby approved shall be carried out in accordance with the mitigation measures and recommendations set out in the approved ecology report (plan reference 1248-EclA-DM (Impact assessment)' received 23<sup>rd</sup> April 2021).

Reason: In the interests of protected species and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

### **Flood Risk Assessment**

Notwithstanding the submitted flood risk assessment, surface water drainage shall be provided by means of soakaways within the site which shall comply with the

requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change.

If demonstrated that the ground conditions are not suitable for soakaways or will result in an increased risk of flooding to surrounding buildings, roads and land, prior to commencement of the development, details of an alternative means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the alternative means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water drainage shall ensure that all off site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10 year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 40% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 40% allowance for climate change" conditions. This will require additional water storage areas to be created thereby contributing to a reduction in flooding downstream.

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

### **Materials**

Prior to their installation details and samples of the proposed exterior materials including the cladding wall finish, windows, doors, eaves, fascias and rainwater goods shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

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

### **Landscaping**

Prior to development continuing above slab level a scheme of 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 8 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 Policies DE1 and C5 of the Torbay Local Plan 2012-2030

### **Travel Plan**

Prior to the use of the development hereby approved, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted information shall provide details of an update to the existing Travel Plan, setting out opportunities to seek to reduce single occupancy car use by staff and mitigate any tensions with nearby residents, 30% modal shift for staff and visitors, with SMART targets and monitoring regime, with the achievement of targets being given over a specific timeframe.

Reason: In the interests of road safety and sustainability, and in order to accord with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030.

### **Informative(s)**

1. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
2. 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.
3. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any

year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

**Relevant Policies**

C4 – Trees, Hedgerows and Natural Landscape Features

C5 – Urban Landscape Protection Areas

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

NC1 – Biodiversity and Geodiversity

SC3 – Education, Skills and Local Labour

SC5 – Child Poverty

SS3 – Presumption in Favour of Sustainable Development

SS10 – Conservation and the Historic Environment

SS11 – Sustainable Communities

SS14 – Low Carbon Development and Adaptation to Climate Change

TA2 – Development Access

TA3 – Parking Requirements

TH8 – Established Architecture

## TORBAY COUNCIL

Application Site Address	Land Off Orchard Way, Edginswell Torquay
Proposal	Enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping.
Application Number	P/2021/0123
Applicant	Torbay Council
Agent	KTA Architects Ltd
Date Application Valid	17.03.2021
Decision Due Date	16.06.2021
Extension of Time Date	16.07.2021
Recommendation	<p>Approval: Subject to;</p> <p>The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Major Development (size of site).
Planning Case Officer	Scott Jones





## **Site Details**

The site comprises of 2.4 hectares of unkempt grass/scrubland to the west of Orchard Way and the existing commercial buildings that form Edginswell Business Park. There is a tree and scrub belt along the south-western boundary of the site adjacent to residential properties that sit off Edginswell Lane. The site slopes from south-west to north-east with the south-western corner being the high point of the site. There is a drop of approximately 15m across the site. Across the remaining borders to the north-east there is a nearby watercourse and rail line, before the land rises again to Riviera Way, and to the north-west lies Hamlyn Way, with a public right of way on the intervening strip of land that connects Edginswell Lane with Torquay Road to the North. Orchard Way presently terminates at the western edge of the site.

Regarding further context the site sits within the Edginswell Future Growth Area, as designated within the Torbay Local Plan, and is within the adopted 'Torquay Gateway (Edginswell)' Masterplan area, which envisages commercial uses on the land. There are also a number of listed building within 100m to the south and east of the site, although none directly border the site. In terms of further heritage interests there is an entry recorded on the Historic Environment Record for a post-medieval 'catch meadow' within the site. Other notable matters include an adjacent watercourse to the north which is an identified flood risk area and the adjacent land around the watercourse and railway line is part of a broader linear identified Local Nature Reserve

and Urban Landscape Protection Area. The site is also within the identified Landscape Connectivity Zone associated with the Greater Horseshoe Bats (South Hams SAC).

In terms of some further context the site is part of the wider envisaged Edginswell Business Park, as outlined within the historic major 'hybrid' (detailed and outline) proposals approved and partly implemented on adjacent land to the east under planning reference P/2007/1030 (as amended), which proposed commercial buildings/uses on this part of the site.

### **Description of Development**

The application is for groundworks to alter the land levels of the site in preparation for future potential uses, together with the extension of the current highway into the site.

Regarding the groundworks the proposals are principally a 'cut-and-fill' scheme to lower the southern half of the site and raise the northern half of the site, resulting in two principal plateaus either side of the proposed road extension.

At the south-west border the lowering of the ground levels includes the proposal for a crib wall to retain the engineered drop in level. The retaining structure will be between 1.5m and 5m along the south-west border above which there is a 5m landscaping strip proposed featuring specimen tree species, smaller tree species and shrubs on the high side of the structure. The wall also turns north towards the western end adjacent to the existing Public Right of Way, grading down from around 3.5m to the natural level.

A further retaining structure is proposed more centrally within the site in the form of a concrete retaining wall. This will partly retain the proposed highway but also navigate the drop in level from the upper to the lower plateau. The 'L' shaped structure is approximately 1.5m-2m high at either end but raises to a height of around 4m within its length.

At the northern edge of the site a graded earth bank is the third engineered structure being proposed, which is proposed to retain the 'fill' on the lower half of the site and the subsequent drop in level to the adjacent land. The earth bank will traverse a drop of around 4.5m.

The proposed highway extension consists of a 70m extension of the existing carriageway westwards into the site, with a 2m wide footway on the northern side and a 3m wide foot/cycleway on the southern side. There is a proposed 'stub' access junction proposed to the southern side approximately halfway along the proposed road.

### **Pre-Application Enquiry**

None.

### **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 Adopted Torquay Neighbourhood Plan (TNP)

### **Material Considerations**

- 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**

Major 'Hybrid' Application: P/2007/1743: Mixed Use Development Comprising Business Use Class B1, Car Showroom, Retail Warehouse And Residential And Public House/Restaurant (Class A3/A4) With Associated Highway Works And Car Parking.(In Outline). Approved.

Planning Application: P/2009/0055: Amendments to planning permission (app number P/2007/1743/MOA) comprising a draught lobby to main entrance and additional fire door at ground floor level to office building O2. Approved.

Minor Material Amendment (Section73 Application): P/2016/0955: Variation of condition P1 of P/2007/1743 - to allow amendments to the appearance, footprint and internal layout of one car showroom and alterations to the layout of the parking and car display area. This permission relates solely to those elements granted consent and have extant detailed planning permission under reference P/2007/1743 (two car showrooms and one retail unit). Approved.

### **Summary of Representations**

2 Objections. Key issues as follows:

- Loss of the historic 10m landscape buffer to properties
- Amenity impact on neighbours from the loss of the buffer
- Visual impact of the loss of the buffer
- Lack of conformity with the Masterplan
- Potential impact on stability

### **Summary of Consultation Responses**

#### **Torquay Neighbourhood Forum:**

No comments.

#### **Natural England:**

No objection. Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

**Torbay Council's Ecology Advisor:**

The proposals are unlikely to have a significant effect upon greater horseshoe bats associated with the South Hams SAC.

In regard to habitat loss the site currently holds grassland and hedgerows and post development will result in a tree-lined planting strip and enhanced orchard area, both towards the southern border. Post development it is calculated that this represents a loss of 2.65 'habitat units' or a net loss of 28%. These 2.65 units will need to be provided offsite.

In terms of broader species works should be undertaken outside of the nesting season to protect birds and the reptile method statement should be followed.

Propose conditions are necessary in regard to lighting, habitat mitigation, construction measures, landscape creation and management, times of clearance, accordance with the submitted ecology reports, and repeat badger surveys.

**Highway Authority:**

No objection. It is advised that any future development proposals should be supported by a Transport Assessment / Statement to accompany the planning submission, which will be subject to review by the Highway Authority before a recommendation can be made. The applicant will also be required to ensure that this is inclusive of identifying pedestrian and vehicle visibility splays from the new proposed accesses, as well as undertaking a swept path analysis exercise, to ensure these are designed to an adoptable standard.

**Torbay Council Strategic Planning / Transport:**

It is noted that the application includes additional highway towards the west of the site. Although detail could wait for a future full planning application it is recommended that any future proposals provide connectivity between Orchard Way and the path running along the north west boundary of the site. This should be accessible to both pedestrians and cyclists.

With regards to the path along the north west boundary and the proposed reinforced embankment development will need to ensure a safe and suitable barrier is provided to protect against falls from height given the extent of the reinforced embankment which appears to be up to 3.95m at its highest point.

The masterplan also shows a route from Orchard Way through or to the south east of plot 1 linking to the space between plot 1 and the watercourse/railway. This is not indicated on these plans and should also be sought as part of wider connectivity improvements, as should the space at the rear, through and around this site for use by the wider community.

It is important that the route, including the additional highway shown, is built to adoptable standards and (ideally) adopted by the Council for safeguarding purposes.

This could be secured through condition. At the very least a footpath and cycle route connection should be dedicated as such and preserved and appropriately maintained as such in perpetuity.

**Torbay Council Drainage Engineer:**

Following the submission of further information, including a site specific flood risk assessment and surface water drainage design for the above planning application, providing the surface water drainage is constructed in accordance with the submitted design, there is no objections on drainage grounds to planning permission being granted.

**Torbay Council (TDA) Engineer:**

It is understood work is in hand to ascertain geotechnical characteristics at this location among others, with which to inform the detail of the current indicative arrangements. Suggest covering any boundary uncertainty by attaching a planning condition similar to the following if granted permission;

‘No development of the proposed boundary ‘crib’ or other retaining walls shall take place without geotechnical investigation and reporting by a qualified geotechnical consultant. Conclusions and recommendations arising from the same should be recognised and adopted by the developer in the proposal and detailing of the installed retaining structure, to include construction and in-service phases.’

**Torbay Council’s Senior Tree and Landscape Officer:**

The proposed landscaping was agreed at pre-app stage to mitigate for the loss of the trees along the boundary - the trees to be removed are G1,G2, G3 G4, NT2 and NT3 to facilitate the enabling works.

It is recognised that the existing tree stock provides a landscape feature along the boundary with its appeal being on the group effect of the trees in the landscape. Except for G3 that has been afforded B category status the remainder of the trees to be removed are C category with a limited life expectancy.

The proposed landscape is a robust design using native trees and bolster planting within the orchard using local varieties. The landscape will provide a dense screen in the long term. The offset is that there will be short to medium term loss of trees in the landscape but owing to their categorisation they are not expected to usefully live beyond 20years.

The large off-site Ash, OT1, requires 20% of its root protection area to be removed to facilitate the ground levels required for any further development proposals. Although unlikely to structurally damage the tree there will be loss of physiological function from the severance of the fibrous and small diameter roots. As the report indicates OT1 is likely to succumb to Ash Dieback although there is no summary on its current level of infection. The age of the tree, its historic management (coppice) has led to a potentially ecologically valuable habitat along the tree line. Owing to the ecological potential of the tree and the current unknown infection level of the tree in respect of Ash Dieback it is deemed that adjustments are sought to the layout so the full root protection area of OT1 is recognised.

It is noted there is no LVIA present as part of the submission which would provide a broader context of the impact.

**Torbay Council's Community Safety Officer:**

Document 3467 'Construction Phase' contains the usual information asked for in a construction management plan regarding the control of noise and dust etc. However it is noted that they are suggesting the following hours:

"Construction hours will be from 7am to 7pm Monday to Friday, 7am to 1pm on Saturdays and closed on Sundays."

Recommend standard hours, 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays, are secured to limit local disturbance.

**Devon County Council Archaeologist:**

The proposal is in an area of archaeological interest relating to the medieval and post-medieval settlement of Edginswell. Groundworks are likely to expose and destroy archaeological features and finds relating to the settlement. The proposal area also contains the remains of part of a post-medieval water meadow system. However, the archaeological evidence is not, in my opinion, of such significance for me to recommend refusal of the application. Archaeological impacts can be satisfactorily mitigated by condition. Should any of the water meadow gullies survive, it may be appropriate to consider retaining them within any proposed landscaping and/or SUDS scheme.

Recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of any heritage assets with archaeological interest.

**Environment Agency:**

It is noted that the application is only for the enabling works and not for the development itself. The concrete retaining wall adjacent to Plot 1 looks like it is probably outside of the indicative flood zone, but it may be worth getting confirmation of this from the applicant and that there will be no development/land-raising within the indicative flood zone. However, a detailed FRA may need to accompany the detailed application for Plot 1 to show that the development can satisfy flood risk policy, i.e. that the development will be safe over its lifetime and not increase flood risk elsewhere.

Regarding the access the extended section appears to be located within flood zone 1. However, part of the existing access extends through flood zone 3 and therefore emergency evacuation of the site will be a consideration for you and the emergency planners with any future application for development of the site.

Provided that there is no development taking place within Flood Zone's 2 and 3 in the current application then we would have no further comments to make.

**Planning Officer Assessment**

## Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact, including heritage impacts
3. Residential Amenity
4. Highways and Movement
5. Ecology and Trees
6. Flood Risk and Drainage
7. Low Carbon Development, Climate Change and Waste Reduction

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

The site has been historically linked with the adjacent business park, principally as it was part of the wider proposals in the historic major mixed-use scheme submitted and approved 14 years ago, which was implemented and partly built out. The land subject to this application was outlined to deliver a small number of business buildings/uses and a bulky goods retail unit within this historic application. The business uses associated with the historic 'hybrid' application have fallen away as no Reserved Matters were submitted within the appropriate time limit, but the retail unit sits as an extant permission over part of the site as it was approved in detail.

Notwithstanding that only part of the site still benefits from an extant planning permission the site is still clearly identified for commercial uses in the current Development Plan. In terms of the Local Plan the site is part of the Edginswell Future Growth Area (identified within Policy SS2) and is identified as an employment site within Policy SS5 (Employment space). There is also an adopted Masterplan relevant to the site and wider area (Edginswell) and this identifies the site as part of 'Edginswell Business Park'. The Masterplan aligns with Local Plan support for high quality business uses and purports that some form of mixed use may be suitable. The indicative layouts and commentary within the Masterplan are divergent to the historic scheme granted planning permission but there is consistency in terms of the land being part of the longer-term aspirations and within the 'boundary' of the business park. In terms of the more recent Neighbourhood Plan the site is again identified as an employment site (TJ1.10) and there is reference to the adopted Masterplan.

In terms of summing up matters of principle and planning policy, in the context of the Development Plan, there is consistency in terms of the land being identified for employment uses. The current engineering operations act as preparatory works for potential future commercial uses and in such circumstances are considered enabling operations that are linked to delivering potential future commercial uses, which are supported in terms of planning policy. As such the engineering works are considered aligned with the aspirations of the Development Plan in terms of principle when considered in the round.

The application, in terms of principle, is considered suitably aligned with the strategic and employment policies contained within the Development Plan, notably Policies SS2 and SS5 of the Torbay Local Plan and Policies TS2 and TJ1 of the Torquay Neighbourhood Plan, and guidance contained within the Adopted Torquay Gateway (Edginswell) Masterplan.

## **2. Design and Visual Impact, including heritage impacts**

The principal considerations are the visual impact of the loss of the existing habitat and site character, which is principally scrub and grassland with sporadic border trees, and the visual impact of the proposed works, this being the regraded land and the retaining features created within.

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'.

There is no landscape designation over the land in terms of the Development Plan, but it is noted that the site forms part of the identified landscape area of a secluded Valley (3B Edginswell Valley) in the Torquay Landscape Character Assessment (2010). The wider area is identified as moderately sensitive with a management strategy to conserve. It is unclear whether this character assessment, which is dated 2010, reflected the local change in context from the consented mixed-use scheme, which appears to have commenced around 2009. There is no notable comment however there is notation that if development were to be permitted in this area it would be well contained from the wider area by the valley topography but would lead to the loss of an attractive and intimate local valley and detract from character of adjoining land. This suggests the assessment possibly pre-dated the build-out of the earlier phase of the business park but was possibly aware that development was forthcoming/likely.

In terms of design and visual impact is it practical to consider that part of the site benefits from an extent permission to build a bulky goods unit and that there is broad policy support through the Development Plan to deliver employment across the site. The inherent loss of the open features is hence not particularly significant, but more how the proposals influence the design and visual impact of future development.

In terms of the core of the site the proposed plateaus present a form of development that is similar to the historic proposals. This will present a stepped form of land that responds to the fall in land levels towards the valley floor to the north. The proposed land levels do not inherently present a matter of concern in terms of how it would influence the design and visual impact of future development.

In terms of the retaining features the northern graded bank, which is closest to the watercourse and rail line, is considered an acceptable form of engineering within what is principally an external facing element of the development. The solution provides landscape potential and would sit comfortably as a visual feature from further afield and from close proximity, should the adjacent water meadow secure the access and open walking route envisaged within the original mixed-use application. In terms of the central concrete retaining wall there is clear expectations that the wall will become an internal facing service yard based on the extant retail permission and historic layouts. Its impact from mid-distanced views from the north would appear only temporary in nature and limited. In terms of the southern-most retaining element this



appears the most sensitive element of the scheme and has raised some public concern in terms of how its form and location would constrain the landscape potential to visually separate the commercial element from the more rural residential character of Edginswell Lane. In terms of the detail the crib wall itself will be inward facing and post-development (of commercial uses) is unlikely to be a prominent feature within the public realm. In terms of the landscaped bank above this feature a 5m tree and shrub border is proposed, which would include feature oak and pine specimens along its length. There is local concern that the linear feature is not sufficient and is not as robust as the historic '10m landscape buffer' proposed via the historic mixed-use development. The Council's Landscape and Arboricultural Officer has considered the proposal and concluded that the proposed landscaping is a robust design and will provide a dense screen in the long term, whilst recognising that although the tree removal will present a short to medium term loss of trees in the landscape these have a short (20 years) expectancy and the proposals will present a longer-lived feature. Notwithstanding the concerns raised within representations when considering the conclusions of the specialist officer the detail of the southern-most wall and its associated landscaping is considered acceptable in terms of its landscape and visual impact.

Having considered both local and national policy guidance the design is considered to provide an acceptable form of development within the context. This conclusion has taken into account the public representations and specialist advice in terms of the robustness of the landscaping.

Regarding heritage assets the scale and form of the engineering proposals will not impact the setting of nearby listed buildings to the south. The proposal is hence considered acceptable having considered the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority pay special attention to the desirability of preserving or enhancing listed buildings and their settings.

### **3. Residential Amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring occupiers and surrounding uses. The NPPF guides (Paragraph 127) that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

The proposed development, post-construction, will not impact the amenity of neighbouring occupiers, which principally sit to the south of the site off Edginswell Lane, as the groundworks and retaining structures will not result in any form of loss of privacy, light, outlook etc. As a precursor to potential future development subsequent proposals would offer scope to consider the impact of buildings and uses on neighbouring occupiers. Notwithstanding the above conclusion the construction phase does have the potential to effect neighbours, principally through noise, dust and general disturbance during construction. The application is accompanied by construction phase information, which has been reviewed by Community Safety and considered acceptable in terms of managing most of the processes during

construction that may impact neighbours. One point of concern is the proposed construction hours and it is recommended that notwithstanding the documents detail should be conditioned as being contained within the hours of 0800 and 1800 Monday to Friday and between 0900 and 1300 on Saturdays, with no working on Sundays or bank holidays. Regarding further construction and post-construction matters there has been a concern raised in public representation regarding land stability. The Council's Engineer has considered the matter of groundworks close to residential plots and has recommend that a planning condition is attached to secure a level of detail and understanding on the engineering solution beyond the current level.

With conditions to secure appropriate working hours during construction and to secure engineering detail to ensure that their will be no impact upon adjacent land in terms of stability the proposals are acceptable in terms of any impact upon the amenity of adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

#### **4. Highways and Movement**

The NPPF guides that in assessing 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.

The proposal seeks to extend the existing highway (Orchard Way) approximately 70m westwards into the site and aside to this the development is seeking only preparatory works for potential futures uses. Due to the form of development the key issue is principally whether the highway extension is a suitable design for the future commercial context. The Highway Authority have confirmed that they do not object to the proposals following receipt of this additional information through the course of the application process. Considering the professional advice received from the Highway Authority the proposal is considered acceptable in terms of the highway works proposed.

Regarding associated matters strategic transport concerns have been discussed by Officers regarding the safety of users of the adjacent Public Right of Way running along the north west edge of the site, due to a subsequent drop in level created by the proposed retaining structure, together with concerns on future connectivity regarding promoting sustainable modes of travel. In regard to the safety issue it is considered reasonable to secure an appropriately formed barrier on top of, or adjacent to, the proposed crib wall that will run along the north west section abutting the Public Right of Way via a planning condition. An appropriately worded condition is proposed within the schedule of conditions at the end of this report. Regarding future connectivity this is principally a matter that is relevant to future detailed development proposals for the site. The applicant has been advised of the policy desire to promote sustainable forms

of transport and improve/provide good connectivity through development, including the masterplans indicative expectation of a foot/cycleway connection to the north west.

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 considered acceptable on highway and movements grounds, and in accordance with the Policies DE1 and TA2 of The Local Plan, and guidance contained within the NPPF.

## **5. Ecology and Trees**

Policy NC1 of The Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Policy C4 seek the retention of trees and other natural features. Policy TE5 of The 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. Guidance within the NPPF provides similar guidance to the above in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity (Para 170).

Regarding ecology matters the site is largely scrub grassland and occasional trees and in terms of notable policy context it is located within the Landscape Connectivity Zone associated with the Greater Horseshoe Bat (South Hams SAC). In terms of species and habitats it is concluded that there are no constraints that should impede the grant of planning permission in terms of ecology considerations. The site is not particularly sensitive in terms of protected species and there are several proposed planning conditions to duly manage and mitigate the impact of the works on reptiles, birds etc and to secure the proposed replacement planting. These conditions are listed in the schedule at the end of this report. The sensitivity of the site and impact of the development on the Greater Horseshoe Bat has been assessed and it has been concluded that the site is not particularly sensitive and there would be no Likely Significant Effect. Natural England have commented on the application and raise no objection.

Regarding biodiversity the loss of the existing habitat has been assessed and notwithstanding the tree planting adjacent to the south west border and the enhancement meadow/orchard within the south west corner, it has been concluded that there would be a net loss of 2.65 'habitat units' or a net loss of 28%. To mitigate this loss compensatory habitat would need to be provided/enhanced offsite and a planning condition is proposed to secure this in line with advice provided by the Council's ecology provider.

Regarding trees there is proposed removal of a handful of specimens along the south west boundary to facilitate the enabling works. The Council's Arboricultural Officer has reviewed the context and has recognised that the existing tree stock provides a landscape feature along the boundary with an appeal of its group effect in the

landscape. In this context the proposed replacement planting is considered acceptable and is deemed a robust design using native trees, which will provide a dense screen in the long term. It is recognised that there will be short to medium term loss of trees in the landscape, but this is considered an acceptable impact when considering the life expectancy of the current trees, which are not expected to be long-lasting. There is one element that is considered to require some further consideration, which is the incursion of the proposed wall into the Root Protection Area of an offsite Ash tree (OT1). The advice of the Council's Arboricultural Officer is that on the current information although the work is unlikely to structurally damage the tree the wall should be moved to respect the full Root Protection Area. This advice is subject to the receipt of further information on the health of the tree and its ecological value, which has been requested from the applicant. As matters stand the officer recommendation is that the scheme is amended unless further information on the health and likely impact on the tree is submitted that amends this professional advice.

Subject to resolution of the Root Protection Area of tree referenced OT1, having considered the submitted assessments, and subject to conditions to secure the tree planting, offsite mitigation, and broader ecology matters, as detailed within the schedule of conditions within this report, for the reasons stated above the proposals are in-line with the aspirations of Policies NC1 and C4 of The Local Plan, The Neighbourhood Plan, and advice contained within the NPPF

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

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

The proposed groundworks will largely retain the site as a natural permeable surface, with the principal surface change being the relatively moderate extension to the highway centrally within the site.

The application is supported by a site specific flood risk assessment that seeks to demonstrate that the development would not increase the risk of flooding and accord with policy advice contained within the Development Plan and the Environment Agency's Critical Drainage Area Advice Note for Torbay.

In terms of detail it is proposed that the surface water arising from the proposed highway will be managed via the local highway drainage network, discharged into this system at an attenuated rate equivalent to a greenfield run-off. As a point of note the existing highway drainage ultimately discharges into the nearby watercourse. The remainder of the site, which will remain unpaved, is to continue to discharge as per the existing situation re unmanaged natural infiltration. This presents a situation where the surface water disposal for the development plots will be confirmed when detailed proposals come forward for the sit, which is considered appropriate.

The Council's Drainage Engineer has considered the drainage proposals and, following the receipt of revised detail that overcomes certain issues on detail, the proposal is considered suitable for approval on drainage and flood risk grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained

within the NPPF. A planning condition is recommended to ensure that the proposed management for the highway run-off is secured and maintained for the life of the development.

## **7. Low Carbon Development, Climate Change and Waste Reduction**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy W1 (Waste hierarchy) of the Local Plan seeks that all development should seek to minimise the generation of waste, having regard to a waste hierarchy, which includes prevention, for example using less material in design and other measures to minimise waste generation.

The supporting information submitted with the application does not explore the issue of low carbon development or climate change in any great detail. The absence of detail on these aspirations does not appear to be integral to the broader merits of the proposal as it is accepted that the engineering operations have limited scope to deliver low carbon development or positively influence climate change, and it would be future detailed proposals for the site that would be duly scrutinised on these policy aspirations. Regarding waste reduction goals again the supporting detail is not overly expressive of the design considerations however, notwithstanding this, there appears a broadly substantiable emphasis to the scheme in terms of seeking to secure functioning commercial levels on a sloping site through a cut-and-fill process that limits the reliance on taking soil/waste offsite to potential landfill, which would be unsustainable in terms of transport needs and ultimately the creation of waste.

The development is, for the reasons above, considered suitable for approval, in accordance with Policy SS14 and W1 of the Torbay Local Plan, with further expected scrutiny of low carbon and energy proposals reserved for future proposals that may come forward over the land.

### **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

#### **The Economic Role**

Job creation is a driver of economic growth and there would be economic benefits should the preparatory works help facilitate the delivery of commercial development on a site that has been long earmarked for such purposes. Aside this more immediately the preparatory works will provide economic benefits to the construction industry. There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

#### **The Social Role**

The principle social benefit of the proposed development is whether it would help deliver job opportunities in the local area. Initially the construction phase will provide activity and employment opportunities and longer term the preparation of the site can only positively influence the attractiveness of the site for future development proposals, which would present the key benefit in term of employment opportunities for local residents. These short and longer terms benefits weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on ecology and biodiversity and drainage. These matters have been considered in detail within this report.

The environmental benefits are considered neutral, with the form of development and planning conditions principally aligned with mitigating environmental impacts that would naturally be linked to developing (or in this case preparing for development) greenfield sites. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is considered to represent sustainable development when considered in the round.

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

Human Rights Act - The development has been assessed against the provisions of the Act, and in particular Article 1 of the First Protocol and Article 8 of the Act. 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**

**CIL**

Not Applicable.

**S106**

Not Applicable.

### **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: Due to the scale, nature and location this development is not considered to have a likely significant effect on European Sites.

### **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 promote economic growth would produce a positive impact overall and help with the delivery of detailed commercial proposals for a long-identified site.

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

The proposal is considered acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and is acceptable in terms of access, ecology and flood risk matters.

The proposed development is considered to represent sustainable development and is acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, the NPPF, and all other material considerations.

### **Officer Recommendation**

Approval: Subject to;

The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;

The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.

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

### **Conditions**

#### **Hours of construction**

Notwithstanding the submitted detail hours of operation throughout the construction phase shall be between 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and at no time on Sundays and Bank Holidays.

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

### **WSI (PC)**

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2019), that an appropriate record is made of archaeological evidence that may be affected by the development. This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

### **Structural details (PI)**

Prior to commencement of works to build the proposed boundary 'crib' or other retaining walls details of the structural assessment and design of these structures shall be submitted to and approved in writing by the Local Planning Authority. The details shall be accompanied by evidence of a supporting geotechnical investigation and reporting by a qualified geotechnical consultant and the conclusions and recommendations arising from the same should be recognised and adopted within any proposed design. The development shall proceed in full accordance with the approved details.

Reason: To secure an appropriate and safe form for development and to protect highway safety and local amenity, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

### **Safety Barrier**

Prior to the installation of the retaining structure along the north west boundary adjacent to the Public Right of Way details of a safe and suitable barrier to run along this retained boundary shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved detail and the approved barrier shall be provided within 8 weeks of the practical completion of the related retaining structure unless an alternative timetable has been agreed in writing with the Local Planning Authority

Reason: To secure adequate safety features are provided, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030

### **Construction Method Statement**

The development shall proceed in full accordance with the submitted 'Construction Phase Information for the Engineering Works' (Document Reference 3467 – Orchard Way, Edginswell. Torquay), unless otherwise detailed in conditions pursuant to this notice.



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.

### **Tree Protection measures PC**

Prior to the commencement of development a Tree Protection Plan and an Arboricultural Method Statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The approved detail shall be adhered to throughout the construction phase of the development.

Reason: In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policy C4 of the Torbay Local Plan 2012-2030. These details are required prior to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

### **Highways Standards**

Construction of the internal roads and footpaths within the internal layout shall be in accordance with the Torbay Highways Design Guide for new developments.

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

### **Ecology 1 - Lighting (PC)**

Prior to the commencement of development a detailed Lighting Strategy shall be submitted to and agreed in writing by the Local Planning Authority. The Strategy shall seek to minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented, and shall include details such as the following: artificial lighting associated with public realm lighting and internal and external lighting associated with any proposed buildings. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policy NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

### **Ecology 2 - In accordance with the EIA**

Development shall commence and proceed in accordance with the actions set out in the Ecological Impact Assessment (GE Consulting, January 2021) and the Shadow Habitats Regulations Assessment (GE Consulting, March 2021).

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

### **Ecology 3 - CEMP (PC)**

Prior to the commencement of development a Construction and Environmental Management Plan, which will include details of environmental protection throughout

the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure important features and protected species are not unduly impacted.

#### **Ecology 4 - LEMP**

Within 6 calendar months of the commencement of development a Landscape and Ecological Management Plan, which shall include details relating to habitat creation, species specification and management, and timing of provision, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, DE1, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

#### **Ecology 5 - Habitat mitigation (PC)**

Prior to the commencement of development, which shall include operations consisting of site clearance including clearance of vegetation, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the erection of a site office, the creation of a site compound and/or the creation of temporary means of access, a Compensatory Habitat Scheme appropriate to compensate for a Biodiversity Impact Assessment score of -2.65 Biodiversity Units shall have been submitted to and approved in writing by the Local Planning Authority. The compensatory habitat secured by the scheme will be functional within 12 months of commencement of development and be managed for a minimum of 30 years.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure that necessary mitigation is secured prior to operations.

#### **Ecology 6 – Badgers (PC)**

Prior to the commencement of development, including all forms of site preparation including scrub clearance, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

### **Ecology 7 - Vegetation Clearance**

No vegetation clearance shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF

### **Landscaping**

The proposed landscaping shall be implemented in full within the first available planting season following substantive completion of the development hereby approved, unless otherwise submitted to and agreed in writing by the Local Planning Authority.

In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of ten years from the date of planting (or following replacement), such trees/plants shall be replaced in the next planting season and maintained in accordance with an approved maintenance plan.

Reason: In the interests of visual amenity and in accordance with Policies DE1, SS8, SS9 and C4 of the Torbay Local Plan 2012-2030 and Policies TE5 and TH8 of the Torquay Neighbourhood Plan.

### **Drainage**

The development shall proceed in full accordance with the submitted and approved Flood Risk Assessment and drainage plan. The drainage system shall then be maintained at all times thereafter to serve the 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 guidance contained in the NPPF.

### **Informative(s)**

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.

### **Relevant Policies**

#### **Development Plan Relevant Policies**

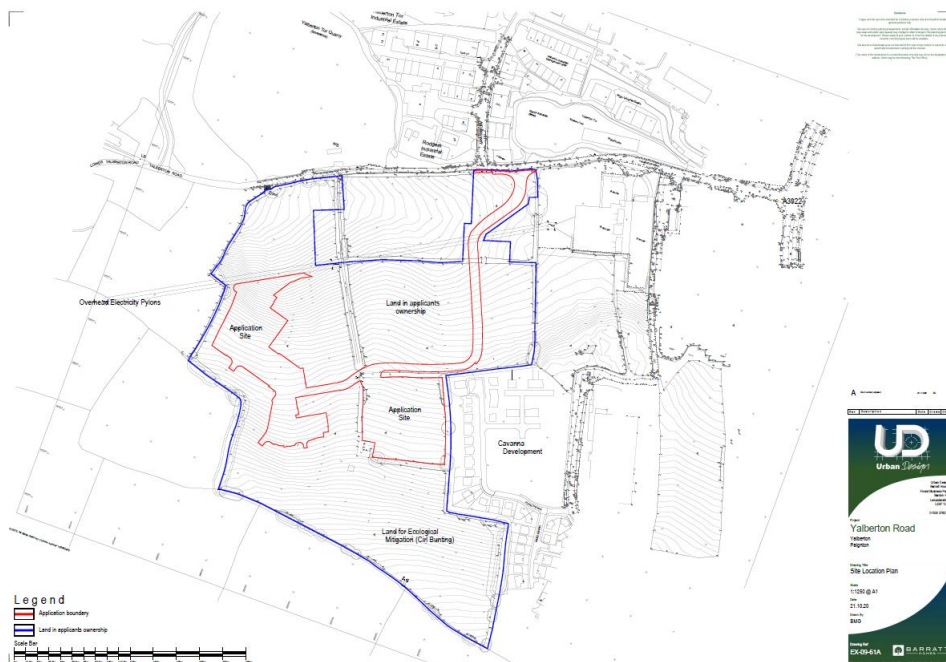
SS1 - Growth Strategy for a prosperous Torbay  
SS3 - Presumption in favour of sustainable dev  
SS8 - Natural Environment  
SS9 - Green Infrastructure  
SS10 - Conservation and the historic environment

TA1 - Transport and accessibility  
TA2 - Development access  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
ER1 - Flood Risk  
ER2 - Water Management  
W1 - Waste management facilities  
NC1 - Biodiversity and geodiversity

TS1 - Sustainable Development  
TS4 - Support for Brownfield and Greenfield development  
TH8 - Established architecture  
TE5 - Protected species habitats and biodiversity



Application Site Address	Land South Of Yalberton Road, Paignton
Proposal	Reserved Matters relating to application P/2014/0983, as amended by P/2018/0977 & P/2019/0605. Matters Reserved: (i) Layout, (ii) Scale, (iii) Appearance & (iv) Landscaping.
Application Number	P/2021/0403
Applicant	Barratt Homes (Exeter) Ltd
Agent	
Date Application Valid	06.04.2021
Decision Due date	06.07.2021
Extension of Time Date	19.07.2021
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Major Reserved Matters Application
Planning Case Officer	Mr. Alexis Moran



## Site Details

The site is located to the west of Brixham Road on the outskirts of Paignton. The majority of the site is located within the Future Growth Area of the Local Plan, except for the part of the site which is set aside for ecological amenity space and the south-western part of the residential proposal.

The land comprises agricultural fields bounded by hedgerows. In addition, overhead power lines cross the northern part of the residential area of the site. The site has a sloping topography with a north facing slope that rises by around 50 metres to a high point near the top of the hill located to the southeast. A field located near to the top of this hill lies outside of the application site but is proposed as a 'high meadow for ecological mitigation and biodiversity' habitat for one pair of Cirl Buntings.

The site is bounded by Yalberton Road to the north; the Western Power electricity station and Yannons Farm development site to the east; agricultural fields to the south (beyond which is South Devon College); and open countryside to the west. The land to the south and west of the main site is designated as Countryside Zone.

The whole site is located within the greater horseshoe bat sustenance zone associated with the South Hams Special Area of Conservation (SAC) at Berry Head; the northwest corner of the main site is also within a strategic flyway. The whole site is located within the Critical Drainage Area (CDA).

## Description of Development

The proposal seeks reserved matters consent pursuant to outline permission P/2014/0983/MOA (amended by P/2019/0605), for the construction of 54 dwellings within an area to the south and west of the site. This results in an additional 5 dwellings making 192 dwellings on the site overall which is the maximum approved by the outline permission P/2014/0983. The proposed dwellings are all two storey with single storey garages to some.

## Pre-Application Enquiry

None.

## 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

## 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/2019/0173 - Reserved matters application pursuant to P/2019/0605, for the construction of 187 dwellings, public open space, landscape planting, ecological mitigation measures, pedestrian, cycle and vehicular links and associated infrastructure. Including the discharge of conditions 1, 2, 4, 7, 8, 9, 10 and 11 (REVISED SCHEME, PLANS RECEIVED 18.02.2020). APPROVED 20.03.2020

P/2019/0605 - Variation of Conditions relating to application P/2018/0977. Variations sought: P1 - replace approved plan 3010-005 B with plan EX-09-39, 4 - Rewording of condition, 6 - Remove references to 'buses'. APPROVED 15.10.2019

P/2018/0977 - Variation of condition P1 - amendments to plans & condition 24 - footway and road, to Major Planning Application P/2014/0983 (revised plans received 14.11.2018). APPROVED 07.12.2018.

P/2014/0983 - Outline mixed use proposal for phased residential development (Use Class C3) of up to 192 dwellings and employment development (Use Classes B1 and B8) of between 7,400 sq m and 9,200 sq m floor area, together with the provision of ecological mitigation measures, public open space and other associated infrastructure. (Means of access to be determined only) (Revised Scheme). APPROVED 07.09.2018

#### Summary of Representations

None received

#### Summary of Consultation Responses

Torbay Council Senior Tree and Landscape Officer – No objection

Environment Agency - No comment received

Torbay Council Drainage Engineer - revised consultation response awaited, however covered by a condition on the outline application

DCC Ecology – No objection. The review letter provided by Illume Design details of the additional testing undertaken for plots 107, 145, 173 and 183 which are affected by the updated layout. Gable end windows have been modelled in line with the proposed house types for each of these plots. Plot 107, 145 and 173 have small gable windows which have been modelled. Confirmation from GE Consulting that there are no windows on the elevations of plots facing the dark corridors (107 and 145). I concur with the lighting mitigation measures set out in the Illume Design letter dated 14 June.

Species-rich grass and trees moved north of plot 107 to 109 and 95 which was previously proposed as mown amenity grassland - this is deemed acceptable. Noted that the proposal still provides a net gain in hedgerows. All instances of the 2.4m



high fence will be maintained by a management company, which will take the fence out of the homeowners responsibility - this is acceptable.

Detail provided in Drawing DB-SD11-004\_A Hedgehog Highway Guidance and EX-09-76A Boundary Treatments Details is deemed acceptable.

The gate within the eastern buffer zone has now been removed and the plans have been updated sufficiently. EX-09-78C Dark Corridors Sections plan adequately shows the width of the dark corridors and confirms there is sufficient width for maintenance.

Natural England –No objection. *Natural England notes that your authority, as competent authority, has undertaken an appropriate assessment of the proposal in accordance with regulation 63 of the Conservation of Species and Habitats Regulations 2017 (as amended). Natural England is a statutory consultee on the appropriate assessment stage of the Habitats Regulations Assessment process.*

*Your appropriate assessment (AA) concludes that your authority is able to ascertain that the proposal will not result in adverse effects on the integrity of any of the sites in question. Having considered the assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, **providing that** all mitigation measures are appropriately secured in any planning permission given.*

*We concur with the mitigation measures set out in your AA, although please check that the latest versions of documents are referenced, and would make the following additional comments:*

- *To reduce further the potential light spill from plots adjacent to the ‘dark corridors’, we advise that gable windows should be avoided on plots 107 and 145.*
- *We concur with the additional lighting mitigation measures set out in the Illume Design letter dated 14 June.*

- *The change to ‘species rich grassland with trees’ in the area north of Plot 107 is acceptable. This is shown on the Landscape proposals and Planting Specifications Rev E, included as Appendices in the revised LEMP. However, the Rev D versions that were attached to your consultation still show amenity grassland north of plot 107. The Rev E plans should be substituted.*
- *For information on species rich grassland planting, please note that Emorsgate EL1 seed mix is currently unavailable, and EM2 is recommended in its place. The EM5 meadow mix for loamy soils may also be successful in this location.*

*Torbay Council Highways Consultant - this response has been prepared based on updated information submitted by the applicant for the development proposal. A previous Transport Planning consultation response has been prepared for this application (5th May 2021) and should be read in conjunction with this document.*

#### *Red line boundary – S38 agreement*

*The applicant has stated that the footway connection to the Yannons Farm Cavanna site has been approved through the reserved matters application with reference P/2019/0173. Condition 26 on this decision notice states “Prior to the first occupation of any of the units, full details of the ramped access to the southern boundary of the site to link up with the site to the south shall be submitted to the Local Planning Authority for approval. The approved scheme shall be completed prior to any works being undertaken in phase 2 of the development as indicated in the approved phasing plan (referenced EX-09-36 version L, received 17.02.2020).” These details were submitted on 16th March 2021, to discharge this condition. A S38 has been submitted under the current reserved matters approval.*

*It is noted that the red line for this reserved matter application excludes this area. This application has been submitted to reflect those areas where changes have occurred from the previous approval, to accommodate the 5 x additional dwellings which are proposed. This is considered acceptable.*

#### *Electric vehicle parking bay*

*It is noted that the applicant has submitted details relating to the provision of electric vehicle charging points (EX-09-72B). The drawing identifies that a total of 19 electric charging points has been provided for the site. Referencing the Torbay Local Plan (2012 – 2030) Parking Standards (Appendix F) it is noted that for dwelling houses, a total of two car parking spaces should be provided of which one should be an electric charging facility space. This is considered acceptable.*

#### *Swept path analysis*

*The applicant has submitted an updated swept path analysis drawing (18.605/609 – B) to show a refuse vehicle accessing the site in a forward gear, servicing the site and egressing in a forward gear. The encroaching of the refuse vehicle adjacent to dwelling no. 110 has now been amended. This is considered acceptable.*

#### *Conclusion*

*Based upon the information submitted by the applicant at the time of writing, the Highway Authority has no objection to the proposed development.*

South West Water- No objection

Paignton Neighbourhood Plan Forum – No comment received

Torbay Council Housing Services – no objection to the siting of the additional units.

Police Architectural Liaison Officer - *From a designing out crime, fear of crime and antisocial behaviour (ASB) perspective I would like to advise that the police raise no objections to the proposal. It is pleasing to note the Secured by Design statement and that many important factors appear to have been considered but there is some concern over the level of tandem 'in line' parking for the scheme. To assist please find the following information, advice and recommendations for consideration:-*  
*As the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision making process for the planning authority please find the following which is to inform the applicant:-*

*ADQ creates security requirements in relation to all new dwellings. All doors that provide entry into a building, including garage doors where there is a connecting door to the dwelling, and all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24*

*As such it is recommended that all external doors and easily accessible windows are sourced from a Secured by Design (SBD) member-company List of Member Companies (Alphabetical). The requirements of SBD are that doors Accredited Product Search for Doors and windows Accredited Product Search for Windows are not only tested to meet PAS 24 (2016) standard by the product manufacturer, but independent third-party certification from a UKAS accredited independent third-party certification authority is also in place, thus exceeding the requirements of ADQ and reducing much time and effort in establishing provenance of non SBD approved products.*

#### *Parking*

*It is recommended that the level of tandem 'in line' design of parking for the scheme is reconsidered, as it is likely, for practical and convenience purposes, that only one of the spaces will be used thus encouraging unplanned parking elsewhere, which has the potential to create parking related problems and issues. Also the problems associated with 'in line' parking can be further exacerbated when designed to the front of a car port or garage.*

*It is recommended that the parking space in garages is not included in the overall parking provision count, as statistically garages are not always used as intended but rather as extensions of the homes for storage or uses other than parking.*

*Side by side parking is a much preferred method of parking as it is likely to encourage its use and reduce the potential for unplanned parking.*

#### Key Issues/Material Considerations

##### Planning Officer Assessment

1. Principle of Residential Development
2. Design and Visual Impact

3. Impact on Residential Amenity.
4. Impact on Highway Safety.
5. Ecology and Biodiversity
6. Drainage and Flood Risk
7. Low Carbon Development and Climate Change

1. Principle of development

The principle of residential development of this site is already established through the extant outline planning permission for up to 192 dwellings.

The application site is located within a wider Strategic Delivery Area (SDA), as designated in the Torbay Local Plan under Policy SS1, which identifies areas for the delivery of growth and change in Torbay for the period of the Local Plan. In addition to the above the site is also part of a wider Future Growth Area as identified within Policy SS2 of the Torbay Local Plan. The site forms part of the Paignton North and Western Area SDA and Policy SDP3 of the Torbay Local Plan identifies that 840 houses could be provided within the Brixham Road/Yalberton Future Growth Area over the plan period. Concomitantly the Paignton Neighbourhood Plan identifies the site as being a Future Growth Area.

This reserved matters application therefore only seeks consent for the proposal's appearance, landscaping, layout and scale. The previous Reserved Matters application (P/2019/0173) gave consent for 187 dwellings, this Reserved Matters application relates to an area to the south and west of the site and seeks consent for the addition of 5 new dwellings (2 of which would be affordable units), which brings the total up to 192.

It is noted that the Council cannot currently demonstrate a 3 or 5 year housing land supply. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision making process. The 'tilted balance' in favour of sustainable housing development therefore applies subject to the detail wording of the NPPF Para 11 and the associated footnotes.

Given the forgoing the principle of additional residential dwellings on the site is acceptable in principle. This broad position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the forthcoming sections of this assessment.

## 2. Impact on Visual Amenity

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.

Local Plan Policy SS2 (TLP) 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). Policy SS8 (TLP) 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. Policy SS11 (TLP) 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 Policy DE1 (TLP) outlines a number of factors towards securing development that is well-designed and that respects Torbay's special qualities. Further to these Local Plan policies Policy PNP1 (c) and (d) of the Paignton Neighbourhood Plan.

An indicative layout was provided as part of the outline application, this was subsequently included in condition 1 of the outline permission P/2014/0938 (as

amended by P/2018/0977). This condition states that the submitted reserved matters shall be consistent with the approved drawing referenced 3445/203/M).

Condition P1 of the outline planning permission requires a reserved matters application to be 'in complete accordance' with several parameters plans, including the Development Areas Plan (ref: 3445/203/M).

The Development Areas Plan defines the maximum spatial extent of the residential development parcels, within which a maximum quantum of development (up to 192 dwellings) can be located. Together, the spatial extent of the development parcels and the total quantum of development approved by the outline application provides a clear indication of the level of density that Officers and Members have considered to be acceptable on the site.

The Reserved Matters application accords with the parameter plans, including the Development Areas Plan.

The density of the developable area of the housing aspect of the whole site (i.e. not including the Cirl Bunting compensation land and areas of public amenity) is 42 dwellings per hectare. The adjacent site to the south-east has a density of 44.5 dwellings per dwelling.

The slight increase in density relates well to the existing density of development to the south of the site.

The proposal seeks an additional 5 dwellings to the south-west and west of the site in the revised plots 107, 114, 130, 145 and 165, this involves breaking 2 previously approved terraces into 2 sets of semi-detached properties. Consequently plots 107, 130, 145 & 165 would be semi-detached properties and with plot 114 being a mid-terrace property.

This would result in additional parking in this area however additional space has been provided for the additional units as a result of making better use of the space to the west in place of an area of steep green space between the dwellings and the

Greater Horseshoe Bat dark corridor. The use of the additional space allows for the additional units and parking to be sited in this area without significant visual impacts.

The increase in units results in an increase in affordable homes from 56 to 58.

The alterations to the south-east of the site result in alterations to the layout approved under Reserved Matters application P/2019/0173 to provide an area that works better with the topography in terms of level accesses to dwellings and more useable rear gardens. No additional dwellings are proposed here.

The proposed development seeks to respect the existing character of the area in terms of design and with regard to the palette of materials proposed.

The building frontages provide active frontages with minimal use of blank walls, particularly in prominent locations and corners.

The use of a variety of house types in terms of design provides interest in the street scene and aids in providing identity to the development site.

The facing materials proposed are made up of red brick, light coloured render with concrete roof tiles. The palette of materials is considered to reflect the local vernacular and are deemed to be acceptable. The use of a mix of render and brick buildings provides some contrast between properties in order to provide identity between properties.

Bearing the above points in mind the proposal is deemed to comply with Policy DE1 (Design) of the Local Plan which, amongst other criteria, requires development to be uncluttered and attractive, acknowledge local character and develop distinctive character in townscape and landscape terms, relate to the surrounding built environment in terms of scale, height and massing and have a clear urban structure and grain that integrates with the surrounding context.

Housing services have confirmed that the additional affordable units are suitably located.



It is considered that the form and layout of the scheme makes effective use of the land and responds well to the topography of the site. The design enables the creation of strong building frontages which enable active surveillance to increase safety and security. The overall layout and form appears to respond effectively to the topography of the site and is reasonably consistent with more recent development in the area.

Given its position, landscaping, and design within the topography of the site, it is considered that the scheme would have limited visual effects on the more open rural areas beyond the site to the west.

It is considered that the proposed appearance, landscaping, layout and scale would not result in unacceptable harm to the character of the area. Based on the 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, SS11, H1 and DE1 of the Torbay Local Plan, Policies PNP1 and PNP21 of the Paignton Neighbourhood Plan and the NPPF.

### 3. Impact on Residential Amenity

Policy DE3 of the Torbay Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers, the closest of which are to the south of the application site. 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 construction phase will naturally result in some temporary impacts, however the outline permission includes a condition requiring the submission of a Construction Method Statement which includes a restriction on the hours of construction and requires details of delivery and construction movement and parking to be submitted and approved by the Local Planning Authority prior to development.

In general, the additional units can be sited without compromising the external amenity areas for the properties and in general these still accord with the requirements of Policy DE3 (TLP). There are sufficient cycle and bin storage areas. All of the proposed dwellings comply with the internal space standards identified in the Local Plan and all provide suitable levels of parking.

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, Policy PNP1 of the Paignton Neighbourhood Plan.

#### 4. Impact on Highway Safety

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.

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.

There are minimal alterations to the road layout approved by application P/2019/0173 and the proposal provides suitable off street parking spaces including electrical charging points.

The proposal is considered acceptable on highway and movements grounds, and in accordance with the Policy TA2 of the Torbay Local Plan, The Paignton Neighbourhood Plan and the NPPF.

#### 5. Ecology & Biodiversity

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.

The habitats within the site boundary comprise poor semi-improved grassland fields bound and divided by species rich and species poor hedgerows. The site is within a sustenance zone for greater horseshoe bats associated with the South Hams Special Area of Conservation (SAC). A revised HRA has been undertaken which confirms that the proposal, with all the avoidance and mitigation measures secured by condition and/or obligation, being implemented in full, will not adversely affect the integrity of South Hams SAC either alone or in-combination with any other plans or projects.

In light of the foregoing the proposal's ecological impacts are considered acceptable, having regard to Policy C4 and NC1 of the Torbay Local Plan.

#### 6. Flood Risk and Drainage

A condition relating to the submission of drainage details prior to the commencement of development was added to the Outline permission P/2014/0938 (as amended by P/2018/0977). As such these details will be provided to the Council as part of a separate assessment exercise. Sewerage details were also detailed as part of the outline permission as follows:

- a) a detailed survey and evaluation of the public foul sewerage network has taken place (at the Owner's expense) to identify improvements necessary to be funded in advance and executed to accommodate the discharge of foul sewage from the development; and

b) the Owner has submitted an application to the relevant Sewerage Undertaker for a public foul sewer requisition under s98 of the Water Industry Act 1991 (which shall include the provision of public sewerage improvement works identified as necessary).

## 7. Low Carbon Development and Climate Change

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources. Policy ES1 seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

The proposal is supported by an energy statement that presents proposed measures by the developer to reduce CO<sub>2</sub> emissions, delivered through a combination of passive and active design measures, in the form of demand-reduction measures and energy-efficiency measures, including the use of solar panels.

The statement includes an energy assessment and the subsequent energy strategy has been prepared to aligned with the Energy Hierarchy, with focus on sustainable building design (reduction of energy consumption at source) and provision of energy efficiency measures. The proposed strategy is based on utilising passive design measures, well insulated and air tight building fabric and high efficient gas fuelled heating system (with flue gas and/or waste water heat recovery) with the installation of Photovoltaic Panels for the provision of supplementary renewable energy generation such that a 20% reduction in all energy use and CO<sub>2</sub> emissions is achieved through LZC/renewable technology

The development is considered suitable for approval subject to satisfactory conditions to secure the measures outlined within the application Energy Statement. The development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF.

## **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

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 a travel plan that seeks to provide the parameters to help the development minimise the use of the private car. This for example includes providing electrical charging points and cycle parking facilities for all dwellings and good-quality pedestrian and cycle networks within the development.

### **The Economic Role**

Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development.

Once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

There are no adverse economic impacts that would arise from this development.

In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional housing, including two additional affordable units. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

On balance, the social impacts of the development weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on ecology and biodiversity and drainage. These matters have been considered in detail above.

The environmental benefits identified are marginal in the case of this application but net gains through additional hedgerows, buffer zones, an orchard, wood planting and the Cirl Bunting mitigation land are provided over the wider site.

The proposal will include bicycle storage, and the proposed development is in a sustainable location inasmuch as it would make use of a brownfield site within the existing urban area.

It is concluded that the environmental impacts of the development weigh positively within the planning balance.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is considered to represent sustainable development.

### **HRA**

HRA: The application site is within a strategic flyway/sustenance zone associated with the South Hams SAC. A revised HRA to that undertaken as part of application P/2019/0173 has been completed.

The competent authority is satisfied that the development, as proposed, with all the avoidance and mitigation measures secured by condition and/or obligation, being implemented in full, will not adversely affect the integrity of South Hams SAC either alone or in-combination with any other plans or projects. The competent authority is satisfied there is no requirement to progress to Stages 3 and 4 of the HRA process.

### **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.

#### 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

##### S.106 Agreement

The outline permission secured planning contributions towards education, lifelong learning, greenspace and recreation, sustainable transport, waste management, habitat monitoring and contributions towards improvements to the Brixham Road and Yalberton Road. This also included a payment of £437,500 towards alternative habitat for 5 pairs of cirl bunting which the applicant has now paid.

#### Affordable Housing

Affordable housing provision for this development has been agreed 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 is expected to secure 58 affordable units, an additional 2 units to that approved by application P/2019/0173.

The location of the affordable units has been carefully considered to ensure that, in line with the Planning Contributions and Affordable Housing SPD (February 2017), there isn't an unacceptable clustering (i.e. a cluster of more than 24 dwellings).

The applicant will build and transfer the affordable housing elements of the proposed development to a Registered Provider in line with the terms outlined within the Section 106 agreement.

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

The site already has outline planning permission and is identified for housing within the Development Plan and the proposal is consistent with the approved outline application for the site.

The proposal is considered acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; would provide an adequate standard of living accommodation and is acceptable in terms of access, ecology and flood risk matters.

The proposed development is considered to represent sustainable development and is acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, the NPPF, and all other material considerations.

### **Officer Recommendation**

Approval: Subject to;

The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;



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

### Conditions

1. The development shall be undertaken in strict accordance with the approved Ecological Mitigation and Enhancement Strategy (Green Ecology, dated June 2021). Details of how mitigation measures have been adhered to shall be submitted to the LPA prior to occupation of a phase.

Reason: In the interests of the amenities of the area and in the interests of biodiversity in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

2. The development shall be undertaken in strict accordance with the approved Construction Environmental Management Plan (revision 3, received 24.02.2020).

Reason: In the interests of the amenities of the area and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

3. The development shall be undertaken in strict accordance with the approved Landscape and Ecological Management Plan (ref 0733-LEMP-FM7).). Details of how mitigation measures have been adhered to shall be submitted to the LPA prior to occupation of a phase. All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of the amenities of the area and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

4. The development shall be undertaken in strict accordance with the approved Phasing plan application drawing EX-09-36 version L (received 17.02.2020).

Reason: In the interests of the amenities of the area and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

5. Notwithstanding the approved plans, no external lighting should be installed within the development, including to residential dwellings, within residential curtilages and garages, unless previously approved in writing by the Local Planning Authority to ensure no adverse impacts on bats.

Reason: In the interests of biodiversity in accordance with Policies DE1 and NC1 of the Torbay Local Plan 2012 to 2030.

6. The development shall be undertaken in strict accordance with the approved Lighting Plans and Lighting Impact Assessment documents.

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

7. Mitigation monitoring is to be implemented in accordance with the submitted Greater Horseshoe Bat Monitoring Strategy (REF: 0733-GHB-FM 2). Details of how mitigation measures have been adhered to shall be submitted to the LPA prior to occupation of the first dwelling of each phase.

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

8. The development shall be undertaken in strict accordance with the measures in the approved arboricultural impact assessment and arboricultural method statement which includes the implementation of tree and hedgerow protection measures pre-commencement and throughout the construction phase of the development.

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

9. Prior to the occupation of each dwelling hereby approved, their associated car parking spaces, 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.

10. All planting, seeding and turfing comprised in the approved details of landscaping within each phase of the development shall be carried out in the first planting and seeding season following the practical completion of the dwellings in that phase , or at such other time as agreed by the Local Planning Authority in writing. Any trees or plants which within a period of 5 years from the 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 similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of the amenities of the area and in accordance with Policies SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030.

11. Prior to the first occupation of each phase of the development hereby permitted, the scheme of hard landscaping treatment for that phase shall be fully installed in accordance with the approved plans. Once provided, the agreed hard landscaping treatment shall be retained for the life of the development.

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

12. Prior to the occupation of any dwelling hereby approved, the refuse and recycling facilities shown on the approved plans shall be provided for that dwelling. Once provided the 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 Torbay Local Plan 2012-2030.

13. Prior to the first occupation of each of the dwellings hereby approved, bicycle storage facilities shown on the approved plans shall be provided for those dwellings. Once provided, storage arrangements shall be retained and maintained 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.

14. The development shall be undertaken in strict accordance with the approved construction method statement at all times.

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

15. Prior to the first occupation of the dwelling to which they relate, the boundary treatments shall be fully installed in accordance with the approved plans and shall be retained for the life of the development and no additional or different fences, gates or walls provided without agreement in writing from the Local Planning Authority.

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

16. Upon occupation of each dwelling, biodiversity information packs shall be provided to all new occupiers of the dwellings hereby approved, with the packs including as a minimum, clear and precise information on the importance of maintaining the dark areas and corridors where no additional external lighting and no removal of boundary hedges will be allowed in the interests of protected species. The details of the information to be included within these information packs shall be approved in writing by the Local Planning Authority prior to the occupation of the first dwelling.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

17. The development hereby approved shall be constructed in accordance with the levels shown on the approved plans reference 18-605-620 (D) (External Works Overall) received 24.06.2021) unless otherwise agreed in writing by the Local Planning Authority.

Reason; In the interests of the visual character of the area, in accordance with Policy DE1 of the Torbay Local Plan.

18. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015 Order (or any Order revoking or re-enacting that Order with or without modification) no development falling within Article 3, Schedule 2, Part 14, Class H - "installation or alteration etc. of wind turbine on domestic properties" shall take place 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 the interests of the amenities of the area and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030

19. The development hereby approved shall be constructed in full accordance with the materials specified on the approved plans unless otherwise agreed in writing.

Once constructed no further changes to the masonry finish including colour shall be permitted without the prior consent of the Local Planning Authority.

Details of any under build and or retaining walls exceeding 300mm in a phase shall be provided prior to the occupation of any dwelling within that phase.

Reason: To ensure a satisfactory form of development and in accordance with the requirements of policy DE1 of the Torbay Local Plan 2012-2030.

20. Accordance with energy statement

The development shall be undertaken in strict accordance with the approved energy statement at all times.

Reason: In interests of tackling climate change and securing low carbon development, in accordance with Policies SS14 and ES1 of the Torbay Local Plan 2012-2030 and guidance contained within the NPPF.

21. The residential development hereby approved shall make provision to an overall ratio of one integral nestbox per dwelling. Details of the siting and number of boxes shall be provided to the Local Authority for approval prior to the occupation of any dwellings on site, the approved boxes shall be installed prior to the occupation of the dwelling to which they relate and shall be retained and maintained at all times thereafter.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

22. Notwithstanding the provisions of Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) 2015 Order (or any Order revoking or re-enacting that Order with or without modification) no windows shall be installed in the west facing side elevations of plots 107 & 145 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 the interests of the amenities of the area and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030

#### Relevant Policies

SS2 - Future Growth Areas  
SS3 - Presumption in favour of sustainable development  
SS4 - The economy and employment  
SS5 - Employment space  
SS6 - Strategic transport improvements  
SS7 - Infrastructure, phasing and delivery of employment  
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  
DE3 - Development Amenity  
ES1 - Energy  
M3 - Preserving and safeguarding of limestone resources and key local building stone

C1 - Countryside and the rural economy  
C4 - Trees, hedgerows and natural landscape features  
NC1 - Biodiversity and Geodiversity  
H1 - Applications for new homes  
H2 - Affordable Housing  
DE3 - Development Amenity  
SC1 - Healthy Bay  
SC2 - Sport, leisure and recreation  
SC3 - Education, skills and local labour  
HE1 – Listed Buildings

## TORBAY COUNCIL

Application Site Address	Land to the southeast of 39 Wall Park Road, Brixham.
Proposal	Outline application for 3 dwelling houses and associated improvements to the private access lane, with all matters reserved.
Application Number	P/2019/0594
Applicant	Mr & Mrs King
Agent	Ian Hobson Designs
Date Application Valid	02.08.2019
Decision Due date	27.09.2019
Extension of Time Date	
Recommendation	Approval: Subject to the planning conditions outlined within the report, as updated, with the final drafting of conditions and the negotiation/completion of a S106 Legal Agreement to secure Affordable Housing Contributions and contributions to mitigate the recreational impacts of the development on Berry Head , as outlined within the report, and addressing any new material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director of Planning, Housing and Climate Change.
Reason for Referral to Planning Committee	Certain issues have come to light as a result of the legal process to complete the planning obligation and an amendment of the original committee resolution is now required.
Planning Case Officer	Craig Davies



## Location Plan



## Update July 2021

On 14th September 2020 Planning Committee resolved to approve application P/2019/0594 subject to:

- i) The conditions set out in the submitted report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;
- ii) The completion of a S106 Legal Agreement to secure the heads of terms as set out in the submitted report, in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document and the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to the Assistant Director of Planning, Housing and Climate Emergency; and
- iii) The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

As part of the due diligence process to prepare the section 106 legal agreement, it has come to the attention of officers that the access lane from Wall Park Road to the site is not in the applicant's ownership, although they have a right of access. As a result, it

will not be possible to oblige the developer to set up a management company to ensure long-term maintenance of the lane. Officers are satisfied that an acceptable form of development will be achieved because a condition requires that a specification for the resurfacing of the lane is agreed prior to commencement of the development, and that the lane is made up to that specification within an agreed timescale.

Additionally, the ecologist who has advised the Council in this matter has had cause to review his advice and now considers that a 5m dark corridor will not be necessary because that hedge is not part of a transit route for Greater Horseshoe Bats. He remains of the opinion that hedgerows are an important feature in the landscape and would like to see the hedge on the south western boundary retained. Council officers consider that this request can be adequately secured by a landscaping condition.

The Council's legal officer has advised that, while legally acceptable, the proposed amendments are significantly different from those previously approved by the Committee and that, as a result, an amended resolution is required.

### **Officer Recommendation**

Approval: Subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;
2. The completion of a S106 Legal Agreement to secure off-site Affordable Housing Contributions in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document, and contributions to mitigate the recreational impacts of the development on Berry Head in accordance with the adopted 'Recreational Pressure on Berry Head' 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 of Planning, Housing and Climate Emergency, 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. Lighting Assessment**

All reserved matters applications shall include a Lighting Assessment detailing measures to minimise indirect impacts from lighting associated with the pre-construction, during construction, and operational activities, and demonstrating how the best practice (Bat Conservation Trust / Institution of Lighting Professionals, 2018) guidance has been implemented. This shall include details such as artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence, and shall ensure that the hedgerow along the southwestern boundary of the site is kept to under 0.5lux. Once agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with the approved details.

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

## **3. Construction Environmental Management Plan – Biodiversity**

All reserved matters applications 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 SS8 and NC1 of the Torbay Local Plan 2012-2030.

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

All reserved matters applications 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, and which, for the avoidance of doubt shall include the hedgerow on the south-western boundary of the site.
- 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 post-construction site management shall be undertaken in accordance with the LEMP.

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

#### **5. Flood risk**

As part of any reserved matters application 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 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.

## **6. Biodiversity enhancement measures**

As part of any reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.

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.

## **7. 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.

## **8. Access lane**

Prior to the commencement of works on site, details of a scheme of improvements to the access lane serving the site, including (but not limited to) resurfacing, widening, and upgrading the surface water drainage system, where applicable, shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the scheme of improvements to the access lane shall be implemented in full in

accordance with a timetable that shall have been agreed in writing with the Local Planning Authority before development continues above slab level.

Reason: To ensure that the access is suitable, and in accordance with Policies TA2, ER1 and ER2 of the Torbay Local Plan 2012-2030 and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

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

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development.

### **10. Energy Efficiency and Low Carbon Development**

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 details shall include the provision of electric vehicle charging facilities to all dwellings.

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 BH7 of the Brixham Peninsula Neighbourhood Plan, and Policies SS14 and TA3 (and Appendix F) of the Torbay Local Plan 2012-2030.

### **11. Existing Hedge Which is to be Retained**

In this condition "hedge" means the existing hedge on the south-western boundary of the site; and paragraphs (a) and (b) below shall have effect until the expiration of 1 year from the date of the occupation of the final dwelling to be occupied on the site for its permitted use.

(a) The hedge shall not be cut down, uprooted or destroyed, nor shall the hedge be topped, lopped or cut back other than in accordance with the details agreed in the Landscape and Ecological Management Plan approved pursuant to condition 4 of this decision notice. Any hedgerow management approved shall be carried out in accordance with British Standard 3998 (Tree Work).

(b) If any part of the hedge is removed, uprooted or destroyed or dies, a replacement hedge or part thereof shall be planted at the same place and shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

(c) The erection of fencing for the protection of the hedge shall be undertaken in accordance with the approved plans and particulars before any equipment,

machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

Reason: In the interests of biodiversity and visual amenity

### **Original Officer Report:**

#### **Site Details**

*The application site comprises part of the rectangular field to the southeast of Nos. 31-39 Wall Park Road, as well as the private access lane leading from Wall Park Road to Brixham Football Club. The land to the northeast and southeast of the field forms part of the Brixham Urban Fringe & AONB (Berry Head and Sharkham) Future Growth Area in terms of the Torbay Local Plan and comprises suburban residential development (the Bloor Homes development), much of which is complete. The application site lies in the northwestern half of the field with open space between the northwestern boundary of the site and the rear boundaries of Nos. 31-39 Wall Park Road, and open space between the southeastern boundary of the site and the residential development to the southeast. The southwestern boundary of the site is defined by an established hedgerow, with the land further to the southwest comprising Brixham Football Club.*

*The site is located within the South Devon Area of Outstanding Natural Beauty, the Greater Horseshoe Bat Sustenance Zone, and the Minerals Safeguarding Area.*

#### **Description of Development**

*The application seeks outline planning permission for 3 dwellings with associated access and highway improvements, with all matters reserved.*

*The application is accompanied by an indicative site layout plan that shows the potential layout of 3 detached dwelling houses on the site accessed from Wall Park Road via a private access lane. The site layout plan also shows a dark corridor along the southwestern boundary that would also provide a means of access to the southeastern half of the field (which is under separate ownership).*

#### **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 Brixham Peninsula 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**

**Pre-Applications**

*DE/2016/0444: Construction of 26 dwellings.*

*The written response to the pre-application enquiry concluded that “the residential development of the site has the potential to be acceptable subject to the submission of further information including but not limited to landscape and visual impact assessments, ecological surveys, details of how waste will be collected and surface water drainage information”.*

**Applications**

*P/2019/0139: Use of field as garden (certificate of lawfulness). Part allowed / part refused 15.04.2019.*

*P/2017/0227: Formation of 3 x 2 bedroom bungalows. Approved 19.07.2017.*

*P/2016/0395: Demolition of existing barn & erection of new dwelling. Approved 01.09.2016.*

*P/2011/0934: Incorporation of 1 acre of land behind house into boundary of house extending garden. Refused 22.11.2011.*

**Summary of Representations**

*2 letters of objection were received in which the following matters were raised:*

- *The proposed access is inadequate and too narrow.*
- *Surface water flood risks relating to the access lane.*
- *Traffic congestion, access problems, and highway safety issues pertaining to the access lane.*
- *The need for measures to protect residential amenity (safety, access, noise) during construction works.*
- *Previous application for the use of the site as a garden was refused.*
- *The site is a greenfield site and should be retained.*
- *Access issues for refuse collection vehicles.*

*1 neutral letter of representation was received in which the following matters were raised:*

- *Surface water flood risks relating to the access lane.*
- *The access lane is narrow and has no passing places.*
- *Access and highway safety concerns.*



## **Summary of Consultation Responses**

### **Brixham Town Council:**

*Brixham Town Council objected to the proposal for the following reasons:*

*“1. The proposed development is outside the settlement boundary and on a site rejected by the BPNP Housing Site Assessment.*

*“2. Although adjacent to the settlement boundary, the development does not satisfy the provisions set out in BPNP Policy BH9 – Exception Sites.*

*“3. The proposed development would be detrimental to the character and visual amenity of the AONB.*

*“4. The proposed options for mitigation of harm to important flora and fauna (specifically greater horseshoe bats and existing hedgerow) are not considered practicable, due to the Local Authority and other agencies lacking the resources to ensure that such mitigation is maintained in the long term.”*

### **Devon County Council Ecologist:**

*Regarding Greater Horseshoe Bats, the consultee response stated:*

*“The site is within the Sustainance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats.*

*Ecology report indicates that the grassland to be lost to development does not provide suitable GHB foraging habitat. The grassland onsite offers negligible foraging opportunities for GHB s due to its amenity nature and species poor composition – this conclusion is considered valid.*

*Note that no bat surveys have been carried out, but we currently consider that impacts can be assessed without survey.*

*The only hedgerow onsite will be retained and clarification has been provided which confirms the existing vehicular access onto the site will remain.*

*This hedgerow is described as being ‘considered suitable for foraging/commuting bats and therefore it must be ensured that it is not illuminated’.*

*Further information has been provided by the ecologist in August 2020, and this confirms that whilst the hedgerow does provide suitable bat commuting/foraging habitat, it is not considered that this hedgerow is used by GHBs associated with the South Hams SAC.*

*The hedgerow is not considered an important landscape feature for bats from the South Hams SAC due to the urban nature of the surrounding land use and poor connectivity to both the Berry Head SSSI roost site, and the wider landscape to the south of the scheme. The Bloor Homes development to the direct south of the scheme has meant this hedgerow has become isolated from linkages into the wider countryside likely to be of highest value to GHBs.*

*By following the flow chart provided in the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC.*

*There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.*

*No mitigation required with respect to GHBs as the further information provided by the ecologists confirms that the proposals will not have any impact upon GHBs using the South Hams SAC and the Berry Head roost site.”*

*Regarding recreational impacts on Berry Head, the consultee response stated: “Policy NC1 of the Torbay Local Plan states that “development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.*

*This site falls within the Brixham Peninsula (Policy SDB1) and in accordance with the Supplementary Planning Document on Recreational Impacts on Berry Head, Torbay Council will be seeking S106 contributions of £95 per dwelling.*

*The HRA developed and agreed with Natural England for the Torbay Local Plan concluded that as long as the s106 contributions as described above are implemented as part of development in the Brixham Peninsula, development in this area will have no adverse effect upon the integrity of any of the European sites and the conservation objectives would be sustained.*

*In order to mitigate the potential recreational impacts on the protected site the applicant needs to make the agreed payment, as per the Supplementary Planning Document on Recreational Impacts on Berry Head.*

*Financial contribution per dwelling, as per the Torbay Local Plan and supplementary planning document, to mitigate recreational impacts on the South Hams SAC – these contributions will be secured via a S.106 agreement.”*

*Regarding priority habitats (hedges), the consultee response stated: “The updated scheme proposals and ecology report provided in August 2020 states that existing vehicular entrance within the hedge the south-eastern boundary will not require widening. No direct impact to this hedgerow is now proposed.*

*Ecology reports indicates that the south east hedgerow will be kept unlit, so it provides a dark corridor for foraging/commuting bat species. The hedgerow will be protected from development due to the creation of a 5m buffer along the eastern edge.*

*Hedgerow will be protected throughout construction and this will be detailed in a CEMP, with the creation of this document being a condition of this outline permission.*

*The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development and a 6ft high closed board fence will be installed to prevent it the 5m buffer being illuminated.*

*Condition: A detailed Lighting Strategy will be conditioned for agreement with the LPA. The strategy will minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to under 0.5lux.*

*Condition: A Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase, will be conditioned. This will need to be agreed with the LPA.*

*Condition: A Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management, will be conditioned. This will need to be agreed with the LPA.”*

*Regarding bat flight lines, the consultee response stated:*

*“Ecology report states that a hedgerow to the south-east of the site is suitable in supporting foraging/commuting bats and the updated ecology report states that this hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening.*

*No bat activity surveys undertaken to accompany planning application, and this is considered sufficient.*

*The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development and a 6ft high closed board fence will be installed to prevent it the 5m buffer being illuminated above 0.5 lux.*

*Further Information Required: Further clarity is still required with regards to the future ownership/ management of both the hedge and the close bordered fence. As stated in my previous comments, specific details of management can be submitted at RM but certainty is required from the applicant at this stage that the hedgerow and fence will be maintained and managed to ensure the dark corridor remains functional for bats.*

*Condition: The details for reserved matters will include the submission of a Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.*

*Condition: The details for reserved matters will include the submission of a detailed Lighting Strategy for agreement with the LPA. The strategy will minimise indirect impacts from lighting associated with the pre-construction, during construction and*

operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to under 0.5lux

*Condition: The details for reserved matters will include the submission of a Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.*

*Regarding dormice, the consultee response stated:*

*“No dormice surveys were undertaken to accompany planning application and no detail provided as to the suitability of the south-eastern hedgerow for dormice. This south-eastern hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening – no impacts upon dormice.”*

*Regarding badgers, the consultee response stated:*

*“Signs of badgers checked when site walkover undertaken. No signs of badger present during site surveys.*

*Condition: Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority.”*

*Regarding Cirl Buntings and nesting birds, the consultee response stated:*

*“Site is within a Cirl Bunting consultation zone. Site walkover indicates no suitable Cirl Bunting foraging habitat onsite or within the site’s locality. Hedgerow is suitable in supporting nesting birds and this habitat will be unimpacted.*

*No further surveys/mitigation required if the following condition is provided.*

*Condition: No vegetation clearance shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.”*

**Natural England:**

*“No objection. Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites.”*

*The consultation response also set out general advice on other natural environment issues.*

**County Archaeologist:**

*“The proposal is sited in an area of archaeological potential. The fields in this area are recorded as ‘Wall’ or ‘Wall Park’ on the mid-19th century Tithe Map. A Roman coin*

*has also been found in the vicinity. This may indicate the presence of buildings of the Roman period below the present ground surface.*

*As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.*

*I recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.*

*If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:*

*'No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.*

*Reason:*

*'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of archaeological evidence that may be affected by the development'*

*This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.*

*I would envisage a suitable programme of work taking the form of archaeological monitoring of consented groundworks and the recording of any features or finds that are observed. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines."*

**Torbay Council's Highways Development Engineer:**

*No objection.*

**South West Water:**

No objection.

**Torbay Council's Waste Client Manager:**

Response pending. A verbal update will be provided at the meeting of the Planning Committee.

**Key Issues/Material Considerations**

**Planning Officer Assessment**

1. Principle of Residential Development.
2. Design and Visual Impact.
3. Quality of Residential Environment
4. Impact on Neighbouring Amenity.
5. Impact on Highway Safety.
6. Ecology and Biodiversity.
7. Drainage and Flood Risk.
8. Low Carbon Development.

**1. Principle of Residential Development**

*The proposal is for the development of three detached dwelling houses on unallocated greenfield land. The site is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, but is not designated as Countryside Area in terms of the Local Plan and is not designated as a Local Green Space in terms of the Neighbourhood Plan. In addition, it is noted that the site forms part of CIL Charging Zone 2 ("Outside 20 percent most deprived LSOAs and within the built up area") in terms of the adopted CIL Charging Zone maps.*

*It should be noted that, along with other parcels of land in the area ('Wall Park Extensions' and 'Berry Head Road', collectively comprising 15ha of greenfield land), the site was considered for allocation for housing as part of the making of the Brixham Peninsula Neighbourhood Plan. These parcels of land were assessed collectively and, as set out in the Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, were rejected for the following reasons:*

*"Development is likely to give rise to significant harm to the landscape character and visual amenity of this part of the AONB, within an area identified as being highly sensitive to change and subject to particular pressure, as well as likely to cause significant impacts to protected species. The sites are not deliverable because of the severe environmental constraints and are therefore not considered to be appropriate for allocation in the Neighbourhood Plan."*

*It is considered that the application site differs in terms of its context and situation compared to some of the other parcels of land that were collectively rejected for allocation, and that the suitability of the application site for residential development should be considered on its individual merits<sup>1</sup>. With due regard to the reasons set out*

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<sup>1</sup> In this regard it is worth noting that, whereas the assessment of the 'Wall Park Extensions' and 'Berry Head Road' sites in the Brixham Peninsula Neighbourhood Plan 'Housing Site

*in Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, specifically the concerns raised regarding the landscape character and visual amenity of the AONB, protected species and environmental constraints, it is considered that these concerns have been adequately addressed and/or mitigated as part of the application and that the site is deliverable for residential development subject to a number of planning conditions.*

*Policy E2 of the Neighbourhood Plan states that development outside settlement boundaries will need to meet the criteria in Policy C1 of the Local Plan. Similarly, Policy BH4 of the Neighbourhood Plan states that development that extends settlements onto adjoining greenfield sites will be considered in the context of Policy C1 of the Local Plan.*

*Policy C1 of the Local Plan states that, in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting.*

*It is important to note that the site is somewhat anomalous in that, while it is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, it is not designated as being within the Countryside Area in terms of the Local Plan. This reflects the site's unusual situation of being greenfield land that, following the construction of residential development (Bloor Homes) on the allocated site to the east, is now surrounded on three sides (northwest, northeast, and southeast) by residential development, with Brixham Football Club adjacent to its fourth side (the southwest). While the site previously had some level of attachment to the surrounding countryside prior to the adjacent Bloor Homes development, the site now comprises an enclave within adjacent development with a clear sense of separation and visual distinction from the surrounding countryside. It is therefore considered that the proposal does not amount to development in the open countryside, would not be away from existing settlements, would not result in the loss of open countryside, would not lead to the creation of urban sprawl, and would not encourage the merging of urban areas with surrounding settlements. (In this regard it is relevant that the site is not designated as being within a Settlement Gap as described in Policy E3 of the Neighbourhood Plan.) The proposal might more reasonably be considered as a form of infill development on land that, although being an open field, is privately owned and not a local green space, and is largely surrounded by residential development that forms the eastern edge of this part of Brixham. It is therefore considered that the proposal does not present any conflict with the considerations set out in Policy C1 of*

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Assessment' document concludes by stating that, "following a suggestion that these sites be considered for protection by way of a Local Green Space designation by the Statutory Consultee Natural England, this Neighbourhood Plan has allocated these sites as Local Green Space within site E4-4", the application site itself was in fact not included in the said Local Green Space designation. This would support the view that this site is a somewhat anomalous site that differs from some of the other parcels of land with which it was grouped, and that the site warrants careful consideration and assessment on its individual merits, as this report seeks to provide.

*the Local Plan, and that the proposal is therefore in accordance with Policies E2 and BH4 of the Neighbourhood Plan.*

*It is noted that the consultation response from Brixham Town Council asserts that the proposal should be considered in terms of the criteria set out in Policy BH9 of the Neighbourhood Plan, and that the proposal fails to meet the criteria. This policy, along with Policy C1 of the Local Plan, sets out certain types of developments that may be considered for land outside settlement boundaries as 'exception sites'. The intention of these policies is that, when dealing with land outside settlement boundaries that would not otherwise be considered suitable for development, exceptions may be considered for certain specified uses (for example agricultural development, affordable housing, touring caravans and tents, and various others) due to, for example, the specific locational needs of the said use or due to the challenges associated with delivering certain worthwhile but less profitable uses. In this instance it is considered that the application site can be considered suitable for development as the development constraints that have previously been identified have been adequately addressed within the proposal and can be adequately mitigated through the proposed planning conditions. It is therefore not considered necessary for the 'exception sites' criteria set out in Policy BH9 of the Neighbourhood Plan and Policy C1 of the Local Plan to be met.*

*Policy H1 of the Local Plan states that proposals for new homes on unallocated sites will be assessed against a set of criteria, proportionate to the scale of the proposal. The assessment of the proposal in relation to each criterion in Policy H1 is set out below:*

- 1. The need to provide a range of homes, including family homes, affordable homes, and opportunities for self-build homes, to meet the full objectively assessed needs as far as is consistent with other policies in the NPPF, Local Plan, and Neighbourhood Plan:*

*The proposed dwelling houses would be moderately sized and would be suitable for use as family homes. While the proposal is for market housing, the proposal also includes the payment of commuted sums for affordable housing in accordance with Policy H2 of the Local Plan, as set out in more detail later in the report. The proposal would therefore make a positive contribution towards addressing local housing needs.*

- 2. The maintenance of a rolling 5 year supply of deliverable sites:*

*It should be noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed. In this regard it is important to note, however, that the Council's position with respect to the maintenance of a 5-year or 3-year housing land supply is of less important in this case as the 'tilted balance' in favour of sustainable development does not apply to sites that are located within the AONB, as is the case with this proposal.*

- 3. The opportunity to create mixed, balanced and prosperous communities, including employment provision, with good access to social and environmental infrastructure:*

*The proposal would provide dwelling houses that would be large enough for use as family homes, would be in an acceptable location with respect to social infrastructure, and would be well located with respect to environmental infrastructure. While the*



*proposal would not involve any new employment provision, the proposed dwellings would be in an acceptable location with respect to existing employment opportunities, noting that the eastern edge of Brixham Town Centre would be around 700m to the west. The site is within walking distance of local schools and bus routes are close by.*

*4. The creation of high quality living environments, including the protection of the amenity, recreational opportunities and access to facilities of all residents:*

*The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site in a layout that would provide an acceptable quality of living environment, including ample indoor dwelling space and outdoor amenity space, and without resulting in any unacceptable impacts on the amenities of neighbouring properties.*

*5. The capacity of physical, social and environmental infrastructure, including highways and sewerage, to accommodate development:*

*The proposed dwellings would be in an acceptable location with respect to existing social and environmental infrastructure. Regarding physical infrastructure capacities, it is reiterated that Torbay Council's Highways Engineer and South West Water have assessed the proposal and have raised no objections. It is noteworthy that the proposal also includes improvements to the private access lane which would be secured using a planning condition.*

*6. The objective to maximise the re-use of urban brownfield land and promote urban regeneration, whilst creating prosperous and liveable urban areas:*

*This criterion is not directly applicable to the proposal as the proposal relates to greenfield land rather than to brownfield land. It is nevertheless noted that, although the proposal is for a relatively low dwelling density of around 15 dwelling units per hectare, the proposal would not amount to an inefficient use of the site, noting that the remainder of the open field (the southeastern part) would still be able to take access from the cul-de-sac at Pilgrim Close to the east in the event that this land were to be considered for development in the future.*

*7. The landscape and biodiversity impacts of the proposal and the objective to achieve a net gain in biodiversity:*

*Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape and, on balance, the proposal's impact on the landscape character is considered acceptable.*

*The application has been accompanied by an ecology report, and the proposal's ecological impact is assessed in detail in the consultation response from the Devon County Council Ecologist and in the section on ecology later in this report. The proposal has been designed to accommodate the retention of the hedgerow along the southwestern boundary as a dark corridor, with the ongoing maintenance of the dark*

corridor to be the responsibility of a management company, secured as part of a Section 106 Legal Agreement. Subject to a number of planning conditions, it is considered that the ecological impacts of the proposal can be adequately mitigated.

8. *The objective to reduce the need to travel by car, whilst making appropriate arrangements for vehicle ownership:*

*Although the site is located at the eastern edge of this part of Brixham, the proposed dwelling houses would be around 20 minutes' walk from Brixham Town Centre. In terms of access to public transport, the proposed dwelling houses would be a short walk from the nearest bus stop on Wall Park Road, and would be around 20 minutes' walk from the central bus station in the town centre. The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site with enough space to include sufficient on-site vehicular parking as well as cycle storage.*

9. *Consistency with other policies in the Local Plan and Neighbourhood Plan:*  
*This is set out in detail in the remainder of this report.*

*The proposal is therefore considered to be in accordance with the criteria set out in Policy H1 of the Local Plan for residential development on unallocated sites.*

*Policy M3 of the Local Plan states that any proposal on or in the vicinity of an important mineral resource, including a Mineral Safeguarding Area, should demonstrate that it will not cause unnecessary sterilisation or prejudice the future extraction of important minerals or building stone on these sites. Given that the site is in proximity to neighbouring residential development, it is considered unlikely that the site would be considered suitable for activities relating to the extraction of minerals due to the potential impact on neighbouring amenity. It is also noteworthy that the application site comprises less than a third of the area of the open field to the rear of Nos. 31-39 Wall Park Road, and that a significant proportion of the open field would therefore remain undeveloped. The proposal is considered to be in accordance with Policy M3 of the Local Plan.*

## **2. Design and Visual Impact**

*Whilst the application is in outline with all matters reserved, the submitted information does include an indicative site layout plan which provides sufficient basis for an assessment of whether the proposed three dwelling houses could be constructed on the site in a layout, design and character that would not result in undue visual impact.*

*Paragraph 124 of the National Planning Policy Framework (NPPF) states that 'good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities'. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan states that development should demonstrate good quality design and should respect the character and appearance of the surrounding area. Policy SS8 of the Local Plan states that, when assessing development proposals within the Area of Outstanding Natural Beauty (AONB), the conservation of the landscape and scenic beauty, biodiversity and*

*geodiversity will be given great weight, and that development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. Policy E1 of the Neighbourhood Plan states that development within the Area of Outstanding Natural Beauty (AONB) must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty, and that development should not harm protected landscape characteristics including dark night skies and tranquillity.*

*Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape, noting that the site is also partially screened from public views by the established hedgerow that would be retained as a dark corridor along the southwestern boundary. The proposal is for detached dwellings that would be laid out in a relatively spacious arrangement that would accord with the character and urban grain of the surrounding residential areas, and the proposed retention of a portion of the open field between the rear plot boundaries of Nos. 31-39 Wall Park Road and the proposed dwelling houses would also serve to retain some of the open and spacious characteristic that currently prevails. The proposal is for a fairly low-density form of development (around 15 dwelling units per hectare) that is considered appropriate given the site's location at Brixham's urban fringe. On balance, the proposal's impact on the landscape character and scenic beauty of the AONB is considered acceptable, noting that the proposal would offer some public benefit in the form of the delivery of three dwelling houses as well as the payment of commuted sums for affordable housing, as explained in more detail later in the report.*

*The proposal is considered to be in accordance with Policies DE1 and SS8 of the Local Plan, Policies BH5 and E1 of the Neighbourhood Plan, and the guidance contained in the NPPF.*

### **3. Quality of Residential Environment**

*Policy DE3 of the Local Plan states that development should provide a good level of amenity for future residents.*

*It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to construct three detached dwelling houses on the site in a manner that would provide a good quality of residential environment for future residents, including sufficient access to natural light, internal dwelling space, outdoor amenity space, on-site vehicular parking, and on-site cycle storage, in accordance with the requirements of Policy DE3 of the Local Plan.*

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

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

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

*Given the siting and scale of the proposed dwelling houses as indicated on the indicative site layout plan, it is considered that the proposal would not result in any unacceptable impacts on the amenities of neighbours in terms of their privacy, outlook, or access to natural light.*

*Given the somewhat constrained access to the site and the potential for a negative impact on the amenities of occupiers of neighbouring properties during construction works, a condition is proposed requiring a Construction Method Statement.*

*Subject to the said condition, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.*

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

*Policy TA2 of the Local Plan states that all development proposals should make appropriate provisions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy BH8 of the Neighbourhood Plan states that access to new developments should comply with the relevant adopted standards. Policy TA3 of the Local Plan states that dwelling houses should each be provided with at least 2 on-site parking spaces as well as adequate space for covered cycle storage and bin storage.*

*The proposed dwelling houses would take vehicular and pedestrian access from Wall Park Road via an existing private access lane, and the submission also indicates that improvements would be made to the access lane. According to the submitted indicative site layout plan, the access lane would have a width of at least 3m for the entirety of the length of the access lane. Given that the access would serve multiple dwellings and would only be wide enough for 1 vehicle with no passing places, the proposal presents some conflict with the adopted Highways' Standing Advice which seeks to ensure that accesses serving more than one dwelling are wide enough to allow for vehicles to pass. It should be noted, however, that the Council's Highways Engineer has assessed the proposal and has raised no objections. Furthermore, Paragraph 109 of the NPPF 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. Given that the proposal would also include improvements to the access lane, it is considered that the increase in vehicular movement arising from three additional dwelling houses would not result in an unacceptable impact on highway safety or a severe cumulative impact on the road network.*

*It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to provide each of the proposed dwelling houses with on-site parking for at least two vehicles, as well as cycle storage. There would also be sufficient space to ensure that vehicles are able to manoeuvre on site such that they are able to enter and exit the site in a forward gear.*

*The proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.*

## **6. Ecology & Biodiversity**

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

*The application has been accompanied by a Preliminary Ecological Appraisal (“the ecology report”) conducted by an ecologist. The ecology report has been assessed by the Devon County Council Ecologist (see the detailed consultation response above) who has indicated that, subject to a number of planning conditions and subject to a means of ensuring the ongoing maintenance of the hedgerow along the southwestern boundary of the site as a dark corridor, the application is acceptable on ecological grounds. In this regard it is noted that a Section 106 Legal Agreement would be used to secure the formation of a Management Company that will be responsible for, amongst other things, maintaining the hedgerow as a dark corridor. In accordance with the requirements of Policy NC1, the Section 106 Legal Agreement would also secure a payment towards mitigating the potential measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.*

*The consultation response from the Devon County Council Ecologist confirms that a detailed Habitats Regulations Assessment is not required.*

*Subject to the said Section 106 legal agreement as well as planning conditions requiring a detailed lighting strategy, a Construction and Environment Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP), a repeat survey for the presence of badgers on the site, and a condition controlling the timing of vegetation clearance, the proposal is considered to be in accordance with Policy NC1 of the Local Plan and the guidance contained in the NPPF.*

## **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 the application is accompanied by a Flood Risk Assessment which states that surface water drainage for the proposed dwellings would be achieved via soakaways, and that surface water drainage from the access lane would continue to discharge into the road gullies and highway drainage system within Wall Park Road (as per the existing) but with an upgraded surface and gully system. Given the nature of the proposal, and subject to a condition to secure the use of soakaways, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.*

## **8. Low Carbon Development**

*Policy SS14 states that, commensurate with their scale and nature, development proposals will be required to minimise carbon emissions and the use of natural resources expected to arise during the lifetime of the development. The said policy also seeks to ensure that the projected effects of climate change are duly considered. Policy BH7 of the Neighbourhood Plan seeks to ensure the use of sustainable construction methods in development and states that developments should be designed so as to minimise energy use and maximise energy efficiency.*

*Given that the application is in outline with layout, scale, design and landscaping being reserved matters, a condition is proposed requiring that, at reserved matters stage, evidence be submitted to demonstrate how the scheme meets the abovementioned policy aims in this regard. The site is considered to be in a sustainable location with respect to bus routes and local facilities and amenities, and, as discussed above, surface water drainage would be achieved via soakaways.*

*Subject to the said condition, the proposal is considered to be in accordance with Policy SS14 of the Local Plan and Policy BH7 of the Neighbourhood Plan.*

### **Sustainability**

*Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:*

#### **The Economic Role**

*Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development.*

*Once the dwellings were occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.*

*There are no adverse economic impacts that would arise from this development*

*In respect of the economic element of sustainable development the balance is considered to be in favour of the development*

#### **The Social Role**

*The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry considerable weight in this balance. The proposed development would also contribute towards affordable housing through the payment of commuted sums, with this being secured through a Section 106 Legal Agreement.*

*Impacts on neighbour amenity have been discussed above where it is concluded that it would possible to develop this site as proposed without significant harm to residential amenity.*

*On balance, the social impacts of the development weigh in favour of the development*

### **The Environmental Role**

*With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on the landscape, ecology and bio-diversity, and surface water drainage. These matters have been considered in detail above.*

*The proposal would result in the use of a field, which currently contributes a sense of openness and spaciousness to the immediate vicinity, for residential development. Given that the site is within the AONB, this has been carefully considered as part of the assessment of the application. The site is somewhat anomalous in that, although it falls outside of the settlement boundary in terms of the Brixham Peninsula Neighbourhood Plan, it is not designated as Countryside Area in terms of the Torbay Local Plan, and adjacent development has rendered the site an enclave surrounded by residential development on three of its four sides, with the fourth side (the southwestern boundary) being screened from view from the public realm by a hedgerow that is to be retained. Given that there is a clear physical separation and visually distinction between the site and the rural landscape and countryside of the AONB further to the southeast, the impact on the character of the landscape and AONB is considered acceptable. It is also noteworthy that the proposal is for a relatively low-density form of development (around 15 dwellings per hectare) that would retain some of the existing sense of openness and spaciousness.*

*Conditions are proposed that would secure mitigation with respect to ecological impacts, the detailing and incorporating of biodiversity enhancement and energy efficiency measures at reserved matters stage, and the use of soakaways for the drainage of surface water relating to the proposed dwelling houses.*

*It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.*

### **Sustainability Conclusion**

*Having regard to the above assessment the proposed development is considered to represent sustainable development.*

### **Local Finance Considerations**

#### **S106:**

*Prior to a planning consent being issued, a S106 legal agreement pertaining to the following matters should be completed. 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.*

### **Management Company**

*In order to ensure that the dark corridor along the southwestern boundary of the site as well as communal areas including internal access roads and open spaces are suitably maintained in perpetuity, the applicant has agreed to institute a Management Company. This would be secured in terms of a Section 106 Legal Agreement.*

### **Affordable Housing**

*In accordance with the requirements of Policy H2 of the Local Plan, the applicant has agreed to the payment of a commuted sum in the region of £32,400 towards affordable housing, with this amount calculated in accordance with the Council's 'Planning Contributions and Affordable Housing' Supplementary Planning Document. This would be secured in terms of a Section 106 Legal Agreement.*

### **Recreational Pressure on Berry Head**

*For non-CIL liable developments, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a Section 106 contribution of £95 per dwelling in order to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation. This is as per Policy NC1 of the Torbay Local Plan which states that "development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure", as well as the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document. The applicant has agreed to the payment of this amount which will be secured in terms of a Section 106 Legal Agreement.*

### **CIL:**

*Given that the site is within CIL Charging Zone 2 and that the proposal is for 3 dwelling houses, 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 site is within the Sustainance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats. By following the flow chart provided in the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC. There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.*

### **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 positive impact overall and help with the supply of much needed housing. Subject to the planning conditions and obligations detailed below, and bearing in mind that a number of elements, including the layout, scale, appearance and landscaping for the development will need to be the subject of reserved matters applications, the proposal is considered to be in accordance with the Development Plan.*



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

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

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

### **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.*

### **Conclusion**

*The application is considered acceptable, having regard to the Local Plan, the Neighbourhood Plan, and all other material considerations.*

### **Officer Recommendation**

*Approval: Subject to;*

- 1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;*
- 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 and the adopted 'Recreational Pressure on Berry Head' 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 of Planning, Housing and Climate Emergency, 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.*

### **11. Reserved Matters condition**

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

- (v) layout,*
- (vi) scale,*
- (vii) appearance; and*
- (viii) 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).*

### **12. Lighting Assessment**

*All reserved matters applications shall include a Lighting Assessment detailing measures to minimise indirect impacts from lighting associated with the pre-construction, during construction, and operational activities, and demonstrating how the best practice (Bat Conservation Trust / Institution of Lighting Professionals, 2018) guidance has been implemented. This shall include details such as artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence, and shall ensure that the hedgerow along the southwestern boundary of the site is kept to under 0.5lux. Once agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with the approved details.*

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

### **13. Construction Environmental Management Plan – Biodiversity**

*All reserved matters applications 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.*

- h) Risk assessment of potentially damaging construction activities.
- i) Identification of 'biodiversity protection zones'.
- j) 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).
- k) 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.
- l) 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.
- m) Responsible persons and lines of communication.
- n) 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 SS8 and NC1 of the Torbay Local Plan 2012-2030.

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

All reserved matters applications 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.

- j) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- k) Ecological trends and constraints on site that might influence management.
- l) A habitat phasing plan to ensure habitat is established and functional in advance of impacts.
- m) Aims and objectives of management.
- n) Appropriate management options for achieving aims and objectives. Noting the comments from Natural England with regards to preferred hedgerow management options.
- o) Prescriptions for management actions.
- p) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- q) Details of the body or organisation responsible for implementation of the plan.
- r) 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 post-construction site management shall be undertaken in accordance with the LEMP.

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

### **15. Flood risk**

*As part of any reserved matters application 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 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.*

### **16. Biodiversity enhancement measures**

*As part of any reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.*

*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.*

### **17. 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.*

### **18. Access lane**

*Prior to the commencement of works on site, details of a scheme of improvements to the access lane serving the site, including (but not limited to) resurfacing, widening, and upgrading the surface water drainage system, where applicable, shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the scheme of improvements to the access lane shall be implemented in full prior to the occupation of the development hereby approved.*

*Reason: To ensure that the access is suitable, and in accordance with Policies TA2, ER1 and ER2 of the Torbay Local Plan 2012-2030 and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.*

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

*No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.*

*Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development.*

### **20. Energy Efficiency and Low Carbon Development**

*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 details shall include the provision of electric vehicle charging facilities to all dwellings.*

*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 BH7 of the Brixham Peninsula Neighbourhood Plan, and Policies SS14 and TA3 (and Appendix F) of the Torbay Local Plan 2012-2030.*

### **Development Plan Relevant Policies**

*Torbay Local Plan:*

*SS3 – Presumption in favour of sustainable development*

*NC1 – Biodiversity and geodiversity*

*SS8 – Natural environment*

*SS10 - Conservation and the historic environment*

*SS14 – Low carbon development and adaptation to climate change*

*C1 – Countryside and the rural economy  
H1 – Applications for new homes  
H2 – Affordable housing  
M3 – Preserving and safeguarding of limestone resources and key local building stone  
DE1 - Design  
DE3 – Development amenity  
TA2 – Development access  
TA3 – Parking requirements  
ER1 – Flood risk  
ER2 – Water management  
SDB1 – Brixham Peninsula*

*Brixham Peninsula Neighbourhood Plan:*

*E1 – Landscape beauty and protected areas  
E2 – Settlement boundaries  
E3 – Settlement gaps  
E4 – Local green spaces  
BH4 – Housing development  
BH5 – Good design and the town and village design statements  
BH7 – Sustainable construction  
BH8 – Access to new dwellings  
BH9 – Exception sites*