

Friday, 4 March 2022

**PLANNING COMMITTEE**

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

**Monday, 14 March 2022**

commencing at **5.30 pm**

The meeting will be held in the Meadfoot Room, Town Hall, Castle Circus,  
Torquay, TQ1 3DR

**Members of the Committee**

Councillor Pentney (Chairman)

Councillor Brown

Councillor Kennedy

Councillor Dart

Councillor Barbara Lewis

Councillor Dudley (Vice-Chair)

Councillor Mills

Councillor Hill

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** (Pages 4 - 6)  
To confirm as a correct record the Minutes of the meeting of this Committee held on 14 February 2022
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. **Stagecoach Devon Ltd., Regent Close, Torquay, TQ2 7AN P/2021/0692** (Pages 7 - 26)  
Formation of new access road for bus depot & associated works.
6. **Singleton Gardens, Meadfoot Sea Road, Torquay TQ1 2LQ P/2021/0802** (Pages 27 - 49)  
Formation of 9 apartments and 2 semi-detached dwellings with access, garages & parking. Demolition of existing outbuildings. Alterations & extensions to existing dwelling to include 2 storey extension to side.
7. **Seabury Hotel, 11 Manor Road, Torquay TQ1 3JX P/2021/0520** (Pages 50 - 76)  
Change of use from hotel to 12 flats, including the demolition of

existing extensions, and the erection of a new extension and new building.

8. **Land Off Brixham Road - Former Nortel Site, Paignton TQ4 7BL P/2019/0278** (Pages 77 - 103)  
Reserved Matters on application P/2014/0947 (Outline mixed use application for retail, business and residential uses with all matters reserved except for access (as revised by S73 applications P/2016/1372, P/2017/0123, P/2017/0571 and P/2017/1041)). Reserved Matters sought: Appearance, Landscaping, Layout & Scale for up to 255 Residential Dwellings (As revised)
9. **Land At Princess Gardens, Off Torbay Road, Torquay TQ2 5EY P/2022/0211** (Pages 104 - 118)  
Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2022).
10. **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.
11. **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 9 March 2022. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

### **Meeting Attendance**

Whilst national Covid-19 restrictions were lifted on 19 July 2021, Torbay Council has taken the decision to continue operating in a Covid-19 secure manner in order to protect staff and visitors entering Council buildings and to help reduce the spread of Covid-19 in Torbay. This includes social distancing and other protective measures (e.g. wearing a face covering (unless exempt), signing in and using hand sanitiser). Our public meetings will continue to operate with social distancing measures in place and as such there are limited numbers that can access our meeting rooms. Also, to help prevent the spread of the virus, anyone attending meetings is asked to take Covid lateral flow test the evening before - if you have a positive test result please follow the Government's guidelines and do not attend the meeting.

If you wish to attend a public meeting please contact us to confirm arrangements for your attendance.

## **Minutes of the Planning Committee**

**14 February 2022**

**-: Present :-**

Councillor Pentney (Chairman)

Councillors Brown, Dudley (Vice-Chair), Hill, Kennedy, Barbara Lewis, Mills and  
Jacqueline Thomas

(Also in attendance: Councillors Brooks, Chris Lewis and David Thomas)

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### **96. Minutes**

The Minutes of the meeting of the Planning Committee held on 10 January 2022 were confirmed as a correct record and signed by the Chairman.

### **97. Land West Of Kings Ash Road, Paignton TQ3 3XF P/2020/0921**

The Committee considered an application for the formation of a Lidl Supermarket (Class E(a)) and two ancillary Class E (a)(b)(c) units with associated parking, landscaping and access works including a new junction on the A380 (Kings Ash Road, Paignton).

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were published on the Council's website. At the meeting Victoria George-Taylor addressed the Committee in support of the application.

Approved, subject to:

- i. the resolution of any new material considerations that may come to light being delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations;
- ii. the completion of a S.106 agreement as per the Heads of Term as contained within the committee report;
- iii. the conditions set out in the submitted report with the final drafting of conditions being delegated to the Divisional Director of Planning, Housing and Climate Emergency;

- iv. receipt of a satisfactory final consultation response from Natural England confirming agreement to the Habitats Regulations Assessment;
- v. an additional condition to negotiate and optimise the availability of electric charging points within the car park; and
- vi. Officers to explore the provision of a filter traffic light system turning right on Spruce Way from Kings Ash Road (but this is not a condition of the permission).

**98. Land Off Brixham Road - Former Nortel Site, Paignton TQ4 7BL P/2019/0278**

The Committee considered an application for reserved matters on application P/2014/0947 (outline mixed use application for retail, business and residential uses with all matters reserved except for access (as revised by S73 applications P/2016/1372, P/2017/0123, P/2017/0571 and P/2017/1041)). Reserved Matters sought on appearance, landscaping, layout and scale for up to 255 Residential Dwellings (as revised)

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were published on the Council's website. At the meeting Jonathan Best addressed the Committee in support of the application.

Resolved:

That the application be deferred for further information in respect of:

- i. Highways, with a view to seek confirmation on tracking information for emergency/waste vehicles;
- ii. designing out crime;
- iii. drainage;
- iv. lighting scheme;
- v. clarification and information on affordable housing; and
- vi. use of exterior materials.

**99. Torbay Hospital, Newton Road, Torquay TQ2 7AA P/2021/0431**

The Committee considered an application for construction of a three storey medical assessment unit, with patient drop-off point, vehicle turning head and associated landscaping works.

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were published on the Council's website. At the meeting Pat Bishop addressed the Committee in support of the application on behalf of the Torquay Neighbourhood Forum.

Approved, subject to:

- i. the conditions as outlined in the submitted report with the final drafting of conditions being delegated the Divisional Director of Planning, Housing and Climate Emergency and;
- ii. the resolution of any new material considerations that may come to light being delegated to Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

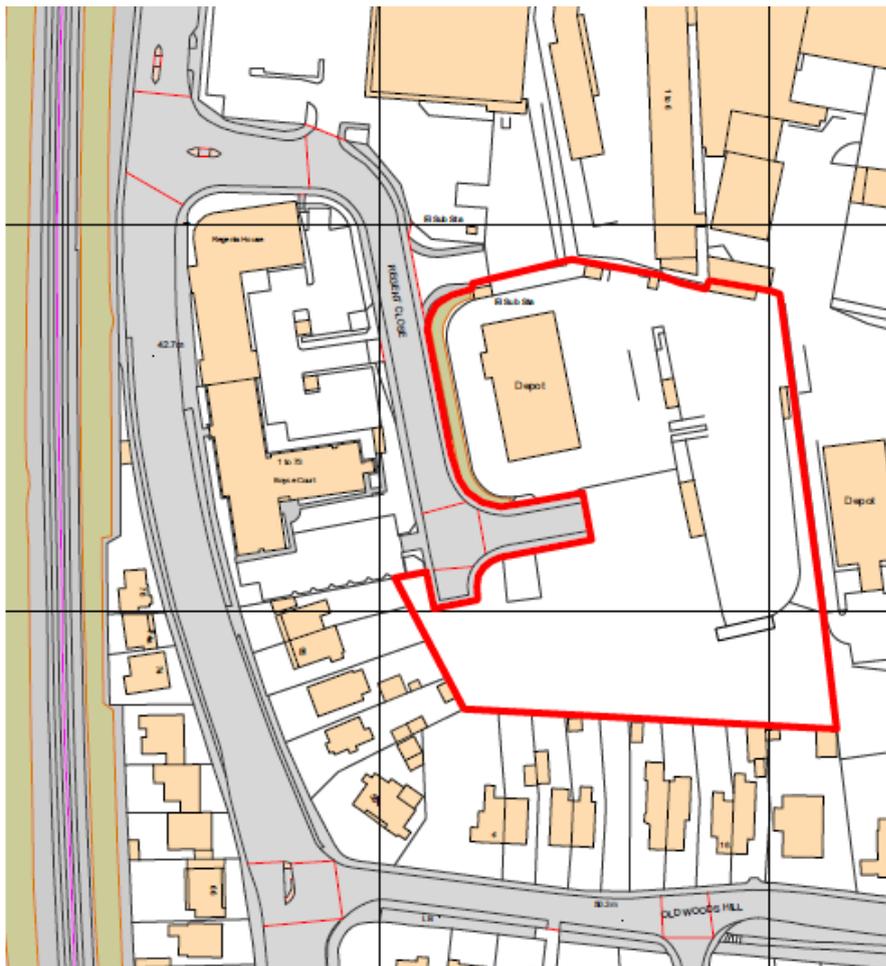
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Chairman

## TORBAY COUNCIL

Application Site Address	Stagecoach Devon Ltd., Regent Close, Torquay, TQ2 7AN
Proposal	Formation of new access road for bus depot & associated works.
Application Number	P/2021/0692
Applicant	Stagecoach UK
Agent	Fearnley Lott Architects
Date Application Valid	07/06/21
Decision Due date	02/08/21
Extension of Time Date	02/08/22
Recommendation	Approval: Subject to planning conditions as outlined within the report, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing & Climate Emergency.
Reason for Referral to Planning Committee	Ward Councillors have asked for the application to be determined at Committee in light of neighbour objections
Planning Case Officer	Sean Davies

### Location Plan



Site Location Plan @ 1:1250

### **Site Details**

The site at Stagecoach Devon Ltd, Regent Close, Torquay, TQ2 7AN is a bus depot and its curtilage, which includes an area of woodland between the depot and houses along Netwon Road and Old Woods Hill. The site forms part of the built up area, but is not otherwise subject to any designations within the Torbay Local Plan.

For the avoidance of doubt, the site is not covered by any environmental designations. Part of the woodland is covered by Tree Preservation Order (TPO).

### **Description of Development**

Formation of new access road for bus depot & associated works.

The proposals are for a 7m wide access road that would run from the existing hammerhead at the end of Regent Close to the top yard of the existing Stagecoach depot site. This would allow buses to enter via the existing site entrance and exist via the new proposed road. At present buses have to drive in and drive out the same way which necessarily involves reversing in what is a constrained site.

The proposals would also include 18 staff parking spaces. Spaces 1-9 would be accessed from the section of Regent Close providing access to the site. Spaces 10-18 would be positioned along the side of the new road furthest away from the houses on Newton Road and Old Woods Hill.

The afore mentioned parking spaces are needed to compensate for the loss of parking at the end of Regent Close where the proposed road would come out (i.e. not to cater for any new development within the site or any increase in staff numbers). The applicant has agreed to make a payment of £5,000 so that double yellow lines can be installed along a part of Regent Close so that cars do not park so as to obstruct buses leaving the site.

The existing woodland located between the Stagecoach depot and houses along Newton Road and Old Woods Hill (including the part covered by the TPO) would be left largely intact, with new trees to be planted in mitigation for those to be removed.

The existing depot operates from 04:00 to 01:00. The hours of operation would not change.

### **Pre-Application Enquiry**

The Local Planning Authority has provided informal positive feedback to the applicant at pre-application stage in relation to the current proposal.

### **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**

DE/2020/0149 Construction of access road to southern side of depot. PRE-APPLICATION ENQUIRY

AT/2020/0021 There is a row of 45 leylandii (*Cupressus x leylandii*) marked on map T1. This row of leylandii is growing down one side of a native woodland. I think all of the trees were planted at the same time in 1971. It is hard to define whether the row of leylandii trees is within the TPO area. The leylandii trees are shading the native trees next to them. The trees next to the leylandii have a lot of deadwood and a couple of hawthorns have already died due to lack of light. They are also starting to shed large limbs and are becoming dangerous to walk underneath. I would like to dismantle to ground level all 45 of the leylandii trees. This is to improve safety in the woodland for pedestrians. It will also improve light conditions for the native species to thrive adjacent. The row of leylandii are providing good screening for the houses bordering the depot so to maintain this privacy I would like to re-plant another one alongside the boundary as shown on map H1. TREE NOT PROTECTED

AT/2018/0328 T1- oak – fell due to the poor condition of tree. 2/3rds of the canopy is dead wood and is overhanging the staffroom porter cabin - APPROVED

P/1997/0251 Erection Of Extension To Existing Workshop (As Revised By Plans Received 15/4/97) REFUSED

P/1996/410 Erection Of Extension To Existing Workshop REUSED/DISMISSED AT APPEAL

P/1996/1409 Extension Of Parking Area REFUSED/DISMISSED AT APPEAL

(Note – Council records indicate that 19 applications have been made at the site. Most of these are not relevant to the proposals. The two applications listed above from 1996/7 have been included as they appear to be the ones referenced in objections summarised below)

### **Summary of Representations**

Approximately 17 representations have been received with two in support and 15 objections:

#### **Objections**

Petition with 25 signatures:

- Proposals similar to those refused on appeal 10/10/97. Existing trees/shrubs provide valuable buffer between site and houses. Two oaks are covered by TPOs. Area is haven for wildlife including bats and birds. Removal of trees is contrary to Government targets for tree planting. Bus site is essentially a 24 hour operation. The proposed new access and parking closer to houses would result in increased air pollution from exhaust fumes and noise (vehicles and staff). The proposals would also result in light pollution from headlights (buses and cars) and any lighting for the proposed road or parking or security lighting.

Site history

- Stagecoach has applied for a new access road twice before on this site and these applications have been refused

#### Local area

- Stagecoach has outgrown the site and should move to another site
- Out of character with local area
- Overdevelopment

#### Traffic

- Unspecified concern about traffic and access

#### Wildlife:

- Impact on wildlife (birds, bats, foxes, insects etc.)
- Concern about independence of environmental report (i.e. as Stagecoach paid for it)

#### Trees:

- Loss of trees;
- any replacement trees will take decades to grow to comparable size;
- trees to replace line of fir trees to be removed would be deciduous and so wouldn't provide screening during Winter
- trees have already been removed to allow development to be constructed
- Concern about independence of an arboreal report (i.e. as Stagecoach paid for it)

#### Neighbour amenity:

- Increase in noise pollution (affecting ability to sleep), air pollution (i.e from vehicle fumes), light pollution (headlights/any new lighting), smells, vibration, for 20 hours a day, 7 days a week, as proposed road would be 25m closer to houses on Old Woods Hill and closer still to properties on corner of Newton Road. Residents wouldn't be able to enjoy back gardens. Proposals would be overbearing and visually intrusive
- Land that access road would be sited on was previously designated as a 'green belt' buffer between residential and commercial land and should stay that way
- Stagecoach has previously parked buses and sited portacabins on the land the access road would be sited on and has dumped building rubble into it causing problems for neighbours.

#### Subsidence:

- Risk of subsidence to properties along Old Wood Hill

#### Security:

- Increased risk of crime as Stagecoach does not have adequate security arrangements in place
- Loss of trees would increase security risk

#### Archaeology

- an archaeological survey has not been carried out.

#### Non Planning Issues

- Breach of restrictive covenants
- Decrease in property prices

(Restrictive covenants and the effect of the proposals on property prices are not planning issues and cannot be considered in determining the application. These issues are not considered further in this report).

#### **Support**

- Retains jobs

- Access road will facilitate smoother run in and run out of buses, eliminating cumbersome reversing movements and reducing associated beeping and engine revving.
- Proposals will lead to a better balance of on road parking areas for residents and workers around Boyce Court near to site
- Proposals create additional space which could lead to electrification of bus fleet sooner than might otherwise occur, reducing noise and pollution
- Some clearing of dead and diseased trees will benefit overall health of remaining preserved trees

Response from Stagecoach Devon Ltd

“ ...

*NOISE: ... designs associated with the applications facilitate an operation where there are less reversing manoeuvres and this will mean less beeping and revving of engines. The application is also designed to facilitate future electrification of the Torbay bus fleet, which may not be possible should this application be unsuccessful. Electric buses make practically no noise at all and so longer term our operation will be far quieter.*

*POLLUTION: With the reduced need for complicated manoeuvres within the depot, there is less need for revving of engines and so pollution will reduce. With the longer term electrification of the fleet, made possible by the planning application, pollution is reduced substantially.*

*WOODLAND PRESERVATION: At present, there are a selection of trees that have been identified for preservation and also a number of dead and diseased trees that require attention. There are also some non-indigenous species that hinder the development of other trees and shrubs. There is the opportunity to better manage the woodland by removing dead trees and replacing with indigenous species.*

*BOUNDARY MANAGEMENT: Along the boundary, there is a line of non-indigenous pine trees that are of excessive height. These can result in unnecessary shadow on bordering properties and they inhibit the growth of indigenous species in the vicinity. Their height could be problematic and the opportunity exists with this scheme to replace them with indigenous trees that provide a better shield from the neighbours and do not grow so excessively high.*

*LOCAL PLAN: From what I can see, the proposals fit squarely with the local plan. Investment in this site will secure the 200 jobs currently on the site and keep those jobs for years to come whilst the environment of the site will be improved and noise mitigated for the neighbouring properties. Furthermore, the plans will facilitate a move to a more environmentally sustainable means of powering the bus fleet, which will be good for the whole of Torbay.*

...”

**Police:** *“Police have no objections to the proposal. From a crime and anti-social reduction perspective, if not already in place, lockable gates or barriers should be included at the entrance and exit points. It is also recommended the indicated staff parking sites be covered by CCTV and compatible lighting”.*

**Torbay Strategic Planning:** *“This site is very important in the operation of the Torbay bus network. The site does however require more space to support the vehicles needed for the local bus network and supporting the implementation of zero emission buses with charging facilities in the near future. The Council has been working with Stagecoach on proposals to bring forward zero emission buses based at this depot and we are keen to support this*

happening, having submitted a bid for funding to Government and including proposals in our Bus Service Improvement Plan. The site is well located to support this infrastructure with appropriate power supplies nearby and the business case relies on this provision being nearby. Our Bus Service Improvement Plan also sets out proposals to increase bus use across Torbay and a well placed depot facility with the space to safely facilitate sufficient vehicles for that operation is critical. This proposal, in my opinion, therefore supports:

- the Community and Corporate Plan by supporting the bus network locally, having benefits to Thriving People, Thriving Economy, and Tackling the Climate Emergency;
- the Local Plan strategic policies by supporting investment in the Strategic Delivery Area for Torquay Gateway (SS1); though the support for an existing employment use (SS4 and SS5), by supporting the public transport network (SS6), and future proofing for a contribution to a carbon neutral Torbay (SS14);
- the Torquay Neighbourhood Plan by supporting the objective for the “The Gateway to Torquay” through the preservation of employment, making best use of brownfield land, and supporting the retention and improvement of employment space; and
- the Local Transport Plan by supporting the overall vision to make best use the transport network and protecting the transport assets, and by supporting a strengthening and improvement of the public transport network as well as enabling the key priorities for Torbay”.

**Torbay Highways:** No objection subject to conditions and contributions towards Traiff Regulation Order.

**Torbay Community Safety:** “Having reviewed both reports I would concur with their findings and in terms of the noise report the recommendation that an acoustic 2.5m high barrier is erected along the southern edge of the site to protect residents. . As such I would confirm that I have no objections to this development provided the recommendations are put in place by the applicant prior to commencement of use. Should you have any further queries then please let me know.”

**Devon County Council Ecology:** “It appears the site offers limited ecological value, given its isolation from other habitats and its location within an urban area. I believe the Ecology Report submitted with the application is adequate and acceptable in terms of its conclusions and recommendations. It is noted that there will be a reduction in trees onsite in order to facilitate the development - however the removal of cherry laurel and leylandii would also add some benefit to the retained areas of woodland. One minor comment is that it does not appear that the location of the 14 trees to be planted or the tree mounted bat and bird boxes (as stated in Section 6 of the EclA) are provided on a plan. As long as the recommendations of the EclA are conditioned, it is unlikely the scheme will have major impacts upon biodiversity”.

**Torbay Arboriculture:** “The site is sustainable from an arboricultural perspective. The Leyland cypress (G5) are prominent in the landscape and do provide a screen however their long term retention beyond 20years is not sustainable and have been correctly categorised as C. There will be a significant impact on the immediate properties to the south when removed as the trees currently provide a visual screen and, to some extent, noise and pollution abatement. The remainder of the proposed tree removals are justified wither by their condition or with mitigation planting/landscaping to be used. The removals provide an opportunity to enhance the tree stock in the area with younger stock providing for a greater diversity and resilience in the long term. The tree replacements identify 14 trees to be planted. Although it is outlined where they are to be placed hence a tree planting plan with associated wording would be required including a commitment to replacement any dead/dying trees and maintenance programme for 5 years. A compliance condition should be used for the submitted method statement”.

**Torquay Neighbourhood Forum:** no response.

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

1. Principle of Development
2. Growth Strategy for a prosperous Torbay
3. Employment
4. Strategic Transport Improvements
5. Heritage and archaeology
6. Design
7. Neighbour amenity
8. Access & Parking
9. Climate Change
10. Ecology
11. Arboriculture
12. Flood risk
13. Ground stability

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

The proposal seeks permission for Formation of new access road for bus depot & associated works. There are no Local Plan policies indicating that the proposal is not acceptable in principle.

#### **2. Growth Strategy for a prosperous Torbay**

Policy SS1 of the Local Plan sets out that The Local Plan promotes a step change in Torbay's economic performance. It supports urban regeneration that creates sustainable living, working and leisure environments, supported by high quality infrastructure. Further that Strategic Development Areas are the foci for delivery of growth and change in the Bay over the Plan period. They provide strategic and sustainable locations for new employment space, homes and infrastructure.

The consultee response from Torbay's Strategic Planning team supports the proposals and identifies that the proposals support Policy SS1 *"by supporting investment in the Strategic Delivery Area for Torquay Gateway"*

Officers therefore consider that the proposals are in accordance with Policy SS1.

#### **3. Employment**

Policy SS4 of the Local Plan (The economy and employment) states that The Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy and supports existing businesses. Policy SS5 (Employment Space) of the Local Plan sets out that in order to meet the needs of existing, growing and new businesses, sufficient high quality space will be provided to meet existing and arising requirements of employers.

The consultee response from Torbay's Strategic Planning team identifies that the proposals would be consistent with Policies SS4 and SS5 *"though the support for an existing employment use"*.

The representation in support of the proposals made by Stagecoach Devon states that *"Investment in this site will secure the 200 jobs currently on the site and keep those jobs for years to come"*

Officers therefore consider that the proposals are in accordance with Policies SS4 and SS5.

#### **4. Strategic Transport Improvements**

Policy SS6 of the Local Plan states that The Council will support improvements to the strategic transport system that enhance the connections between the three towns, between Torbay and the rest of the sub-region and that improvements proposed include improvements to the bus and public transport networks to service new development and ensure connectivity within and between town centres, district and local centres.

The consultee response from Torbay's Strategic Planning team identifies that the proposals are consistent with Policy SS6 by supporting the transport network.

Officers therefore consider that the proposals are in accordance with Policy SS6.

#### **5. Heritage and archaeology**

Policy SS10 of the Local Plan states that development proposals will be assessed against the need to sustain and enhance all designated and undesignated heritage assets, including archaeological remains.

An objection has been made that the proposals have not been accompanied by an archaeological survey.

Officers have considered this point but as there is no known archaeological significance associated with the site and the proposed works themselves are comparatively minor in nature officers do not consider that it would be necessary or proportionate to require a survey to be carried out.

Officers therefore consider that the proposals are in accordance with Policy SS10.

#### **6. Design**

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 and that design should maximise safety for all. 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.

Notwithstanding the objections that have been made officers consider that the proposals are in keeping with the character of the local area, which is largely commercial in nature.

Likewise, officers have considered the objections made in relation to security but do not consider that site security is a significant issue in this case. The Police have not objected to the proposals and have provided advice about security. Officers do not consider that the proposals would lead to any significant new security issues.

Objections have also been made that the loss of trees would result in a loss of visual screening to the Stagecoach depot and that the proposed road would be 25m closer to the backs of houses along Old Woods Hill and closer still to houses along Newton Road. Also, that the proposals, through loss of trees would increase security risks as there is no site security fencing.

The proposed road would run along the backs of five houses on Newton Road and nine houses on Old Woods Hill.

It would be closest to Nos. 63, 65 and 67 Newton Road, where it would be approximately 6-7m behind the back gardens and approximately 26m from the backs of these houses. The

road would be approximately 13m away from the back garden of no. 61 and 36m away from the back of that house and approximately 40m from the back of no. 59.

It would, at its closest point be approximately 13-15m from the back gardens of houses along Old Woods Hill (Nos. 14, 16 and 18) and approximately 25-30m from the backs of those house. The road would be around 17-18m or more away from the back gardens of nos. 4, 6, 8, 10 and 12 and in the region of 30m or more from the backs of those houses. It would be around 20m from the back garden of no. 20 and approximately 40m from the back of that house.

No deciduous trees would be removed from the existing woodland immediately behind the backs of the houses. Those trees to be removed would be situated along the line of the proposed road itself. As such the existing visual screening to the Stagecoach site is unlikely to be substantially affected through the loss of deciduous trees. It should be noted in this respect that the back gardens of houses along Newton Road/Old Woods Hill already have rear fences or walls of some description.

The greatest visual impact associated with the proposals appears likely to be loss of a row of Leylandii trees running from the existing hammerhead (behind no. 65 Newton Road) to the patch of woodland behind no. 10 Old Woods Hill. The loss of these trees is considered likely to make the Stagecoach depot site more visible from rear facing first floor windows of these properties and will inevitably make buses using the proposed road more visible than if they could be kept in place.

Balanced against this, it should be noted the applicant applied to the Council to remove all 45 of these trees in 2020 (AT/2020/0021) and to check that they were not protected. The Council confirmed that these trees are not protected at the time and, as such, planning permission is not needed to fell them. In other words, the applicant is free to fell them whether or not planning permission for the current proposals is granted. It should also be noted that the Arboriculture Impact Assessment, which has been reviewed by the Council's arboriculture officer, concludes that these trees are in poor structural condition and have a life expectancy of 10+ years. In other words, if left in place they would likely die or begin to significantly deteriorate within this time frame anyway.

The proposals involve replacing these trees with deciduous species. Officers accept that it will take time for these to reach maturity but on balance believe this is acceptable and to a degree inevitable. A planning condition can be used to require a tree planting plan so that the exact location, age and species of trees can be agreed. Officers understand that replacement trees are likely to be around 2.5-3m tall.

Taking the above into account officers believe that the distance of the proposed road from the backs of houses and gardens along Newton Road and Old Woods Hill, along with proposed re-planting, is sufficient that the visual impact of the proposals is acceptable.

## **7. Neighbour amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity for future occupiers and should not unduly impact the amenity of neighbouring and surrounding uses. The policy states that this will be assessed using a criteria that includes the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution; satisfactory provision for off road parking, and nature of the use, specifically where this would be overbearing and impacts on existing living conditions and standards of accommodation of other uses.

Objections have been made that the proposed new road would lead to increased air pollution (exhaust fumes), noise (staff and vehicles), light (car/bus headlights and any

parking/security lighting) pollution as well as smells and vibration. And that these impacts would be exacerbated due to the site's operating hours (04:00 am to 01:00 am) and as the road would bring vehicles closer to houses along Newton Road and Old Woods Hill. Concerns have been made that the occupants of these houses will be unable to enjoy their back gardens and that their sleep might be disrupted. Objections have also been made that the proposals for a new road in this position have previously been made by the applicant and rejected on neighbour amenity grounds.

#### Previous applications

Planning applications P/1996/1409 (Extension of Parking Area) and P/1996/1410 (Erection of Extension to Existing Workshop) were refused by the Council individually and then dismissed at appeal under a single appeal decision in 1997.

P/1996/1409 involved the construction of a new road from the existing hammerhead at the end of Regent Close along the backs of the houses on Newton Road and Old Woods Hill along with 81 staff car parking spaces. 24 of these spaces would have been positioned along the boundary with houses on Newton Road and Old Woods Hill. The existing woodland area between these houses and the Stagecoach depot would have been completely removed with only a few trees retained between parking spaces.

The reason for refusal was:

*"This proposals would be detrimental to the residential amenity of neighbouring occupiers by reason of noise, smell, fumes, and general disturbance and to the character and appearance of a site of landscape significance by reason of loss of trees the subject of a tree preservation order and associated works on construction"*

P/1996/1410 was for a workshop extension in the middle of the depot site. The reason for refusal was:

*"Taken in conjunction with refused application 96/1409, the proposals is deficient in car parking ... would severely impair the circulation of vehicles around the site, would lead to the parking of vehicles on the highway, would create conditions of danger to all road users and interference with the free flow of traffic".*

The appeal decision (for both refused applications) said:

*"... (4) The expansion [i.e the proposed parking] would be into the undeveloped area of shrubs and trees, and adjacent to the houses. A new road would be built through this part of the site and as well as being the access to the parking area it would become the way into the rear of the site for buses. .... (8) The residents already complain of noise and disturbance from the bus depot, including late night activities. Whilst the trees probably provide little protection from noise, the area undoubtedly provides a valuable buffer between the industrial site and the houses, as evidenced in my view that the trees are intended to be preserved. (9) Not only would most of the area be built over for parking .. and therefore largely lost as a buffer of greenery, but the activities would be much closer to the houses than now. There would be ways of mitigating the impact but I consider the residents would inevitably suffer a significant loss of amenity due to increased noise and disturbance. The coming and going of cars, particularly late at night, early in the morning and at weekends, would be disturbing in itself. Were this to be coupled with the use of the roadway for bus access, the impact would be far greater. In my opinion ... the effect of the proposal on residential amenity would be*

*unacceptable. ... (12) Unless Stagecoach can find other ways of solving the problem of staff parking, the conclusion must be that the activities have outgrown the site”.*

Officers have carefully considered the Council’s reasons for refusal for the applications and the Inspector’s findings. However, officers do not believe that these provide a precedent that can be relied on to justify a decision of refusal in this case.

The road subject to the 1997 proposals would have been significantly closer to the backs of most of the houses along Old Woods Hill than the current proposed road would be, at around 8-11m. In addition, all of the space between the road and the backs of the houses would have been used for staff parking in the 1997 proposals. And all of the woodland between the backs of the houses and the depot would have been removed with only a few token trees being retained between parking areas.

The current proposals are substantially different to those considered in 1997. The proposed road would be further away from the houses on Newton Road and Old Woods Hill. The existing woodland area (including that subject to tree preservation order) would be left largely in-tact (0.07ha of woodland would be removed from an existing 0.39ha) and new trees would be planted in mitigation for those that would be lost. No parking is proposed next to the backs of the houses along Newton Road and Old Woods Hill. Nine staff car parking spaces would be provided to be accessed off of that part of Regent Close running into the site and a substantial distance away from the houses. Another nine spaces would be provided along the side of the new proposed road furthest away from the houses.

It should also be noted that, despite the Inspector’s reservations about the long-term sustainability of the depot site (at a time when the Inspector notes that double decker busses were only just being introduced), Stagecoach has operated at the site successfully for more than two decades since the appeal was dismissed, clearly demonstrating that Stagecoach has not outgrown the site.

It should also be remembered that the 1997 refusals pre-date the adoption of the Torbay Local Plan and Torquay Neighbourhood Plan and that Torbay’s strategic infrastructure needs have altered significantly in the interim.

Taking the above into account, officers consider that the current proposals must be considered on their own merits and not with reference to conclusions reached about a significantly different scheme.

#### Noise

A Noise Assessment has been submitted with the application. This document has been reviewed by Torbay Council’s Community Safety Team and has been found to be acceptable. It concludes that:

*“Without mitigation, the change in noise levels between the existing and proposed scenarios are predicted to increase of 3.5dB at the closet sensitive receptors [i.e. the houses along Newton Road, Old Woods Hill and Barton Road] during the night-time scenarios. As such, mitigation is to be provided in the form of a 2.5m barrier along part of the southern edge of new access road. Inclusive of mitigation, a change in noise level assessment has been undertaken which shows that noise levels are expected to change by up to a maximum of +1.9 dB with the new access route, which falls within the No Observed Adverse Effect Level. Overall, and when assessed on a worst-case basis, noise from the proposed redevelopment*

*is predicted to have a low impact and noise levels fall within the Lowest Observed Adverse Effect Level”.*

The 2.5m high noise fence identified would run behind nos. 4, 6, 8, 10, 12 and 14 Old Woods Hill.

Officers consider that this provides acceptable mitigation for increased noise nuisance associated with the proposals.

It should also be noted that as the proposed new road would operate as a circle, with buses entering the site via the existing entrance and leaving via the proposed new road, the proposals would be unlikely to lead to any additional bus movements along it late at night (i.e. as buses would be returning to the depot to park up using the existing entrance).

It should also be noted that both Torbay’s Strategic Transport team and Stagecoach Devon have said that the proposals will support the electrification of the bus fleet in Torbay. Clearly, once the bus fleet has been electrified noise levels associated with bus movements are likely to fall significantly. Likewise, Stagecoach Devon has identified that the proposed road, by allowing a smooth in/out arrangement will significantly reduce engine revving and beeping associated with the reversing that is currently required to maneuver busses on site.

Officers agree with that this is likely to be the case and therefore consider that the proposals are therefore acceptable in relation to noise.

#### Light

The proposals would include lighting for the proposed access road.

A Light Spillage Assessment has been submitted with the application. This has been reviewed by Torbay Council’s Community Safety Team and has been found to be acceptable. It concludes that:

*“the risk of the proposed scheme resulting in exceedances of either the ILP pre-curfew or post-curfew obtrusive light limitations at sensitive local residential receptors will be low. The assessment has concluded that, with the implementation of the specified lighting design, the sky glow levels associated with the development will have minimal impact on surrounding residential receptors.”*

The proposed scheme referred to in the preceding paragraph refers to an indicative lighting design which does not at present form part of the proposals. However, this assessment clearly demonstrates that lighting for the proposed road can be provided without causing nuisance to neighbours. A condition can be used to ensure that the proposed road is not brought into use until a lighting design has been submitted to the Council and agreed in writing. It should be noted in the respect that the company that conducted out the Light Spillage Assessment has confirmed that the assessment was carried out on the basis that *“the luminaires on the proposed road are facing away from the residential receptors which minimises light spillage”*. It should also be noted that one of the recommendations in the Ecological Impact Assessment submitted with the application is that *“All additional lighting along the new access road should be kept to a minimum and must not be directed at the retained trees or woodland edges”*. This recommendation, which can be secured via condition in the same manner as the lighting design, is aimed at minimising disturbance to bats but will necessarily also minimise any disturbance to neighbours.

Officers have considered whether headlights of vehicles (buses and cars) using the proposed road would be likely to cause nuisance to neighbours but have concluded this is unlikely. The company that carried out the Light Spillage Assessment (Tetra Tech) has

confirmed that a headlight assessment was not carried out as “as the extensive vegetation as well as the fences from residential gardens will shield light from the proposed access road”. Officers also note that the acoustic fence, which would be positioned adjacent to the road, would block headlights along much of the road’s length.

Officers consider that proposals are therefore acceptable in relation to potential light spillage.

#### Air Quality, Smell, Vibration

Officers consider that the proposals are unlikely to lead to any significant new deterioration in air quality, or any significant increase in smells or vibration. No need for additional assessment has been identified by the Council’s Community Safety Team.

It should be noted that the site is not in an Air Quality Management Area. As observed above, unlike the previous proposals refused in 1997 the current proposals do not involve the wholesale removal of the existing woodland area and do not involve a mass of parking spaces next to the back gardens of houses along Newton Road and Old Woods Hill. The existing woodland area would remain largely in-tact and would continue to provide a buffer between the proposed road and these houses. Only 0.07ha of woodland would be removed out of a total area of 0.39ha. It should also be noted that the proposed road is for bus traffic associated with the depot and some staff parking along the side of this road only. The proposals do not involve any expansion of the Stagecoach site i.e. the proposals are not associated with any development within the site, increase in staff numbers or bus movements. Traffic movements along the road would, in consequence, be likely to be a very small fraction of the traffic movements that use the majority of adopted roads in Torbay, which are themselves in many cases far closer to houses than the road subject to the current proposals would be.

It should also be noted that both Torbay’s Strategic Transport team and Stagecoach Devon have said that the proposals will support the electrification of the bus fleet in Torbay. Clearly, once the bus fleet has been electrified then air pollution associated with vehicle emissions and smells are both likely to fall significantly.

Officers therefore consider that the proposals are acceptable in relation to air quality, smell and vibration.

#### Summary

Officers consider that the proposals are acceptable in relation not Policy DE3.

### **8. Access and parking**

Policy TA1 of the Local Plan (Transport and accessibility) states that the Council is seeking to develop a sustainable and high quality transportation system which makes sustainable travel the first choice when travelling, thereby meeting the accessibility needs of everyone and promoting Torbay’s economic competitiveness, whilst reducing the need to travel and its environmental impact, with an emphasis on public transport provision. Policy TA2 of the Local Plan (Development access) states that All development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. And that Schemes which require new access to/from the highway network will be supported where they provide vehicular and pedestrian access to a safe standard, including a satisfactory standard of visibility, maintain an acceptable network capacity or provide suitable mitigation for any negative impact on capacity, enhance public transport and are essential to access the schemes and can demonstrate significant environmental, safety or economic benefits. Policy TA3 states that the Council will require appropriate provision of car parking spaces in all new development.

The applicant has provided swept path information demonstrating that the proposed car parking spaces would be usable and that a fire tender could access the site.

The proposed road would remain private and would not be adopted by the Council but would nevertheless be built to adoptable standards.

The proposals include 18 staff parking spaces within the site to compensate for existing parking at the end of Regent Close that would be lost.

The applicant has agreed to make a payment of £5,000 for a Traffic Regulation Order that would see double yellow lines painted on that part of Regent Close outside the site entrance, extending to outside of Boyce Court on Regent Close to prevent vehicles being parked and obstructing buses entering or leaving the site.

Torbay Highways have reviewed the proposals and have responded with no objections subject to conditions for a car parking management plan, to secure the afore mentioned financial contribution and to clarify what type of kerbs would edge the road inside the site.

Officers therefore consider that the proposals are acceptable in relation to Policies TA1, TA2 and TA3.

## **9. Climate change**

Policy SS14 of the Local Plan (Low carbon development and adaption to climate change) 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 consultee response from Torbay's Strategic Planning team states that "*This site is very important in the operation of the Torbay bus network. The site does however require more space to support the vehicles needed for the local bus network and supporting the implementation of zero emission buses with charging facilities in the near future. The Council has been working with Stagecoach on proposals to bring forward zero emission buses based at this depot and we are keen to support this happening, having submitted a bid for funding to Government and including proposals in our Bus Service Improvement Plan. The site is well located to support this infrastructure with appropriate power supplies nearby and the business case relies on this provision being nearby.*" Further that the proposals would assist in "*future proofing for a contribution to a carbon neutral Torbay*". The representation I support of the proposals made by Stagecoach Devon states that "*The application is also designed to facilitate future electrification of the Torbay bus fleet, which may not be possible should this application be unsuccessful*" and that "*the plans will facilitate a move to a more environmentally sustainable means of powering the bus fleet, which will be good for the whole of Torbay*".

Officers therefore consider that the proposals are in accordance with Policy SS14.

## **10. Ecology**

Policy NC1 of the Local Plan (Biodiversity and geodiversity) states that The Local Plan seeks to conserve and enhance Torbay's biodiversity through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance and that development should not result in the loss or deterioration of irreplaceable habitats or wildlife corridors.

The application has been accompanied by an Ecological Impact Assessment. This report identifies that the proposals would result in the loss of 0.07 ha of woodland (from a total area of 0.32ha) and 0.01 ha of amenity grassland (from a total of 01.ha). The report identified that

the site has no more than local importance for habitats/flora and protected species - bats, birds and reptiles. A number of mitigation and compensatory measures are identified including planting approximately 14 new trees along the western and northern boundary of the site, keeping woodland edges and trees dark to maintain a corridor for bats and enhancing the existing woodland through removal of the existing leylandii treeline (allowing light levels within the woodland to increase and ground flora to prosper) and non-native cherry laurel. The report concludes that providing these measures are carried out the proposals will result in a biodiversity net gain. The report identifies that no further survey work is required.

Some objections have been made about the quality of the report and have raised concerns that it may not be independent since the applicant paid for it. Officers are satisfied that the company that carried out the report (ge consulting) is reputable and that staff are appropriately qualified and experienced. It is usual for applicants to pay for any reports required by the Local Planning Authority (as this one was). The report has been reviewed by Devon County Council's Ecologist who has confirmed that the *"site offers limited ecological value ... the Ecology Report ... is adequate and acceptable ... [and] as long as the recommendations in the report are conditioned it is unlikely that the scheme will have major impacts upon biodiversity"*.

Officers therefore consider that the proposals are in accordance with Policy NC1.

## **11. Arboriculture**

Policy C4 of the Local Plan sets out that development will not be permitted when it would seriously harm, either directly or indirectly, protected or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. Where the loss of, or impact on trees, hedgerows or landscape features is considered acceptable as part of development, replacement and other mitigation measures will be required.

The application has been accompanied by an Arboriculture Impact Assessment (also an Arboriculture Method Statement and Arboriculture Constraints and Opportunities Plan). The report identifies that *"The scheme has been designed to retain the majority of trees on Site. The trees which are to be removed are considered to be of low arboricultural and amenity value; their loss will be compensated by a replacement tree strategy which will ensure a net gain in tree cover for the Site in the long-term"*.

It shows that two Category B arboricultural elements (life expectancy of 20+ years) and 2 Category C arboricultural elements (life expectancy of 10+years) would be removed. These elements are mapped at Appendix 1

G15(B) identifies a patch of woodland that the proposed road would run through at the end of the top yard in the north east of the site. W4(B) identifies a patch of woodland that the proposed road would run through. G5(C) contains a row of Leylandii trees running from the existing hammerhead of Regent Close to the south east. T14(C) identifies a single tree to be removed.

None of the large deciduous trees closest to the backs of the houses along Newton Road or Old Woods Hill would be removed. The deciduous trees that would be affected are furthest away from these houses. It should be noted that the Leylandii trees forming arboricultural element G5(C) were confirmed by the Local Planning Authority as **not** being within the Tree Preservation Order area that covers part of the site in 2020 (AT/2020/0021). As such planning permission is **not** needed to fell them and the applicant is free to do this whether or not planning permission for the current proposals is granted. The Arboricultural Impact

Assessment has identified these as having a suitable life expectancy of 10+ years and records that they are in poor structural condition.

There are two individual trees covered by a Tree Preservation Order (TPO). There is also a small area covered by a TPO that contains a small number of trees. None of these trees would be removed. One of the trees covered by an individual TPO would be pruned to allow construction.

The proposals identify that 14 new trees would be planted in mitigation for those that would be lost to the west of the site (i.e. to replace the Leylandii that will be removed) and to the north of the site. A planning condition can be used to secure a tree planting plan so that exact locations for these trees, as well as their species and age can be agreed. It is likely that replacement trees would be in the region of 3m tall.

The arboriculture reports submitted have been reviewed by the Councils arboriculture officer who has visited the site and advised that the proposals are sustainable in arboriculture terms and that the proposed tree removals are justified in relation to their condition or proposed landscaping/new tree planting mitigation.

Officers have carefully considered the objections made in relation to trees, including the proposed loss of trees, the time it will take for new replacement trees to grow and the trees species to be planted as mitigation but consider that the proposals are acceptable. Officers have considered concerns have that arboriculture reports may not be independent since the applicant paid for them. Again, Officers are satisfied that the company that carried out the report (ge consulting) is reputable and that staff are appropriately qualified and experienced. It is usual for applicants to pay for any reports required by the Local Planning Authority (as this one was).

Officers therefore consider that the proposals are in accordance with Policy C4.

## **12. Flood risk**

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment.

The applicant must demonstrate that they have investigated a sustainable drainage system and provide details of why this is not feasible for the development site. As Torbay is a Critical Drainage Area any surface water discharge rate from the site to the combined sewer must be limited to greenfield run off rate for the 1 in 10 year storm 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 30% allowance for climate change. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec, a discharge rate of 1.5l/sec will be accepted. The applicant must submit their design to demonstrate that their surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to their development for the critical 1 in 100 year storm event plus a 30% allowance for climate change. If the application was minded for approval, a planning condition would be included to ensure that the most sustainable form of drainage was explored before opting for the means stated on the submitted flood risk assessment.

The proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

### **13. Ground stability**

Policy ER4 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.

An objection has been made that the proposals involve a risk of subsidence to houses along Old Woods Hill. No information has been provided in support of this assertion.

Officers are not aware of any local identified or suspected ground instability issues which present a risk to public health and safety.

The proposals are therefore considered to be in accordance with Policy ER4

### **Local Finance Considerations**

#### **S106:**

The applicant has agreed to make a contribution of £5,000 for a Traffic Regulation Order.

#### **CIL:**

The CIL liability for this development is Nil.

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

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

#### **HRA:**

Not applicable.

### **Planning Balance**

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

### **Proactive Working**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

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

The proposal is: acceptable in principle and would not result in unacceptable harm to visual amenity, neighbour amenity, access and parking, ecology or arboriculture. The proposed development is therefore considered acceptable, having regard to the Development Plan, and all other material considerations.

### **Officer Recommendation**

That planning permission is granted, subject to the conditions detailed below and the signing of a s106 agreement or unilateral undertaking for the delivery of double yellow lines outside the site entrance. 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 acoustic barrier shown on the approved plans shall be installed prior to the use of the road hereby approved and thereafter retained permanently.

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

2. A detailed lighting plan for the road hereby approved shall be submitted to and agreed in writing with the Local Planning Authority prior to the road being brought into use. The agreed lighting shall be installed before the first use of the road and thereafter permanently retained.

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

3. Before first use of the road hereby approved details of kerbs to be used to edge the road shall be submitted to and agreed in writing with the Local Planning Authority. Development shall take place in accordance with the approved details and shall be retained as such for the lifetime of the development.

Reason: In the interests of safety in accordance with Policy TA2 of the Torbay Local Plan 2012-2030.

4. Before the first use of the road hereby approved the parking areas shown on the approved plan(s) shall be completed and thereafter permanently retained for parking of vehicles.

Reason: In the interests of the safety and convenience of users of the highway in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

5. Prior to the road hereby approved being brought into use a car parking management plan shall be submitted to and agreed in writing with the Local Planning Authority. The plan shall be implemented for the lifetime of the development.

Reason: In the interests of the safety and convenience of users of the highway in accordance with Policy TA3 of the Torbay Local Plan 2012 -2030.

6. The development shall be carried out in accordance with the recommendations set out in the Ecological Impact Assessment submitted with the application. All identified mitigation measures shall be delivered prior to the first or use of the road hereby approved.

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

7. A tree planting plan shall be agreed in writing with the Local Planning Authority. The trees identified in the agreed plan shall be planted prior to the first use of the road hereby approved or before the end of the first planting season following completion of the road. Any trees that die, are removed or are diseased within five years of the date they are planted shall be replaced.

Reason: In the interests of arboriculture, visual amenity and residential amenity in accordance with policies C4, DE1 and DE3 of the Local Plan 2012-2030.

8. All works associated with the construction of the road hereby approved shall be carried out in accordance with the submitted Arboriculture Method Statement,

Reason: In the interests of arboriculture in accordance with policy C4 of the Local Plan 2012-2030.

9. 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 30% allowance for climate change. On site all surface water shall be safely managed up to the "1 in 100 year critical rainfall event plus 30% 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 to adapting to climate change and managing flood risk, and in order to accord with saved Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and the guidance contained in the NPPF. These details are required pre-commencement as specified as Torbay has been designated as a Critical Drainage Area and to ensure that a surface water drainage system is designed appropriately in light of this designation.

### **Development Plan Relevant Policies**

#### Torbay Local Plan

- SS1 Growth Strategy for a prosperous Torbay
- SS4 The economy and employment
- SS5 Employment space
- SS6 Strategic transport improvements
- SS10 Conservation and the historic environment

SS14 Low carbon development and adaption to climate change  
TA1 Transport and accessibility  
TA2 Development access  
TA3 Parking requirements  
C4 Trees, hedgerows and natural landscape features  
NC1 Biodiversity and geodiversity  
DE1 Design  
DE3 Development amenity  
ER1 Flood risk  
ER4 Ground stability

Torquay Neighbourhood Plan  
TH8 Established architecture

## TORBAY COUNCIL

Application Site Address	Singleton Gardens Meadfoot Sea Road Torquay TQ1 2LQ
Proposal	Formation of 9 apartments and 2 semi-detached dwellings with access, garages & parking. Demolition of existing outbuildings. Alterations & extensions to existing dwelling to include 2 storey extension to side.
Application Number	P/2021/0802
Applicant	Mr R Bishop - O.J. Developments Ltd.
Agent	Mrs Anna Suszczynska
Date Application Valid	21/07/2021
Decision Due date	20/10/2022
Extension of Time Date	18/02/2022
Recommendation	Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott

### Location Plan:



O J Developments  
OFFICE SUITE, 64/65 SANDS, LYNDEMEAD HILL,  
TORQUAY, DEVON, TQ2 8QX, TEL: 01803 29744, MOBILE 0786837874  
EMAIL: [raj@ojdevelopments.co.uk](mailto:raj@ojdevelopments.co.uk)

### **Site Details**

The site, Singleton Gardens, is a residential dwelling with land on the northern edge of Meadfoot Sea Road. The residential dwelling is modest in scale within a large plot. The site is enclosed by stone and rendered boundary walls. The land rises to the north towards Lincombe Drive, with a copse of trees set above the northern extremity of the applicant's ownership. To the north-west of the site are two large villas with extensive grounds and to the east lies an array of private houses of varying ages and types. To the south of the site, on the opposing side of Meadfoot Sea Road are large villas with extensive grounds.

The site is located within an existing residential area, is designated as Flood Zone 1, is situated within the Lincombes Conservation Area and is subject to Area Tree Protection Order (2005.010). Within the Lincombes Conservation Area map, the dwelling, greenhouse and an outbuilding are noted as other key buildings of architectural importance which make a significant contribution to the townscape. The site is adjacent to 'Singleton' (Grade II) and opposite 'Palm Grove' (Grade II) which are listed buildings.

### **Description of Development**

The proposal seeks permission for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings, namely the greenhouse and a pitched roof outbuilding. Also, alterations and extensions to the existing dwelling to include a two storey extension to side.

The proposed apartment block would involve a mixture of two (4x) and three (5x) bedroom apartments, which would have four storeys but only three storeys would be visible when viewed from Meadfoot Sea Road. The proposed apartment block would have a symmetrical frontage and would occupy more than half the width of the plot, whilst being sited in the rear section of the plot. The proposed apartment block would be finished in render, with the penthouses in a dark grey standing seam zinc cladding, with aluminium openings.

The proposed semi-detached dwellings would both be two storeys that offer three bedrooms. The proposed semi-detached dwellings would have a hipped roof and integral garages. The proposed finish of the dwellings would be a natural stone ground floor frontage, with the remainder of the elevations finished in render, with dark grey aluminium openings and a natural slate roof.

The proposals would have vehicular access from Meadfoot Sea Road and would provide twenty on-site parking spaces; two of which would be integral garages serving the semi-detached dwellings, nine within the courtyard, and nine within the apartment block.

### **Pre-Application Enquiry**

DE/2019/0015: Development of 8 apartments with parking. Summary - The principle of residential development in this location is considered acceptable however, as discussed, there are a number of concerns relating to the proposal's design and layout; impact on neighbours; along with a workable parking and manoeuvring area. Should a planning application be submitted, planning officers are unlikely to support a proposal along the lines indicated in your submission. It is likely that the matters raised could be addressed if the scale and bulk of the proposed development was reduced in line with comments provided by the Council's Interim Heritage Advisor, which would decrease the amount of residential units and parking required, and subject to acceptable impacts on neighbours.

DE/2020/0042: Construction of six dwellings. Summary - The principle of residential development in this location is considered broadly acceptable subject to wider policy considerations. As discussed, there are a number of concerns relating to the proposal's design and layout; impact on neighbours; along with a workable parking and manoeuvring area. Should a planning application be submitted, planning officers are unlikely to support a proposal along the lines indicated in your submission. It is likely that the matters raised could be addressed if the design was sensitive to the heritage assets, along with decreasing the amount of parking proposed, and ensuring that the scheme has an acceptable impact on adjacent occupiers.

### **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**

No relevant planning history relating to the site.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. 15 letters of objection and 8 letters of support have been received.

Concerns include:

- Drainage
- Impact on local area
- Loss of light
- Impact on conservation area
- Noise
- Overdevelopment
- Not in keeping with local area
- Privacy/overlooking
- Traffic and access
- Trees and wildlife
- Sets precedent

Comments in support include:

- Impact on local area
- It provides facilities
- It provides houses
- It removes an eyesore
- Provides/retains jobs
- Residential amenity

### **Summary of Consultation Responses**

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

No response received.

#### **Torbay Council's Drainage Engineer:**

No objections on drainage grounds to planning permission being granted for this development.

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

Further detail on the AMS is required prior to any confirmation of approval. This may be best suited to carrying out trial pits to establish the presence of roots so help inform a satisfactory outcome for the entrance. Works to the London plane O1 are not require for the development and will be removed from the document.

#### **Torbay Council's Senior Environmental Health Officer:**

No objections subject to the inclusion of a planning condition for a Construction/ Demolition Management Plan.

**SWISCo's Waste Client Manager:**

No objections subject to a planning condition to secure a suitable bin storage provision for the development.

**WSP on behalf of the Local Highway Authority:**

No objections subject to planning conditions.

**Planning Officer Assessment****Key Issues/Material Considerations**

1. Principle of Development
2. Impact on the Character of the Area
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology and Biodiversity
6. Flood Risk and Drainage
7. Affordable Housing Contributions
8. Designing Out Crime

**1. Principle of Development**

The proposal is for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings. Also, alterations and extensions to the existing dwelling to include a two-storey extension to side. Supporters have stated that the proposal would provide facilities, housing and jobs.

Policy H1 of the Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is 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. As the Council cannot demonstrate a 5 year housing land supply the tilted balance in favour of sustainable development is applicable as required by the National Planning Policy Framework (NPPF)

Paragraph 11 of the NPPF states:

Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnote 8: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

This broad position is subject to wider policy considerations that are relevant to the development proposal.

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

Paragraph 126 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 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design and government guidance on design'. 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 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.

It is considered that the site, Singleton Gardens, once was part of the estate of 'Singleton', the Grade II listed villa which is sited north-west of the site. The site itself presents a modest, two storey, residential dwelling with large grounds including a dilapidated greenhouse and a disused outbuilding. The dwelling has uPVC openings, poor quality extensions and is surrounded by walls. The grounds of the plot gradually raise up from south to north forming terraces separated by stone walls. The natural stone walls define the site due East, West and North, whilst the southern boundary, along Meadfoot Sea Road, is a rendered wall. The existing dwelling occupies the south-western corner of the site. The building is built in the boundary walls and has an existing vehicular access at south-east corner off Meadfoot Sea Road.

The site is within the Lincombes Conservation Area and is adjacent to 'Singleton' (Grade II) and opposite 'Palm Grove' (Grade II) which are listed buildings. Within the Lincombes Conservation Area map, the dwelling, greenhouse and an outbuilding are

noted as other key buildings of architectural importance which make a significant contribution to the townscape. Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. The application is supported by a Heritage Significance Assessment. Supporters have stated that the proposal would have a positive impact on the local area and would remove an eyesore. Objectors have raised concerns in terms of impact on local area, impact on the Lincombes conservation area, it constituting overdevelopment, setting an unwanted precedent and is not in keeping with the local area.

The proposal is for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings including the greenhouse. The proposed apartment block would be four storeys in height, with the ground floor hidden from the streetscene given the proposed walls within the site and the topography. The proposed apartment block would have a symmetrical frontage and would occupy more than half the width of the plot, whilst being sited in the rear section of the plot. The proposed apartment block would be finished in render, with the penthouses in a dark grey standing seam zinc cladding, with aluminium openings. The proposed semi-detached dwellings would have two storeys, a hipped roof and integral garages. The proposed finish of the dwellings would be a natural stone ground floor frontage, with the remainder of the elevations finished in render, with dark grey aluminium openings and a natural slate roof.

The outbuildings proposed for demolition include the greenhouse, which the accompanying heritage assessment states it dates to the period between 1933 and 1953. The timbers do not suggest anything like the kind of quality that one might expect of Victorian glasshouses and its orientation and juxtaposition with the cottage suggest a more modern use. It is of little heritage value and has been badly repaired and altered over the course of the 20th century. Within the wider grounds, a number of brick and stone outbuildings appear to be late 19th- early 20<sup>th</sup> century in date, extended and altered with modern roofs and in various states of dilapidation. The small outbuilding on the west boundary is also proposed to be demolished. The heritage assessment states that this may have at one time been a pen or lean-to structure affixed to the wall and is visible on early mapping. However, its present roof is shallow pitched and tiled, with rebuilt gables. The walls are in poor condition and appear to be added to the earlier boundary. The building is of limited heritage value and may be retained and restored, or removed to better reveal the garden plot walls behind. The proposed demolition of such structures is considered to be acceptable given their state of disrepair.

The proposal also includes alterations and extensions to the existing dwelling 'Singleton Gardens' to include a two storey extension to the side of the dwelling. The

proposal proposes a render finish, slate roofs and aluminium openings to the existing dwelling.

National and local planning policy emphasises the importance of design. It should be noted that the applicant has entered into two pre-application enquiries and two Torbay Design Review Panel workshops which over the evolution of concepts for the site has seen the number of proposed residential units decrease. This part of Meadfoot Sea Road is characterised by the most significant buildings being 'Italianate' in their architectural language, with complex accretive massing, heavy articulated eaves detailing and multiple localised symmetries. The plot to building relationships and ratios are noteworthy with large villas set back from the main frontage and siting within generous gardens, visible verdant landscape and orientated somewhat to gain sea views. The streetscene and locality benefits from mature trees, including an off-site tree (O1 London plane) owned by Torbay Council, adjacent to where the proposed access would be to serve the development.

The proposed apartment block is similar to that discussed at the Design Review Panel second workshop, where concerns were expressed that the south-western elevation presents a symmetrical façade that leads to an incongruous set of relationships that does not generate a satisfying architectural design and leads to a "*deceitful composition*". The Panel's report goes on to state that "*The lack of variation in height / massing seemed to be a distinct departure from the character of the Conservation Area*", which remains within the current proposal. It is considered that the proposed apartment block would have an unrealistic and unbroken scale and massing that would be highly visible from when within the Lincombes Conservation Area. It would present itself as an overtly dominant mass within the locality which lacks attention to detail and high quality design.

The proposed semi-detached dwellings have a similar footprint to the previous informal drawings showing more dwellings in the early stages of pre-application enquiries and the workshops. The proposed dwellings would have a symmetrical façade and integral garages, which are considered to be alien to the layout and the surrounding locality. It was highlighted to the applicant on a number of occasions that the courtyard area should not be dominated by car parking, the character of the space should be landscape led, instead there is an oversupply of parking and a significant lack of landscaping, which when within the site or viewed from the streetscene would appear harsh. The proposed semi-detached dwellings have a two-storey form which combined with their siting close to the plot frontage, would be at odds with the prevailing character and appear evident in the streetscene. Whilst it is acknowledged that the existing dwelling is situated within the front and western boundaries of the site, it is not an imposing two storey structure. The proposed dwellings would have an unrealistic scale that would be highly visible from within the Lincombes Conservation Area. The proposed dwellings have a traditional, pitched design, that clashes and is at odds with the remainder of the site given the modern flat roofed apartment block.

The pitched roof element of the dwellings adds to the scale, massing and dominance of the proposed built form. The Design Review Panel workshop explicitly expressed concerns regarding the integral garages, as it promotes an “outdated suburban-style plot typology”. The proposal retains the integral garages which are not evident elsewhere within the local built form. The proposed semi-detached dwellings are of a poor design, it is considered that the proposal is out of character and disproportionate with the existing streetscene and other dwellings in the area, it appears cramped and would represent an overtly dominant built form. The proposal has a siting, scale and massing which fails to reflect the existing area.

It is considered that the apparent and incongruous siting and design of the built form in the way of the proposed semi-detached dwellings within the streetscene would lead to less than substantial harm to the setting of the ‘Palm Grove’ Listed Building, given the limited vegetational coverage between the site and the listed building. Should the vegetation around Palm Grove be pruned back this harmful intervisibility would be exacerbated

It is considered that the proposal in totality does not acknowledge the local character and does not have a clear urban structure and grain that integrates with the surrounding context, in terms of siting, scale and design. The proposed design is inappropriate, it does not even attempt to reflect the design of the locality. The proposed development appears cramped and would erode the spacious, verdant qualities of the site. It is considered that the proposal fails to acknowledge the local distinctiveness as well as relating acceptably to the heritage assets, as the proposal is not in keeping.

Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of the designated heritage assets, this harm should be weighed against the public benefits of the proposal. The proposed development would provide limited economic benefit, in terms of the work itself and make a minor contribution to the housing land supply, however this does not amount to substantial public benefit which would outweigh the harm identified. In any event, in this case, it is considered that the development in totality will lead to less than substantial harm to the significance of the Lincombes Conservation Area and to the setting of the nearby listed building, the ‘Palm Grove’.

Given the siting, scale and design of the proposal, it is considered that the proposal would have a detrimental impact upon the existing street scene, locality, and heritage assets, contrary to Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained within the NPPF. The development fails to preserve or enhance the character or appearance of the Lincombes Conservation Area.

The above conclusions have consideration of Paragraph 199 of the NPPF which identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. The conclusion also considers the general duties of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding conservation areas, which requires Local Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Should planning permission be granted, planning conditions should be employed to secure landscaping, suitable boundary treatments, materials and window and door details to ensure that a suitable form of development is undertaken without detriment to the heritage asset and locality.

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

Policy DE3 of the Local Plan states that development proposals should be designed to provide a good level of amenity for future residents and will be assessed in terms of the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution, provision of useable amenity space, and an adequate internal living space.

#### *Internal Living Space*

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. 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 sets out the minimum floor space standards for new dwellings and apartments. The proposed residential units comply with the minimum floor space requirements. Therefore, the proposed residential accommodation is considered to comply with Policy DE3 of the Local Plan in this regard.

#### *External Amenity Space*

Policy THW4 of the Torquay Neighbourhood Plan states that all new houses shall have not less than 20 square metres of outside space and must have garden areas with not less than 10 square metres of space suitable for growing plants or the equivalent allocated communal growing space within an easy walk. Flats or apartments must have either a balcony of not less than 10 square metres and as appropriate to the size of the home or a communal green area of not less than 10 square metres per unit within the curtilage of the property. The proposed layout provides a communal outdoor amenity space for the apartment block as well as providing most with their own individual private terraces. The proposed semi-detached dwellings and the existing

dwelling would also benefit from their own individual outdoor amenity spaces. The proposal is considered to comply with Policy THW4 of the Torquay Neighbourhood Plan.

### *Daylight*

Habitable rooms in residential development should provide occupiers with adequate and suitable outlook and access to natural light. Officers are concerned that the room layout and fenestration for certain apartments, in particular apartments 3, 6 and 8 would have little or no sunlight owing to their orientation and adjacent trees on neighbouring land, of which their canopies would be some 5 metres from the habitable room openings. It has not been demonstrated by the applicant whether these apartments would have suitable levels of natural light, therefore the proposal is considered to fail to accord with Policy DE3 of the Local Plan in this regard.

### *Neighbour Amenity*

Given the differences in finished floor levels, it is considered that the proposed openings between the proposed residential units will not provide direct intervisibility between habitable rooms.

Objectors have raised concerns in terms of noise, loss of light and privacy/overlooking, whilst supporters have stated it would improve residential amenity. The proposed apartment block would be some 32 metres from the closest neighbour to the east 'White Lodge', to the north is a dense copse of trees, to the west is 'Meadville' which is flatted development and is some 19 metres away. Given the existing vegetation outside of the applicant's ownership, as well as the boundary treatments and separation distances, it is considered that the proposal would not result in a detrimental impact on adjacent neighbours in terms of overlooking/intervisibility. Furthermore, given the separation distances it is considered that the proposal would not harm the outlook of the habitable openings of adjacent neighbours. Given the siting of the apartment block in relation to adjacent neighbours, it is considered that the proposal would not have a detrimental impact on the neighbours access to natural light.

The properties to the south are considered to be a sufficient distance away given the separation distance and Meadfoot Sea Road being in-between that there would not be a detrimental impact on the amenity of neighbours, in terms of their outlook, privacy, or access to natural light. Overall, given its siting, scale, and design of the proposal, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, or access to natural light. More generally in terms of the finished development the residential use aligns with the residential uses nearby and the additional residential units would not result in undue noise or general disturbance for existing occupiers in the area. Should planning permission be granted, a planning condition should be employed to secure a Construction Method Statement, suitable boundary treatments including between the

roof terraces of apartments 3 and 4 and the gardens of the semi-detached dwellings.

#### **4. Impact on Highway Safety**

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 TA1 sets out promoting improvements to road safety. 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. 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. Policy TH9 goes on to state that new major developments must contribute to better pedestrian/cycle links where possible and encourage modal shift towards active travel.

The proposal includes a new access point from Meadfoot Sea Road and provides a total of 20 on-site parking spaces. Objectors have raised concerns regarding traffic and access.

The Local Highway Authority have been consulted on the application. The applicant has submitted a drawing which illustrates visibility splays of an 'X' distance of 2.4m and a 'Y' distance of 43 metres can be achieved in both the primary and secondary directions. This is commensurate with the requirements of a posted speed restriction of 30mph and is considered acceptable. The proposed plans also illustrate that the site access gates which open inwards into the site which is considered acceptable. The swept path analyses demonstrate that both large vehicles including refuse and fire vehicles can access and egress the site in a forward gear, which is considered to be acceptable.

Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment and two off-street parking spaces per dwelling, totalling 15 off-street parking spaces, plus an additional parking space for visitors. There is a surplus of 4 parking spaces. Appendix F states that parking spaces should be 4.8 metres by 2.4 metres except for when they abut the public footpath and/or public highway and then the spaces should be 5.5 metres by 3.2 metres to prevent vehicles from overhanging and causing an obstruction to the public footway and potentially the public highway. Furthermore, the adopted Highways Standing Advice states that where a parking space is adjacent to a solid obstruction such as a retaining wall, the minimum width of a parking space should be 3.2 metres and should not be reduced. In terms of the undercroft parking, the proposal proposes 4.8 metre by 2.4

metre spaces for parking spaces 2, 3, 6, 7,8 and 9, whereas parking spaces 1, 4 and 5 have been enlarged in relation to the guidance. It is considered that parking space 9 should also have a minimum width of 3.2 metres given its position adjacent to the bicycle store. Therefore, parking space 9 is substandard. The undercroft parking also accommodates a 6.3 metre back-to-back distance between opposing parking spaces for manoeuvring. Garages should have a minimum internal measurement of 6 metres by 3.3 metres. The proposed integral garages for the semi-detached dwellings adhere to this requirement. The Local Highway Authority concurs that there is an oversupply of parking, 10% of spaces should be for disabled users and 10% visitor parking for the apartment block. Should planning permission be granted, a planning condition should be employed to allocate the parking arrangements of the site, including disabled parking spaces.

Appendix F also states that 1 electric charging point should be provided for each dwelling and 20% of parking spaces for flatted development should have electric charging points. Should planning permission be granted, a planning condition should secure such details prior to occupation. Furthermore, in terms of sustainable modes of transport, Appendix F states that at least 2 covered and secure cycle storage spaces should be provided per dwellings and at least 1 covered and secure cycle space per flat. The proposed plans show a cycle storage for the apartment block, but not for the remainder of the site. Should planning permission be granted, a planning condition should secure such details prior to occupation.

Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes. The proposal provides bin storage, SWISCo's Waste Client Manager has concerns regarding the communal bin store, therefore should planning permission be granted notwithstanding the approved plans the bin storage needs to be satisfactory and align with the guidance of such matters prior to the occupation of the development. Subject to the aforementioned planning conditions, the proposal would have an acceptable impact in terms of highway safety, and would comply with Policies TA1, TA2 and TA3 of the Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

## **5. Impact on Ecology**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy TE5 of the Torquay Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. 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 (Paragraph 174).

The application is supported by a Preliminary Ecological Appraisal. Objectors have raised concerns in terms of trees and wildlife. The report found that the property and outbuilding were considered to have low-moderate potential for roosting bats, therefore a single dusk emergence/dawn re-entry survey was required. The re-entry survey did not observe any bats emerging from either building no further surveys are required to prove their presence/likely absence. Nesting birds must be considered against disturbance during nest building or nesting; typically between March-August inclusive to avoid contravening the legislation which protects them. Furthermore, the initial ecological appraisal found that the amenity grassland is considered suitable habitat for common reptiles which are protected by legislation. The reptile surveys found a single juvenile Slow worm present; a breeding population was not determined but likely to be present due to the presence of a juvenile. Therefore, should planning permission be granted a planning condition should secure the recommendations, mitigation measures and biodiversity enhancement measures in the submitted ecological reports. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy TE5 of the Torquay Neighbourhood Plan.

Policy C4 of the Local Plan states that development will not be permitted when 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 application is supported by an Arboricultural Impact Assessment. The site is protected by a 1973.01 Area TPO and lies within the Lincombes Conservation Area. Both the TPO and Conservation Area provide statutory protection to the trees impacted by the development. The Council's Senior Tree and Landscape Officer has been consulted on the proposal and has stated that the submitted arboricultural information correctly identifies the trees and categorises them accordingly.

The off-site tree (O1 London plane) is owned by Torbay Council and is assessed as part of their ongoing management of the wider tree stock. Although pruning of London plane 01 has been included it is not necessary with the reasons provided largely academic in respect of the development proposal. As a Council owned tree it is Torbay Council's responsibility to manage and maintain as it sees fit and currently no works have been prescribed for the tree. The proposed pruning of the third party owned Monterey pine is reasonable with the tree having experienced injudicious pruning before resulting in lengthy stubs being retained in the lower crown. The

proposed works will remediate the perceived dominance of the tree in relation to the building which will provide an improved spatial relationship with the building. It should be noted that although the works are considered reasonable agreement from the owner of the tree will be required to carry out the pruning.

An Arboricultural Method Statement has been submitted to mitigate against root damage to the London plane 01 to create the access for the development. The Officer has requested further details to ensure that the roots of the tree are properly protected throughout the creation of the entrance and the severing of any roots encountered is against the relevant British Standards. The Officer has advised that that carrying out explorative trial holes to ascertain the presence of roots in the area would help inform any works going forward. The Officer has also raised concerns regarding debris and natural light in relation to the existing tree stock outside the ownership of the applicant and the proposed apartment block, matters of which were covered under the residential amenity section of this report.

Given the response from the Council's Senior Tree and Landscape Officer, further details with regards to the Arboricultural Method Statement have been requested and the applicant has failed to provide such. Therefore, it is considered that insufficient information has been provided to establish whether the proposed development would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene, as such it is considered that the proposal fails 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 is accompanied by a Flood Risk Assessment. Objectors have raised concerns regarding drainage. The Council's Drainage Engineer has been consulted on the scheme and has stated that the hydraulic modelling confirms that the surface water system as designed will not result in a flood risk to properties on the site or any increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. The Council's Drainage Engineer raises no objections on drainage grounds to planning permission being granted, subject to a planning condition to secure the surface water drainage. Should planning permission be granted, a planning condition should be employed to secure the surface water drainage. The proposal is considered to accord with Policy ER1 of the Local Plan.

## **7. Affordable Housing Contributions**

The proposal falls within the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on greenfield sites of three dwellings or more. For eleven dwellings it would have an affordable housing target of 20% which is usually sought through an on-site provision. Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits.

Paragraph 63 of the NPPF states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:

- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
- b) the agreed approach contributes to the objective of creating mixed and balanced communities.

Paragraph 65 of the NPPF states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

The applicant has not indicated that they intend to provide any affordable housing.

In the absence of a signed Section 106 Obligation the proposed development cannot deliver the necessary affordable housing as required, therefore the proposal is considered to fail to accord with Policy H2 of the Local Plan and paragraphs 63 and 65 of the NPPF.

## **8. Designing Out Crime**

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Torquay Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The proposal does not include a scheme of designing-out crime measures. Therefore, should planning permission be granted, it is considered that a planning condition should be employed to secure a scheme of such prior to occupation. Subject to the use of this condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan, and TH2 of the Torquay Neighbourhood Plan.

## **9. Low Carbon Development**

Policy SS14 of the Local Plan seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
2. Use energy efficiently within the fabric of the building;
3. Incorporate the use of decentralised heat, cooling and power systems; and
4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.

The applicant has submitted an energy statement which states that the prime objective of a low energy or low carbon design is to optimize the orientation, structure, window/glazing location, and size and selection of proper materials pertaining to the building envelope. In addition, amalgamation of energy-efficient heating, ventilation and air conditioning (mechanical ventilation with heat recovery) is also covered under low energy building aspect. Furthermore, the use of modern construction with an external wall insulation providing a continuous envelop of the thermal insulation for the buildings.

A light timber construction will be used for penthouse apartments to reduce load and impact on the structural design. The proposed dwellings have been suitably designed with larger windows facing either south or west direction and with living accommodation always having a dual aspect openings. Good quality, double glazed, aluminium windows will prevent from heat loss and solar gain. All apartments will have 100% energy efficiency lighting, interoperable building communication system and optimized control strategy. The use of the flat roof over the apartment's block for installation of the Photovoltaic Panels to power the onsite lighting.

The proposals allowed for two electric car charging points on the site encouraging the low carbon electric car usage to evolve. Also, the new development wanted to promote a healthy living by securing a suitable storage areas for bikes or paddle boards to give the future occupants a chance for active and healthy living. The buildings will be well insulated to high standards which along with an energy efficient electric installations, good quality, modern, aluminium fenestration and sustainable materials will be an example of low carbon emission development.

Should planning permission be granted, a planning condition should be employed to ensure that the development adheres to the measures stated within the submitted energy statement.

### **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 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. Given the NPPF priority to significantly boost the supply of housing, the residential units to be provided must carry significant weight in this balance. However, the proposal fails to secure the required 20% affordable housing, which fails to meet the housing needs of local people.

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

#### **The Environmental Role**

With respect to the environmental role of sustainable development, for reasons set out in this report there is material harm to identified heritage assets (the Lincombes Conservation Area and setting of the Palm Grove Listed Building) which presents a clear reason for refusing the application. In addition, other elements that are considered to be especially relevant to the proposed development are impacts on trees, biodiversity and drainage. These matters have been considered in detail above.

The proposal provides low carbon and energy measures. The environmental benefits identified are marginal in the case of any biodiversity net gain, where it is proposed to require enhancement measures through condition should planning permission be granted.

It is considered that insufficient information has been provided to establish whether the proposed development would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene.

Concerns have also been raised with regards to access to natural light to habitable rooms when considering a number of the proposed apartments.

It is concluded that the environmental impacts of the development, in the absence of the tree information, adverse impact on heritage assets and concerns over access to natural light for some of the apartments, weigh against the development.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is considered to represent unsustainable 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:

Policy H2 of the Local Plan states that developments of over 11 residential units on greenfield sites should provide 20% affordable housing. The applicant has not indicated that any of the units would be affordable and has not provided heads of terms

for the S.106 legal agreement that would be necessary to secure provision of affordable units as part of the development.

CIL:

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

### **EIA/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 and development plan policies.

When taking account of the Government's objective of significantly boosting the supply of homes and the role of the construction industry in supporting economic growth, along with the acknowledged important contribution that small sites can make to meeting the housing requirement of an area and the Council's housing land supply situation, the cumulative public benefits of the proposed scheme only attract modest weight.

Therefore, having regard to the great weight that should be given to the conservation of designated heritage assets, the public benefits do not outweigh the less than substantial harm to the significance of the Lincombes Conservation Area and the setting of the 'Palm Grove' Listed Building.

The Council's housing land supply situation also means that paragraph 11 d) of the Framework must be applied. This sets out that planning permission should be granted, subject to whether the application of policies in the Framework which protect areas or assets of particular importance provides a clear reason for refusing the development.

Designated heritage assets are one of the defined protected assets and given the harm to the Lincombes Conservation Area and the setting of the 'Palm Grove', the policies in the Framework which seek to protect designated heritage assets provide a clear reason for refusing the development. The presumption in favour of sustainable development therefore does not apply.

It is concluded that whilst the proposal assists the delivery of housing, when considering the planning balance the significant benefit of providing such is not

outweighed by the harm identified within this report. Therefore, on balance the proposal is considered to be unacceptable having regard to the Development Plan taken as a whole.

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

The Council cannot currently demonstrate a 5-year housing land supply, as sought by Government, and the proposal will help with the delivery of housing. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay. For reasons set out in this report there is material harm to identified heritage assets which presents a clear reason for refusing the application. As such, in applying the 'tilted balance' identified in Paragraph 11 of the NPPF, it is concluded that the application should be refused.

The provision of housing is a significant benefit within the planning balance. In the absence of 5-year housing land supply the NPPF advises that the policies most important for determining the application should be considered to be out of date.

It is concluded that the development is considered to conflict with the Development Plan however paragraph 11 (d)(ii) of the NPPF states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless 'any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'. It should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development, however it is considered that notwithstanding the benefits of providing housing, the adverse impacts of the development, as set out in this report, significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

As such it is recommended that planning permission be refused.

### **Officer Recommendation**

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

### **Reason(s) for Refusal**

1. Given the siting, scale and design of the proposal, it is considered the proposal would fail to reflect local distinctiveness as well as failing to relate acceptably to the heritage assets. The proposed siting, scale and design of the semi-detached dwellings is suburban in character and would be dominant in the street scene. As such they would be inappropriate and out of character with the context of the site

and surrounding area and fail to respect the local character and would lead to less than substantial harm to the setting of the 'Palm Grove' listed building. The proposed scale and design of the apartment block fails to provide a quality design, respect the local character in terms of design, scale and bulk, and in terms of reflecting the identity of its surroundings. It would present itself as an overtly dominant mass within the locality that would be highly visible within the Lincombes Conservation Area. The proposal in its totality would result in an incongruous addition that would cause demonstrable harm to the heritage assets that is not outweighed by sufficient public benefit. The proposal is considered to fail to conserve or enhance the distinctive character and appearance of the Lincombes Conservation Area and would therefore lead to less than substantial harm to the heritage asset. The proposal is considered to be contrary to Policies DE1 and SS10 of the Adopted Local Plan 2012-2030, Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030 and the guidance contained within the NPPF, in particular Paragraphs 130, 134, 199 and 202.

2. The proposed development would provide a poor quality residential environment by reason of the trees adjacent to the western boundary in relation to the proposed apartment block, in particular apartments 3, 6 and 8, some of the habitable rooms would have limited access to natural light given the trees, which would result in the creation of an environment injurious to the amenity of future residents, contrary to Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the National Planning Policy Framework, in particular Paragraph 130.
3. The proposed works are in close proximity to a protected tree within the conservation area. As insufficient information has been provided it cannot be confirmed that the proposal would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene, and therefore whether the proposal would be in accordance with Policy C4 of the Adopted Torbay Local Plan 2012-2030.
4. The proposal, in the absence of a completed S106 Legal Agreement, fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Adopted Torbay Local Plan 2012-2030 and the National Planning Policy Framework, in particular Paragraphs 63 and 65.

### **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 with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to amend the application. However, the local planning authority was unable to resolve these issues with the applicant

and the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

**Relevant Policies**

C4 – Trees, Hedgerows and Natural Landscape Features

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

ES1 – Energy

H1 – Applications for New Homes

H2 – Affordable Housing

NC1 – Biodiversity and Geodiversity

SS3 – Presumption In Favour Of Sustainable Development

SS11 – Sustainable Communities

SS14 – Low Carbon Development and Adaptation to Climate Change

TA1 – Transport and Accessibility

TA2 – Development Access

TA3 – Parking Requirements

TE5 – Protected Species Habitats and Biodiversity

TH2 – Designing Out Crime

TH8 – Established Architecture

TH9 – Parking Facilities

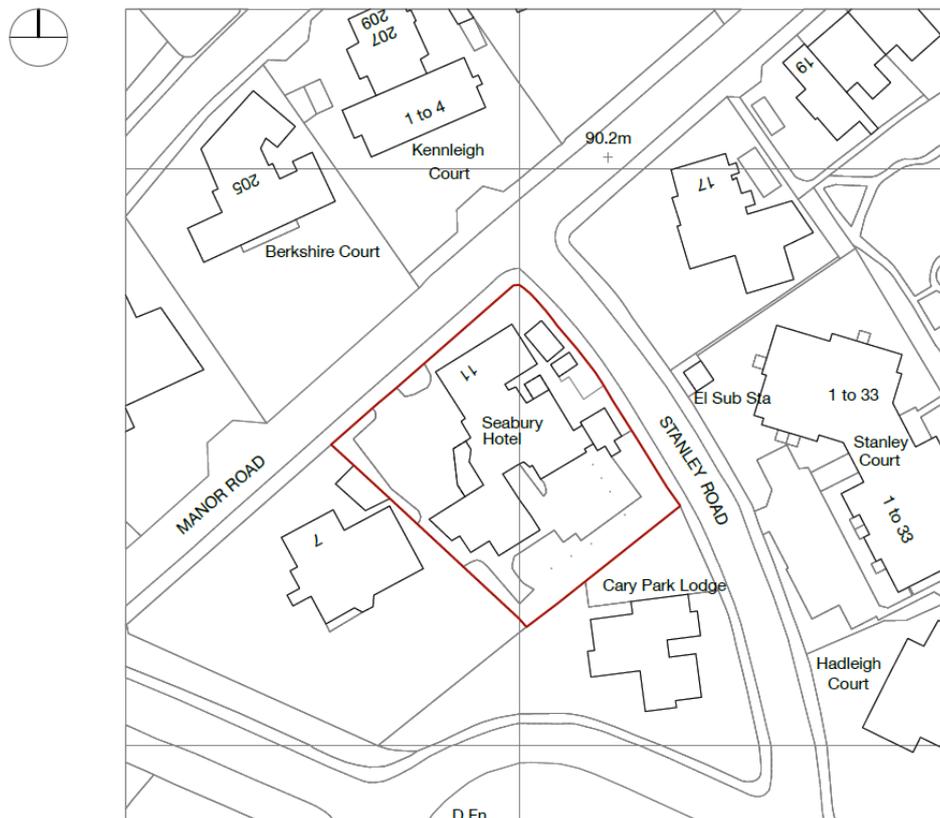
THW4 – Outside Space Provision

W1 – Waste Hierarchy

## TORBAY COUNCIL

Application Site Address	Seabury Hotel 11 Manor Road Torquay TQ1 3JX
Proposal	Change of use from hotel to 12 flats, including the demolition of existing extensions, and the erection of a new extension and new building.
Application Number	P/2021/0520
Applicant	Mr Hill – 8 Tech Ltd.
Agent	Mr Toby Peters - EMPERY + CO LTD
Date Application Valid	29/06/2021
Decision Due date	28/09/2021
Extension of Time Date	18/03/2022
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 Divisional Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott

### Location Plan:



### **Site Details**

The site is occupied by a Victorian Villa and its curtilage, sited at the corner of Manor Road and Stanley Road, Torquay. While the original building dates from 1830s-1860s, the building has been extended by way of a number of more recent extensions that detract from its historic character to some extent. The building is currently in use as a hotel, which has not operated as such since the COVID pandemic.

The site is located within the St Marychurch Conservation Area. The St Marychurch Conservation Area appraisal document does not identify the subject property as a key building within the conservation area, but draws attention to the prominent stone walls and mature trees along the plot boundaries. The site is in proximity to a Grade II listed building, namely No.205 St Marychurch Road which is opposite the site on the north-western side of Manor Road. The site is also located within Flood Zone 1, which is a Critical Drainage Area. The site is located outside of, but around 200 metres to the northeast of, a Community Investment Area, and is located outside of the Core Tourism Investment Area.

### **Description of Development**

The proposal seeks permission for a change of use from a hotel to 12 flats, including the demolition of all existing extensions, and the erection of a new two-storey extension and a new two-storey building to the rear of the site. The proposal includes four 1-bed flats, six 2-bed flats and two 3-bed flats.

The proposal includes a large communal outdoor amenity area for all the residential units to use. The proposals would maintain vehicular access from Manor Road and would provide 12 on-site parking spaces.

The scheme has been revised since its initial submission, as originally the proposal was for 15 flats – eight 1-bed flats and seven 2-bed flats – and included 15 parking spaces. It should be also noted that the original proposal had a different design that was considered to portray a poor pastiche, therefore the current proposal offers a contemporary re-design.

### **Pre-Application Enquiry**

DE/2020/0013: Conversion of existing hotel to 26 residential flats. Summary - On the basis of the submitted viability report, the principle of the proposed change of use from holiday accommodation to residential flats is considered to be acceptable, however a more contextually appropriate design approach would be required in order for the proposal to gain officer support. While the scheme detailed in your submission raises concerns primarily with regard to the proposal's impact on the character of the conservation area and the setting of the listed building, the principle of residential development is one that would be supported due to the public benefit associated with housing delivery, and as such this written response has provided guidance with

respect to matters such as design, residential amenity, highways, arboriculture, ecology, and drainage, which can be used to help inform a scheme that would be more likely to gain officer support.

### **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/2013/0909: Extend time limit (re P/2010/0736) First Floor Extension With Pitched Roof Over; Extended Reception Area. Approved 17/09/2013.

P/2010/0736: Extend time limit - first floor extension with pitched roof over; extended reception area - application P/2007/1576/PA. Approved 20/08/2010.

P/2007/1576: First Floor Extension With Pitched Roof Over; Extended Reception Area. Approved 06/11/2007.

P/1998/1187: Alterations And Erection Of Extension To Form Conservatory To Existing Lounge At Rear (As Revised By Plans Received 14/9/98). Approved 22/09/1998.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. 2 letters of representation have been received.

Concerns include:

- Impact on local area
- Noise
- Overdevelopment
- Traffic and access

### **Summary of Consultation Responses**

**Torquay Neighbourhood Forum:**

No response received.

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

No objection subject to a planning condition for compliance for the Tree Protection Plan and Arboricultural Method Statement and a pre-commencement condition for a detailed landscaping scheme.

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

No objections subject to the inclusion of a planning condition for a Construction / Demolition Management Plan.

**Police Designing Out Crime Officer:**

No objections subject to a planning condition to secure designing-out crime measures.

**Torbay Council's Strategy & Project Management Officer:**

No objection.

**Torbay Council's Drainage Engineer:**

No objections on drainage grounds to planning permission being granted, providing the standing advice is used for the surface water drainage from the car parking areas.

**South West Water:**

The method proposed to discharge of driveway water into the ground (infiltration) is acceptable.

However, discharge of the roof water to the public combined sewerage network is not an acceptable proposed method of disposal, when there is the option to discharge to ground (infiltration). There is apparently sufficient space for a soakaway to the southwest of the existing building. I further refer the applicant to DCG Appendix C Clause B5.1.14 of the Sewerage Sector Guidance, which states that foul sewers should not be laid under infiltration elements such as permeable paving.

**SWISCo's Waste Client Manager:**

No objection subject to additional information regarding the 'Equinord Underground H3 bin system'.

**WSP on behalf of the Local Highway Authority:**

No objection subject to planning conditions to secure the parking provision, manoeuvring area, electric charging points and a disabled parking provision.

**Planning Officer Assessment**

## Key Issues/Material Considerations

1. Principle of Development
2. Impact on the Character of the Area
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology and Biodiversity
6. Flood Risk and Drainage
7. Affordable Housing Contributions
8. Designing Out Crime

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

The proposal is for a change of use from a hotel to 12 flats, including the demolition of existing extensions, and the erection of a new extension and new building.

Policy TO2 of the Local Plan states that, outside Core Tourism Investment Areas, the change of use of holiday accommodation will be permitted where:

1. The holiday character of the area and range of facilities and accommodation offered are not undermined; and,
2. One or more of the following apply: the site is of limited significance in terms of its holiday setting, views and relationship with tourism facilities; it can be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes, or; the redevelopment or change of use will bring regeneration or other benefits that outweigh the loss of holiday accommodation or facilities.

Policy TO2 of the Local Plan states that, where a change of use away from tourism is permitted, there will be a requirement to (i) restore buildings or land to their original historic form by the removal of unsightly features, signage, clutter and extensions relating to the holiday accommodation use, (ii) to reinstate amenity space lost through over-development as a holiday use, and that (iii) a high priority will be given to restoring the character and appearance of buildings within conservation areas.

In light of the above, the proposal includes the demolition of its unsightly features, particularly the extensions relating to holiday accommodation use. The original building shall be retained and through the removal of deleterious extensions and inappropriate additions, with a particular emphasis on restoring the original appearance and detailing of the elevations that address Manor Road and Stanley Road.

Policy TO2 of the Local Plan also states that, whether inside or outside Core Tourism Investment Areas, change of use from holiday accommodation to small apartments and houses in multiple occupation (HMOs) will not be permitted where they would conflict with the tourism character and offer of the Bay. Similarly, Policy SS11 of the

Local Plan seeks to secure, amongst other things, well-balanced communities with a range of good quality residential accommodation including small to medium sized homes (2-4 bedrooms), and to resist excessive numbers of small self-contained flats and HMOs, with a particular emphasis on Community Investment Areas. While it is apparent that the site does not have a strongly tourism-based character and is not within a Community Investment Area, the site is located relatively close to the Core Tourism Investment Area anchored around Babbacombe Downs to the northeast and the nearby Community Investment Area to the southwest. Therefore, the applicant has revised the proposal to provide a mixed tenure of residential development and a planning condition is recommended to ensure that the proposed residential units cannot change into a House of Multiple Occupation under permitted development without express planning permission from the Local Planning Authority.

Policy TT1 of the Torquay Neighbourhood Plan states that change of use from tourist accommodation to residential on sites outside the Core Tourism Investment Areas will be supported subject to, amongst other things, the site being of limited significance to the tourism setting, or the site lacking viability for tourism.

Policy TT2 of the Torquay Neighbourhood Plan states that change of use away from tourist accommodation within Conservation Areas will be support in principle (subject to other policies) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

It is considered that the submitted viability reports provide a reasonable basis for supporting the proposed change of use from holiday accommodation to residential in accordance with the criteria set out above. The viability report states that the hotel is located in a secondary, residential area with limited passing trade and no sea views. The property is not well placed for Torquay's main attractions, all having negative implications for occupancy and room rate. The hotel requires significant capital expenditure to the bedrooms, bathrooms, public areas and externally in order to meet guest expectations and compete locally with other hotels. The local market is due to experience a significant increase in the number of hotels and hotel bedrooms, all of which will compete for the existing business at the Seabury Hotel. Previous evidence suggests that the 2-star independent sector which the Seabury Hotel sits in, is the most sensitive to market challenges and the business is currently loss making due to declining revenue and high costs associated with property maintenance, payroll and credit card charges and is therefore not viable.

Although 12 months marketing data is not provided, other evidence pursuant to Policy TT1 of the TNP is provided. The character in the vicinity of the site is more defined by residential properties than by holiday accommodation, and the site is somewhat separate from the important tourism facilities and accommodation at Babbacombe Downs (which, unlike the application site, is designated as a Core Tourism Investment

Area). Although the hotel contains a swimming pool and has clearly received investment, the type of accommodation and facilities appear to be available elsewhere, closer to key tourism locations. Given the site's location, the hotel's performance in recent years, and the pipeline of new hotels opening in the wider area, it appears unlikely that the loss of the hotel would adversely affect the tourism character of the area or the range of accommodation offered in Torbay. The proposed change of use would bring about public benefits in the form of housing delivery (in the context of a lack of a 5-year supply of land for housing), and would also have the potential to provide other public benefits in the form of heritage gains through the removal of deleterious extensions.

Policy H1 of the Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is 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. As the Council cannot demonstrate a 5 year housing land supply the tilted balance in favour of sustainable development is applicable as required by the National Planning Policy Framework (NPPF):

Paragraph 11 of the NPPF states:

Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>8</sup>, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>7</sup>; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnote 8: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

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 would apply as it is considered that the proposal does not lead to any adverse impacts that would significantly and demonstrably outweigh the benefits.

Policy TS4 of the Torquay Neighbourhood Plan states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in the plan. It further advises that development of greenfield sites can have an adverse impact through the loss of green space, so will only be supported where it is an allocated site within the Neighbourhood Plan or the loss is required to meet the strategic economic policies within the Local Plan.

In the light of the broad aspirations of Policy H1 of the Local Plan and Policy TS4 of the Torquay Neighbourhood Plan, the principle of residential use on the site is considered acceptable, subject to broader policy considerations. It is noted that the site is well located for housing, in a sustainable location with good access to shops and other services – approximately 175 metres from the St Marychurch District Centre, transport links and recreational areas, within an area of mainly residential character. This context supports the principle of a residential use being acceptable.

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

Paragraph 126 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 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design and government guidance on design'. 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 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 site is occupied by a Victorian Villa and its curtilage, sited at the corner of Manor Road and Stanley Road, Torquay. While the original building dates from 1830s-1860s, the building has been extended by way of a number of more recent extensions that detract from its historic character to some extent. The proposal seeks the removal of deleterious extensions, which are evident across the original villa. The original detailing is proposed to be reinstated where possible on the original villa, and with a particular emphasis on the elevations facing Manor Road and Stanley Road. The proposal includes a contemporary extension which respects the height of the original villa, and provides a modern contrast to the existing Victorian architectural style that is complimentary to the original villa.

Objectors have raised concerns in terms of impact on local area and it constituting overdevelopment. Units 2, 3, 8 and 9 would be accommodated within the original villa

building, which would maintain a hipped roofscape, return the fenestration back to traditional sash and maintain a rendered appearance. The proposal would involve the demolition of its unsightly features, particularly the extensions relating to holiday accommodation use. Units 1 and 7 would be contained within the proposed extension to the villa, which would have a two storey contemporary design that would be attached to the original villa via a glazed connection. The proposed stand alone building would be sited to the rear of the original villa but would be visible from Manor Road, it would be of a similar appearance to the proposed extension, in terms of being two storey and have a contemporary design. The proposed extension and new-build would have proportionate fenestration that relates to the original villa. A planning condition is recommended to secure samples of the external materials as well as the fenestration. It is considered that the proposed development provides a suitable and well-designed scheme to redevelop a brownfield site.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. The site is located within the St Marychurch Conservation Area and the application is supported by a Heritage Statement. The St Marychurch Conservation Area appraisal document does not identify the subject property as a key building within the conservation area, but draws attention to the prominent stone walls and mature trees along the plot boundaries. The site is in close proximity to a Grade II listed building, namely No.205 St Marychurch Road, which is opposite the site on the north-western side of Manor Road. It is considered that the setting and character of the St Marychurch Conservation Area will be enhanced by the proposal given the existing built form, and the proposal would not result in harm to this heritage asset.

The proposal ensures the retention of the existing stone boundary wall in its entirety, with the existing access being retained, the corner gated access being removed and made good and no new apertures being created within the boundary wall. The proposal also includes the retention of the existing hedge between the site and Cary Lodge, along with the supplementation of other boundaries as per the proposed site layout plan.

Given the proposal's siting, scale, and design, it is considered to be acceptable and without unacceptable detriment to the character and appearance of the locality or street scene in accordance with Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

The above conclusions have consideration of Paragraph 199 of the NPPF which identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be).

This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. The conclusion also considers the general duties of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding conservation areas, which requires Local Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

### 3. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to provide a good level of amenity for future residents and will be assessed in terms of the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution, provision of useable amenity space, and an adequate internal living space.

#### *Internal Living Space*

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. 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 sets out the minimum floor space standards for new residential units. The proposed residential units comply with the minimum floor space requirements, see the table below.

<u>Flat Number</u>	<u>No. of Bedrooms</u>	<u>No. of Bed Spaces</u>	<u>Floorspace (sq m)</u>	<u>Minimum Requirement</u>
1	3	4	76	74
2	1	1	51	37
3	2	3	65	61
4	2	3	61	61
5	1	1	38	37
6	2	3	62	61
7	3	4	76	74
8	1	1	50	37
9	2	3	65	61
10	2	3	61	61
11	1	1	38	37
12	2	3	71	61

Therefore, the proposed residential accommodation is considered to comply with Policy DE3 of the Local Plan.

#### *External Amenity Space*

Policy THW4 of the Torquay Neighbourhood Plan states that flats or apartments must

have either a balcony of not less than 10 square metres and as appropriate to the size of the home or a communal green area of not less than 10 square metres per unit within the curtilage of the property. The proposed layout provides a communal external amenity space for all the residential units to share, in excess of 400 square metres. The site also benefits from being within close proximity to Cary Park. The proposal is considered to comply with Policy THW4 of the Torquay Neighbourhood Plan.

#### *Daylight*

Each of the habitable rooms proposed within the dwelling are served by sufficient window openings to allow for sufficient outlook and light and as such is considered to offer a good standard of internal amenity for future occupiers. It is considered that the proposed openings between the proposed residential units will not provide direct intervisibility between habitable rooms. More generally in terms of the finished development the residential use aligns with the residential uses nearby.

The proposal includes a level of planting to screen the car parking area from the adjacent elevations to prevent headlight intrusion and nuisance from other occupiers of the development.

#### *Neighbour Amenity*

Objectors have raised concerns in terms of noise. The proposed development is some 12-16 metres from the nearest adjacent neighbours (residential care home (Park House) and flatted development (Cary Park Lodge)). The existing use of the site is a hotel, it is considered that the proposed residential use would not result in any detrimental impact on adjacent neighbours in terms of noise. Given the proposal's siting, design and orientation in relation to adjacent neighbours it is considered that the proposed development would not have a detrimental impact on the amenity of neighbours, in terms of their outlook, privacy, or access to natural light. The Council's Environmental Health Officer raises no objections subject to the inclusion of a planning condition to secure a Construction and Demolition Management Plan.

A planning condition shall be employed to secure boundary treatments of the site prior to the occupation of the development, the site currently benefits from substantial boundary treatments including stone walling and box hedging that retained would provide suitable screening between the site and adjacent neighbours. Overall, subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

#### **4. Impact on Highway Safety**

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 TA1 sets out promoting improvements to road safety. 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. 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. Policy TH9 goes on to state that new major developments must contribute to better pedestrian/cycle links where possible and encourage modal shift towards active travel.

Objectors have raised concerns regarding traffic and access. The proposal proposes to maintain the existing vehicular access from Manor Road. The proposal includes 12 on-site parking spaces. Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment, totalling 12 off-street parking spaces, plus an additional parking space for visitors. There is a deficit of 1 parking space, however it is considered that the existing use of the site with 23 hotel rooms available, the existing 12 car parking spaces had to serve both guests and hotel staff. It is considered that the deficit of 1 parking space for the proposal, in relation to the existing situation would have a lesser impact on the local highway network. Furthermore, the site is in a sufficiently sustainable location as it is in close proximity to the St Marychurch District Centre and is in close proximity to local amenities and public transportation links to mitigate the insufficient onsite parking provision. The proposal also includes 28 bicycle storage spaces, which would exceed the policy requirement of 1 space per apartment. The proposal also includes three electric charging points, Appendix F of the Local Plan does not stipulate the number of electric charging points that should be included within flatted development.

The Local Highway Authority has been consulted on the proposal. The proposal retains the existing access from Manor Road into the site, which takes the form of a priority-controlled junction, for vehicular and pedestrian access. The applicant has provided pedestrian visibility splays of 2m x 2m from the access, which the Local Highway Authority consider to be acceptable. Due to the small scale of the proposed development and considering the trip generation associated with the extant use of the site, it is determined that the impact of the proposed re-development will be minimal on the local highway network. Therefore, no junction capacity assessments will be required. The applicant has submitted a swept path analysis to show access to the site by a fire engine, large car and panel delivery van, which is considered to be acceptable. The applicant has stated that the site in terms of refuse will be serviced from the carriageway, which is considered to be acceptable.

Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and with particular reference to residential developments, they should

provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes. The proposal indicates a 'Equinord Underground H3 bin system', however, no information is given about which materials this would be provided for and how this would be prepared for collection, nor is there any information about the capacity of this system for waste storage. SWISCo's Waste Client Manager has been consulted on the proposal and requires additional details, therefore a planning condition is recommended to secure such details prior to the occupation of the development. Compliance conditions are recommended to secure the bicycle storage, electric charging points and parking provision. On balance, it is considered that the proposal would have an acceptable impact in terms of highway safety, and would comply with Policies TA1, TA2, TA3 and W1 of the Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

## **5. Impact on Ecology**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy TE5 of the Torquay Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. 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 (Paragraph 174).

The application is supported by a Preliminary Ecological Appraisal and a Bat Survey report. The report states that there was no obvious evidence of roosting bats or nesting birds on or within the buildings. The follow-up bat report had not identified any evidence of roosting birds on or within the buildings or the hollow chestnut tree. The report concludes that there is no requirement for further survey work. There is no required bat mitigation for works to the building but precautionary advice has been provided in the unlikely event that a bat is uncovered. There are several trees on site that have negligible to low potential to support roosting bats. If the identified trees are to be affected by the proposed development it is recommended that these are re-inspected by a bat ecologist before any pruning or felling is undertaken. Biodiversity net gain for bats will be achieved by installation of three bat boxes on the renovated building. The reports provide mitigation measures and biodiversity net gain requirements, which are recommended to be secured by planning condition.

Policy C4 of the Local Plan states that development will not be permitted when 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 application is supported by an arboricultural report, an arboricultural method statement and an arboricultural impact assessment. The Council's Senior Tree and Landscape Officer states that the trees are not subject to a Tree Preservation Order. The trees are subject to Conservation Area regulations (St Marychurch Conservation Area). The assessment of the on-site tree stock is accurate, and the categorisations are in line with the recommendations as per the relevant BS5837. The submitted documents provide sufficient detail to allow for the desired long-term retention of the trees, however no landscape scheme has been submitted. The Officer considers that the site is sustainable from an arboricultural perspective, subject to a compliance condition for the Tree Protection Plan and Arboricultural Method Statement and a pre-commencement condition for a detailed landscaping scheme. Subject to the aforementioned planning conditions, as suggested, the development is considered acceptable, in-line with the aspirations of Policy C4 of the Local Plan, and advice contained within the NPPF.

## **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 is accompanied by a Flood Risk Assessment. Council's Drainage Engineer has been consulted on the scheme and raises no objections to the proposal, stating that the proposed drainage strategy for surface water run-off from the buildings is for a controlled discharge to the combined sewer system and the controlled discharge rate has been identified as 1.5l/sec which complies with the requirements of the Torbay Critical Drainage Area. Hydraulic calculations have been included within the drainage strategy which confirms that the surface water drainage for the buildings has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Within the drainage strategy the developer has indicated that the car parking areas will be formed of permeable paving however no details of the infiltration testing have been submitted to confirm that permeable paving will be feasible at this location. The recently agreed standing advice regarding sustainable drainage can be used for the permeable paving within the car parking areas. Subject to planning conditions securing the surface water drainage strategies, the proposal is considered to comply with Policy ER1 of the Local Plan.

## **7. Affordable Housing Contributions**

The proposal falls below the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of fifteen dwellings or more.

### **8. Designing Out Crime**

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Torquay Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The Police Designing-Out Crime Officer has been consulted and has recommended a number of designing-out crime measures. Officers recommend the use of a planning condition to secure a scheme of crime prevention measures to be submitted to the Local Planning Authority prior to the occupation of the development. Subject to the use of this condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan, and TH2 of the Torquay Neighbourhood Plan.

### **9. Low Carbon Development**

Policy SS14 of the Local Plan seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
2. Use energy efficiently within the fabric of the building;
3. Incorporate the use of decentralised heat, cooling and power systems; and
4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.

The applicant has submitted an Energy and Carbon Statement that in terms of energy efficiency a dual approach has been undertaken due to the proposal having both new and existing built form, therefore reusing the existing building has a much lower embodied carbon footprint than building a new one and renovating the fabric of the existing building with new high performance insulation, improved air tightness and improved window specification. Whereas, with the new build it is designed with a 'Fabric First' approach, and will exceed current building regulations and therefore

provide excellent thermal performance. This will be further aided with improved airtightness which, combined with the improved thermal performance, will mean that the new flats will retain heat far better than the existing buildings. An air-source heat pump heating (ASHP) system is proposed for the both the new and existing buildings to provide an energy efficient method of heating the homes. ASHPs need electricity to operate, but because they are extracting renewable heat from the environment, the heat output is greater than the electricity input therefore they are an effective renewable source for heating. A planning condition is recommended to secure the energy and low carbon measures stated within the statement. Subject to the aforementioned planning condition, the proposal is considered to comply with Policies ES1 and 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**

Whilst the loss of the hotel use is regrettable, the evidence supported with the application suggests that the 2-star independent sector which the Seabury Hotel sits in, is the most sensitive to market challenges and the business is currently loss making due to declining revenue and high costs associated with property maintenance, payroll and credit card charges and is therefore not viable.

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 residential units 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.

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 residential units to be provided must carry significant weight in this balance.

The provision of housing would provide an appropriate use and offer units within a sustainable location.

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 any biodiversity net gain, where it is proposed to require enhancement measures through condition.

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.

### **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:

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

### **EIA/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**

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.

The 'tilted balance' in favour of sustainable housing development therefore would apply as it is considered that the proposal does not lead to any adverse impacts that would significantly and demonstrably outweigh the benefits, and as such the 'tilted balance' identified in Paragraph 11 of the NPPF is enacted.

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

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, local amenity or heritage assets; would provide an adequate standard of living accommodation and provide acceptable arrangements in relation to access, flood risk, and ecological constraints. On balance, the proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood 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**

#### **Landscaping**

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.

### **Arboricultural Method Statement**

The development hereby approved shall be carried out in strict accordance with the approved Arboricultural Method Statement and Tree Protection Plan.

Reason: In accordance with the submitted details and to protect trees in the interests of visual amenity in accordance with Policy DE1 and C4 of the Adopted Torbay Local Plan 2012-2030.

### **Boundary Treatments**

Notwithstanding the approved plans, prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed boundary treatment 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.

### **Permitted Development - Means of Enclosure**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 2, Class A, no other means of enclosures shall be erected within the external areas of this development, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

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

### **Hedgerow, Tree and Shrub Removal**

No removal of hedgerows, trees or shrubs shall take place between 1st March and 30th September 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 Adopted Torbay Local Plan 2012-2030.

### **Communal Garden**

The development hereby approved shall not be occupied or brought into use until the 'Lawn' detailed on the plan referenced "Proposed Survey Drawing" (plan reference 'PA01 05 C' received 9<sup>th</sup> February 2022) has been provided in full. This communal garden area shall thereafter be maintained and retained for the use of all of the development's occupiers for the life of the development.

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

### **Materials**

No development (above damp-proof course level) shall take place until details including colour of the proposed external materials (walls and roof) and openings, rainwater goods, fascias and/or bargeboards 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: To ensure an acceptable form of development in the interests of the character and appearance of locality and the streetscene in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

## **Window and Door Details**

Notwithstanding the approved plans, prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority, which seek to respond to the positive aspects of the local prevailing character of the area:

- Materials and finish
- Sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the locality in accordance with Policies DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

## **Designing Out Crime**

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

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH2 of the Adopted Torquay Neighbourhood Plan 2012-2030.

## **Parking Provision**

The development hereby approved shall not be occupied or brought into use until the parking spaces and manoeuvring area detailed on the plan reference "Proposed Layout" (plan reference 'PA01 05 C' received 9<sup>th</sup> February 2022) have been provided. Of the parking spaces detailed on the approved plan, a space shall be provided for each flat for the lifetime of the development. These elements shall thereafter be retained for the use of the associated residential units for the life of the development.

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

## **Electric Charging Points**

The development hereby approved shall not be occupied or brought into use until the electric charging points detailed on the plan reference 'PA01 05 C' received 9<sup>th</sup> February 2022 have been provided. These elements shall thereafter be retained for the use of the associated residential units and for the life of the development.

Reason: To ensure the parking provision of the new residential units in accordance with the requirements of Planning Policy TA1, TA3 and Appendix F of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Adopted Torquay Neighbourhood Plan 2012-2030.

## **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. Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- j) Procedures for maintaining good neighbour relations including complaint management.
- k) 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.

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

## **Bin Storage**

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policies DE1 and W1 of the Adopted Torbay Local Plan 2012-2030.

## **Bicycle Storage**

Prior to the first occupation of the development hereby permitted, the approved bicycle storage on plan reference 'PA01 05 C' received 9<sup>th</sup> February 2022, shall be provided in full and retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

## **Ecological Recommendations and Enhancements**

The development shall proceed, and shall be retained thereafter, in full accordance with the approved ecological reports (plan reference 'P2021-0520-1 (PEA)' received 11<sup>th</sup> May 2021 and 'P2021-0520-1 (Bat Survey)' received 17<sup>th</sup> February 2022) hereby approved, including the outlined recommendations and ecological enhancements.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

## **Low Carbon Development**

The development hereby approved shall be carried out in strict accordance with the approved Low Carbon Statement (plan reference 'P2021-0520-10 (Energy & Carbon Statement)' received 17<sup>th</sup> February 2022), and shall be retained as such for the life of the development.

Reason: In interests of low carbon development and in accordance with Policy SS14 of the Adopted Torbay Local Plan 2012-2030.

## **Removal of Permitted Development C4**

Notwithstanding the provisions of Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), the residential use of any one or more units hereby approved shall not be changed to a House in Multiple Occupation, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and the living environment conditions in this locality in accordance with Policies DE1, DE3, H4 and SS11 of the Adopted Torbay Local Plan 2012-2030.

### **Drainage – Except Car Park**

The development, with the exception of the car park, shall be undertaken in strict accordance with the approved drainage details and retained as such at all times thereafter.

Reason: In the interests to 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, the guidance contained in the NPPF, and the requirements of the designation of the Critical Drainage Area by the Environment Agency.

### **Drainage – Car Park**

Should the car parking area under the development hereby approved be unable to be constructed using permeable paving, 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 to 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, the guidance contained in the NPPF, and the requirements of the designation of the Critical Drainage Area by the Environment Agency.

### **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.
2. 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.

3. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.
4. Community Infrastructure Levy (CIL)

This development is liable for contributions under the CIL regulations to provide essential infrastructure to support development in the Borough.

CIL next steps required under the CIL Regulations 2010 (as amended):

Where planning permission has been granted for development, the Council (as the collecting authority) requires the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form. The Council, as the collecting authority, will then as soon as reasonably practicable, issue a Liability Notice to the applicant, the developer, and/or whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.

Any claims for exemption or relief can only be considered from parties who have already assumed liability, prior to commencement of development.

The relevant liable person(s) must then submit a notice to the Council setting out when development is going to start - a Commencement Notice. The Commencement Notice must be submitted to the Council for their written acknowledgement at least 48 hours prior to the start of any development on the site. No development must commence without written acknowledgement of receipt of a Commencement Notice.

The Council will then issue a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. On receipt of the demand notice and commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure.

Failure to inform the Council of Commencement or to follow the CIL process and payment procedure correctly may result in the addition of surcharges and/or late payment interest. It must be noted that it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (Regulation 110 as amended by the 2011 Regulations).

Further CIL information and Forms can be found at <https://www.gov.uk/guidance/community-infrastructure-levy#forms-and-template-notices>

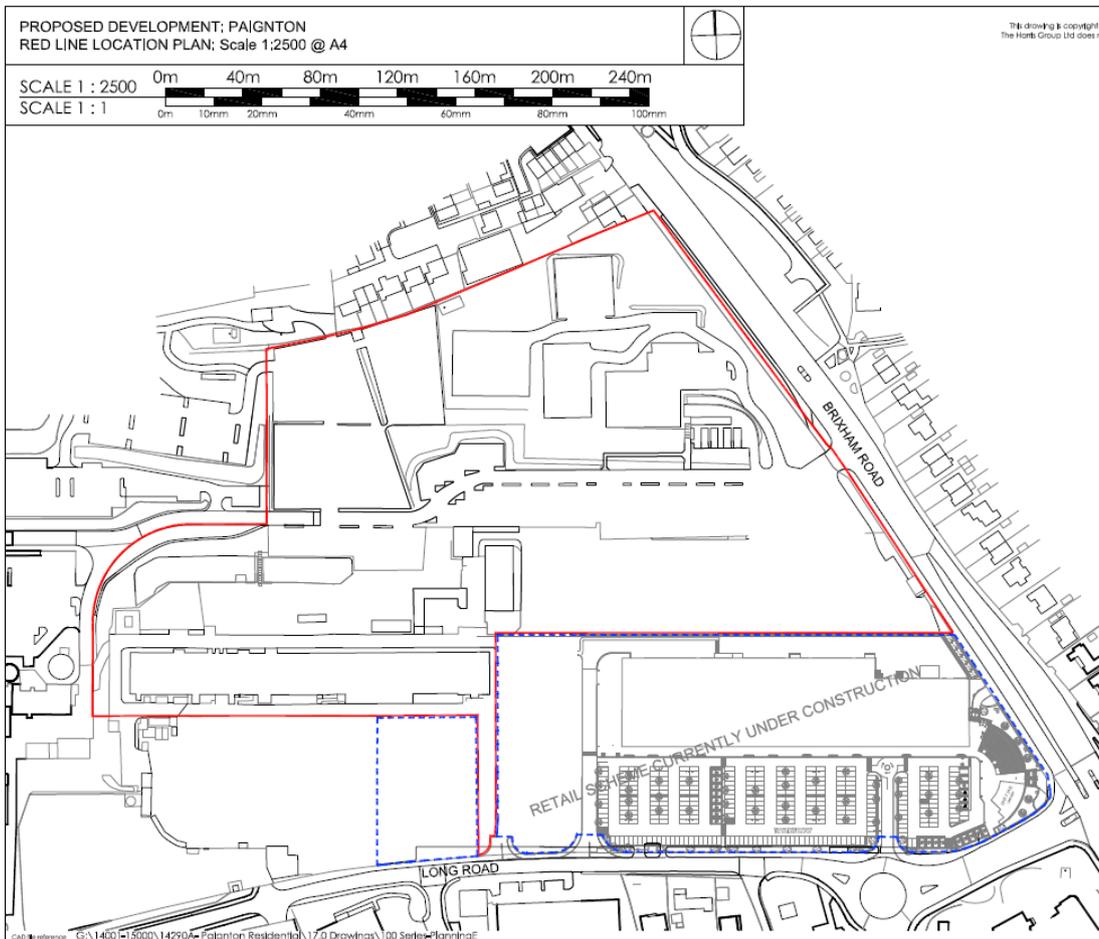
### **Relevant Policies**

- C4 – Trees, Hedgerows and Natural Landscape Features
- DE1 – Design
- DE3 – Development Amenity
- ER1 – Flood Risk
- ER2 – Water Management
- ES1 - Energy
- H1 – Applications for New Homes

H2 – Affordable Housing  
NC1 – Biodiversity and Geodiversity  
SS3 – Presumption In Favour Of Sustainable Development  
SS10 – Conservation and the Historic Environment  
SS11 – Sustainable Communities  
SS14 – Low Carbon Development and Adaption to Climate Change  
TA1 – Transport and Accessibility  
TA2 – Development Access  
TA3 – Parking Requirements  
TO2 – Change of Use of Tourism Accommodation and Facilities  
W1 – Waste Hierarchy

TE5 – Protected Species Habitats and Biodiversity  
TH2 – Designing Out Crime  
TH8 – Established Architecture  
TH9 – Parking Facilities  
THW4 – Outside Space Provision  
TS4 – Support for Brownfield and Greenfield Development  
TT1 – Change of Use Constraints Within and Outside a CTIA  
TT2 – Change of Use in Conservation Areas and Listed Buildings

Application Site Address	Land Off Brixham Road - Former Nortel Site Paignton, TQ4 7BL
Proposal	Reserved Matters on application P/2014/0947 (Outline mixed use application for retail, business and residential uses with all matters reserved except for access (as revised by S73 applications P/2016/1372, P/2017/0123, P/2017/0571 and P/2017/1041)). Reserved Matters sought: Appearance, Landscaping, Layout & Scale for up to 255 Residential Dwellings (As revised)
Application Number	P/2019/0278
Applicant	Devonshire Park Limited
Agent	Montagu Evans
Date Application Valid	21.03.2019
Decision Due Date	20.06.2019
Extension of Time Date	17.01.2022
Recommendation	<p>Approval: Subject to;</p> <p>The resolution of identified highway matters to be delegated to the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>The conditions as outlined, with the final drafting of conditions delegated to the Divisional 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 Divisional 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.
Planning Case Officer	Scott Jones



## March Update Note on Deferred Matters

### February Planning Committee Draft Minutes:

That the application be deferred for further information in respect of the following matters in relation to the reserved matters (appearance, landscaping, layout and scale):

- Highways, with a view to seek confirmation on tracking information for emergency/waste vehicles;
- designing out crime;
- drainage;
- lighting scheme;
- biodiversity; and
- use of exterior materials (including cladding).

Following the committee resolution to defer the item for the reasons above the applicant has submitted a response note and a suite of information as detailed below;

### Transport Documentation

- Updated General Arrangement Plans 100 & 101;
- Updated Highway Adoption Plan 109 & 110;
- Updated Refuse Vehicle Swept Path Plan 111;
- Fire Tender Tracking Plans 114 & 115; and
- Estate Car Tracking Plans 116.
- Proposed Site Layout plan
- (14290A-103U) from The Harris Partnership (“THP”) architects.

## Details of Materials

- Additional details are set out on the enclosed Materiality supplementary page from THP.

## Landscaping Details

- V14290A\_L01S - Landscape Masterplan\_A0.pdf.
- V14290A\_L02S - Landscape Plan [1 of 4] \_A0.pdf;
- V14290A\_L03S - Landscape Plan [2 of 4] \_A0.pdf.
- V14290A\_L04R - POS Landscape Plan [3 of 4]\_A0.pdf;
- V14290A\_L05R - Landscape Plan [4 of 4]\_A0.pdf; and
- V14290A\_SK01D - Devon Bank\_A3.

## Biodiversity

- Updated LEMP.Rev2; and
- UK Habitats 2014 Baseline Map

## Designing out Crime

- Additional details are set out on the enclosed Designing Out Crime supplementary page from THP.

## Drainage Details

- A Surface Water Drainage Technical Note TN01 from Jubb has been prepared and is enclosed.

## Open Space

- Please see V14290A\_SK04 - Open Space Comparison Plan\_A3.

## Officer Notes on deferral matters

### Highways

Further information was requested on the tracking for emergency vehicles and details have been submitted by the applicant that seeks to address the concerns. These details are currently being considered by Highway Officers and Members will be updated on this and any related highway matters during the planning committee.

Additional information has also been received regarding additional highway points raised within the former Highway Authority / WSP consultation response. Members will also be updated on these matters during the planning committee.

Subject to highway officer comments the development is acceptable on highway grounds considering advice contained within the NPPF.

### Designing Out Crime

The committee report considered the layout of the development in terms of designing out crime credentials and concluded as follows in Section 2 of the officer assessment;

*“In terms of seeking to deliver a safe and secure residential environment, which is informed by activity within the streets and natural surveillance of public areas and routes, the development is considered suitably resolved. The housing arrangement provides natural surveillance to all streets and the central greenspace will be naturally overlooked by a number of properties. In addition, following officer discussions side facing windows have been added to certain plots to improve the surveillance to short sections of footpaths”.*

It is the retained opinion that the proposed layout is acceptable in respect to aspirations towards designing out crime for the reasons previously reported.

Further to the above in regard to constructional considerations of designing out crime, as verbally reported within the February committee's questions and answers section, any approved reserved matters would be subject to a Secured By Design planning condition that is attached to the outline consent. This condition will secure consideration on more detailed aspects of the built form. The condition is worded as follows;

*"Prior to the first occupation of any of the dwellings hereby permitted, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the residential development meets Secured by Design standards as far as practicable".*

It is a retained opinion that the existing planning condition attached to the outline consent duly addresses the development plans aspirations for safe and secure development, including Policy PNP1(g) Designing out crime.

The Police Designing Out Crime Officer has been contacted for further comments and a response was requested from the agent.

The applicant has responded on this point and raised similar conclusions to the above. The response is supported by a note that does set out, at a high level, some of the ways in which designing out crime has been considered within the reserved matters scheme.

Members will be updated on the officer view and any further view from the Police Designing Out Crime Officer.

### Drainage

The committee report considered flood risk and concluded as follows in section 7 of the officer assessment;

*"Flood risk was duly considered in detail at outline stage with an approved outline strategy and a conditional requirement for further detail being submitted.*

*The Councils Drainage Engineer has confirmed that there is no objection but an expectation that further detail is submitted prior to commencement to accord with Condition 8 previously attached. South West Water do not object.*

*The proposal, due to the condition attached via the consenting outline permission, is considered acceptable on flood risk and surface water drainage grounds, in accordance with policies ER1 and ER2 of the Torbay Local Plan and policy PNP1(i) of the Paignton Neighbourhood Plan".*

Any approved Reserved Matters would therefore need to satisfy the following condition, which basically prevents any development commencing until the drainage solution has been submitted and approved;

*"No development (including demolition and ground works) or vegetation clearance works shall take place until a detailed surface water drainage scheme for the site has been submitted to and approved in writing by the Local Planning Authority. Priority shall be given to sustainable urban drainage systems, where soakaways must be designed in accordance with Building Research Establishment Digest 365 and include details of how they have been designed to cater for the 1 in 100 year critical rainfall event plus an allowance for climate change. Evidence that trial holes and infiltration tests have been carried out in accordance with Building Research Establishment Digest 365 in the same location as any soakaways or sustainable drainage features must be provided. The scheme shall demonstrate that there will be no increased risk*

*of flooding to surrounding buildings, roads and land. The development shall not be occupied or brought into use until the approved surface water drainage scheme has been completed as approved and it shall be continually maintained thereafter”.*

It is noted that Policy PNP1(i) (Surface Water) states that developments will be required to comply with all relevant drainage and flood risk policy. Proposals, which achieve more than sustainable drainage improvements and move beyond Sustainable Urban Drainage systems (SUDs) by keeping surface water out of the combined sewer network at source are encouraged.

It is a retained opinion that this existing planning condition attached to the outline consent duly addresses the development plans aspirations for development to ensure that there is no additional risk from flooding.

The applicant has responded on this matter, there is an explanation note, however the conclusion is aligned with the points previously reported, that the drainage engineer holds no objection and there is a planning condition on the outline consent that has established the trigger for delivering a detailed scheme to the local authority.

In terms of member concerns on this process the Reserved Matters for the retail element followed the above detailed process whereby the drainage design was approved through Condition 8.

### Lighting

External lighting is managed by an approved Dark Areas Map that has been submitted and discharged under the outline consent, which limits light levels in certain areas (western and northern borders and the central green space), and through a planning condition attached to the outline consent for an external lighting scheme for the residential element to be submitted and approved by the Local Planning Authority.

A request has been made to the agent for further information to demonstrate the current layout can accord with the previously approved dark areas map. Members will be updated.

### Biodiversity

The agent has been asked to respond on the concerns regarding the ecological and biodiversity credentials of the development.

The applicant has responded on ecology and biodiversity. Although it is reiterated that the outline consent establishes the parameters for the reserved matters the applicant has undertaken a broad review in including a net gain assessment.

The applicants' ecologist, Engain, has calculated the Biodiversity Net Gain using the baseline 2014 baseline results, i.e. prior to the sites clearance. It is assessed that the current landscape proposals show a net gain of 17.19% for habitats and 363.7% for hedgerows.

Members will be updated on any response from the council's ecological advisor. As previously advised the proposed landscape and ecological parameters are considered broadly acceptable. The single point of concern being the landscape detail related to design matters.

### External materials (including cladding)

The agent has been asked to respond on the concerns regarding the proposed materials and specifically in regard to the medium and long term maintenance and visual qualities of the development.

The applicant has provided a response that explains that the materials to be used have been selected for a variety of reasons, including the robustness of them to continue to look good over time.

It is the retained officer view that securing high quality materials and architectural detail will be key in terms of delivering on the aspirational concept expressed within the submitted detail supporting the application. Officers will consider the detail submitted and Members will be updated on this matter.

### Open space

The applicant has offered some understanding on the open space credentials of the development.

Setting out a comparison of the open space within the scheme subject of the reserved matters scheme in comparison to the scheme subject of the masterplan to the outline permission showed that the quantum of open space has more than doubled from c397sqm with the scheme subject of the outline application, to 835sqm with the current reserved matters layout.

It is furthered by the agent that whilst there is no condition attached to the outline permission requiring any specific arrangement for the open space within the development, we consider that the formation of a single cohesive area within the reserved matters scheme layout is a qualitative enhancement, that will ensure that the open space within reserved matters application both larger and better quality than was envisaged when outline permission was granted.

Officer opinion is that the open space is acceptable considering the outline masterplan expected provision and the outlines consents silence on it potentially being insufficient. As expressed by the agent response the scale of the open space appears larger than that previously outlined which is considered a positive response.

## **Previous Report Detail**

### **Site Details**

The application relates to the northern part of the former Nortel/Bookham site that is now largely referred to as Devonshire Park. The site sits to the west of Brixham Road and to the north of Long Road and the recently built retail park, which was developed on the southern part of the wider Nortel/Bookham site. The site is on the western outskirts of Paignton, close to widely known residential areas of Roselands, White Rock and Yannons Farm.

The site is approximately 7 hectares in size and is approximately 450m (east-to-west) by 280m (north-to-south). There is a gentle gradient through the site that drops north to south. The northern high point abuts residential and commercial uses. To the east there is a frontage to Brixham Road that runs approximately 280m. To the south the site abuts the recently built retail park approved as part of the mixed-use scheme that granted outline consent for residential use on the land subject to this reserved matters application. The border of this site abuts the rear of the retail park which is defined by a curved acoustic fence that sits on top of a large retaining wall to the service area that is set on a lower plateau. The western part of the

southern border abuts undeveloped land. To the west the site abuts the campus of South Devon College.

The site is largely cleared with pockets of trees/scrub and occasional border vegetation. Towards the southeast corner there are retained low-level buildings.

In terms of designations the site is within Flood Zone 1 and a Critical Drainage Area and the site is part a Future Growth Area as designated within the Torbay Local Plan. There is a Tree Preservation Order placed over a few trees within the northern part of Devonshire Park. The site is also located within the greater horseshoe bat sustenance zone associated with the South Hams SAC at Berry Head.

### **Description of Development**

This is a reserved matters application that is seeking approval for the layout, scale, appearance and landscaping for 254 dwellings following the grant of outline consent under application reference P/2014/0947 (as amended) for up to 255 dwellings.

The scheme proposes 201 dwellings arranged across a mix of detached, semi-detached and short terraces, and the provision of 53 apartments arranged in 2 blocks, one block of 12 units and one block of 41 units.

The layout is principally one of three streets running east-west across the hillside served off the central access point. There is a central greenspace at the heart of the site that provides public space, and this bleeds diagonally to the north-east and south-west.

The scale of the dwellings range from single storey to four storey dwellings, and the apartment blocks are three storeys and four storeys in height.

In terms of appearance the concept outlined in the submitted design and access statement is a high-quality development with a modern feel, encompassing playful roof pitches and a complimentary palette of timbers, zinc and renders, which seeks to deliver a specific identity and dynamic character. There are 11 distinct house types proposed through the development.

As touched on the landscape concept had a central public area that runs diagonally to offer a green spine through the site. The central road has street planting to emphasise its scale and to soften the public realm. Away from the main street planting is evident through the site in terms of private gardens and pockets of frontage planting. In terms of the main public border to Brixham Road the proposal is a for a Devon Bank with regular tree planting along the border.

Vehicular access was approved in detail at outline stage with a single junction off Brixham Road and an emergency access off Long Road and does not form part of this reserved matters consideration.

As established within the outline consent the development will deliver 4% affordable housing units, in accordance with the viability provisions of the S106 legal agreement.

### **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 Adopted Paignton Neighbourhood Plan (PNP)

### **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/2017/1041:*

Variation of condition on application P/2014/0947 (as amended by S73 applications P/2016/1372, P/2017/0123 and P/2017/0571): (Devonshire Park Housing/Commercial Project). Variation of condition 33 - Maximum retail floor space. Amendment sought: Increase total gross floor area of class A3 floorspace from 139sqm to 167sqm. Approved 15.12.2017.

#### *P/2017/0571:*

Variation of condition on planning application P/2014/0947/MOA; As amended by S73 applications P/2016/1372 and P/2017/0123): Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. (Condition 32: Restrictive Goods Condition). Approved 14.12.2017.

#### *P/2017/0123:*

Variation of condition P1 of P/2014/0947 (as amended) (Outline Application with all matters reserved except access) - to vary Condition (P1) detailed approved plans to vary the access arrangement off Long Road. Approved 18.10.17.

#### *P/2016/1372:*

Variation of condition P1, 34 and 35 of P/2014/0947 (Outline Application with all matters reserved except access) - to vary Condition (P1) - Approved Plans to omit reference to the Masterplan, Condition (34) to vary the minimum unit size restriction for 1 unit and Condition (35) to clarify the restriction of concessions. Approved 18.10.2017.

#### *P/2014/0947:*

Outline Application with all matters reserved except access, for demolition of the remaining buildings on the site and redevelopment for mixed use purposes comprising up to 255 Class C3 dwellings, up to 5,574sqm of B1 and /or B8 business and/or warehousing uses, up to 8,501sqm Class A1 (bulky goods) retail with up to 515sqm garden centre, and up to 139sqm of A3 cafe /restaurant uses, along with related site access, access roads and paths, parking, servicing, open space and landscaping. Approved 22.03.2016.

#### *P/2017/0493 and P/2014/0494:*

Two options for groundworks, including the demolition of remaining structures, grubbing out of trees, foundations and floor slabs, remediating contamination and earth works to re-profile the site. Approved 22.09.2017.

## **Summary of Representations**

3 letters citing objections have been received. The summary of concerns is as follows;

- Concerned re relationship with properties adjacent to the northeast corner of the site.
- Concern re overdevelopment and local area impact.
- Less need for housing / numbers should be reduced from that approved.
- Should have larger houses with bigger gardens and more green space.
- Lack of parking.
- Impact on local doctors, dentists, schools and shops.

## **Summary of Consultation Responses**

### **Paignton Neighbourhood Forum**

No comments.

### **Highway Authority (Swisco/WSP) Latest comments January (2021):**

Based upon the information submitted at the time of writing the highway authority are unable to provide a recommendation for the development proposals. The applicant will be required to submit the following information:

- Update the Highway Adoption Plan to illustrate connection from the site with the emergency service access on Long Road and the pedestrian link to Brixham Road;
- The applicant will be required to re-submit the swept path analysis to illustrate safe access and egress to the disabled parking bay;
- The applicant will be required to amend the site plan to ensure that a turning head is provided for refuse vehicles or an alternative refuse management plan is developed as it is unacceptable for refuse vehicles to reverse onto the main carriageway in the interest of highway safety;
- The applicant will be required to undertake a vehicle tracking exercise to illustrate safe access and egress to/from car parking bays located on driveways within the site layout, with particular reference to house type 12;
- The applicant will be required to amend the dimension of car parking spaces, located at the back of footways and on driveways, to ensure they have a required minimum length of 6m and a width of 3.2m;
- The applicant will be required to update the site layout to show only one pair of tactile paving at the pedestrian crossing;
- The applicant will be required to provide visibility splays for the main junctions within the site;
- The applicant will be required to submit a vehicle tracking drawing to illustrate an emergency service vehicle safely access all areas of the site;
- The applicant will be required to provide details relating to the provision of electric vehicle charging points within the site, as per standards contained within Appendix F of the Torbay Local Plan (2012 – 2030).

### **Police Designing Out Crime Officer**

There appears to be no reference to crime prevention, security, designing out crime or the principles of Secured By Design (SBD), as such there is no way of knowing if these have been considered or where implemented in the proposed scheme.

### **Drainage Engineer (Torbay Development Agency)**

No objection on drainage grounds to the approval of the reserved matters application. However it is highlighted that the surface water drainage design for this development has still to be submitted and approved as required under Planning Condition 8.

### **Green Infrastructure Manager (Swisco) - Latest comments January (2021):**

#### Brixham road

On the boundary plan the Brixham Road boundary is currently shown as being a brick wall with hedge planting. The landscape proposal along Brixham road is for a Devonshire bank to be created extending along the length of the garden areas for the dwellings. The landscape plans identify trees between the Devon bank and the wall defining the backs of the gardens.

The species selection is that of conical or fastigate form trees that will produce a uniform linear feature along Brixham Road with gaps between the crowns that would not provide sufficient screening to the properties until the long term owing to the fastigate or conical growth habit. The surrounding tree stock is one of agricultural hedges and large canopy trees to the south along Brixham Road and pasture field boundaries to the north west. We would be looking to increase the density of trees in this area whereby there is a continuous understory of vegetation (a hedge) that will afford screening to the site with larger canopy trees to be included and allowed to extend from the hedge below and form fully grown trees. The hedge could be located on the created Devonshire bank.

#### Slatted fencing

The expectation of high quality robust borders from a planting perspective has not been achieved. There appears to be a general continuation of typical landscape planting theme with no additional bolster planting shown or annotated to ensure that the borders are meeting the required expectation. Where there is planting close to the slatted fence this will provide cover and screen however where the fencing is exposed with only grass shown then the fence will be more visually prominent.

#### Internal landscape planting

An overview of the masterplan identifies areas that are lacking in tree cover, which can help create a sense of space and place within the development whilst bringing the additional benefits of having trees, in what will be a relatively dense development.

In general the open spaces have been planted but many of the roads do show as having inadequate tree cover, and there is an opportunity to provide further tree and shrub planting to soften the development. Where there is tree planting in hard landscapes we would also need to see engineered tree pits are in place to ensure sufficient soil volume is available for the roots of the tree to exploit.

In essence the current planting does not sufficiently bolster the boundary edges and is not robust enough in terms of its screening with opportunity to increase the internal planting, to not only provide a visual softening of the development but bring the additional benefits of trees into the area.

### **Torbay Council Community Safety Officer**

To avoid possible nuisance complaints, request a condition to seek a detailed scheme of noise insulation measures for the properties at the north of the site adjacent to the industrial unit in Western Business Park (off Brixham Rd). This is to safeguard the amenities of the residential occupiers and the details are needed prior to the start of work so that measures can be incorporated into the build.

### **Waste and Recycling Officer (Swisco)**

The dwellings appear to have sufficient waste facilities designed in. The smaller apartment block should have capacity for 4 large (1100 litre) communal bins.

## **South West Water**

No comment.

## **Environment Agency**

No objection.

## **Planning Officer Assessment**

1. The Principle of Development,
2. Design and Visual Impact,
3. Landscaping,
4. Residential Amenity,
5. Highways, Movement and Parking,
6. Ecology
7. Flood Risk
8. Low Carbon Development
9. Affordable Housing
10. Housing Supply

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

Outline consent was granted for up to 255 dwellings pursuant to planning permission P/2014/0947 (with minor material amendments approved via subsequent Section 73 applications). This established the principle of 255 dwellings served off a detailed access arrangement off Brixham Road. This Reserved Matters application is principally to consider the Layout, Scale, Appearance and Landscaping as the broad principle has been established.

In terms of relevant matters the proposed development accords with the outline consent in terms of delivering the residential element on the northern part of the site and being served off the approved access point, together with delivering a secondary emergency link to Long Road. The total number of dwellings also accords with the maximum number with 254 units proposed through a mixture of flats and houses.

Subject to ensuring that the proposal provides an acceptable form of development, in terms of securing a suitably designed scheme, a good quality living environment and one that retains adequate amenity levels for adjacent occupiers, whilst also according with the conditions attached to the outline consent, the principle is considered acceptable.

In terms of determination it is relevant to appreciate that the Council cannot currently demonstrate a 3 or 5 year housing land supply and 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. The policies therefore should be afforded limited weight within the current decision-making process. The 'tilted balance' in favour of sustainable housing development therefore applies but this broad position is however subject to wider policy considerations that are relevant to the development proposal as touched on above, which will be discussed in the forthcoming sections of this assessment.

### **2. Design and Visual Impact (Layout, Scale and Appearance)**

The key consideration is the desire to provide an attractive environment that responds to the surrounding built form, that is safe and secure, with legible routes and good permeability, which integrates well with the surrounding area, including external and internal green infrastructure.

In terms of the layout the proposed housing is largely focused off three parallel roads that run

across the hillside from east to west, with some small cul-de-sacs pocketed around the peripheries of the development on the western fringes. This basic layout largely accords with what was envisaged at outline stage and is considered acceptable when considering the site constraints, where there is presently limited benefit for connectivity across the north and western boundaries, where commercial, housing and educational uses sit as barriers, and where the rising ground levels from south to north also present a considerable constraint in terms of running continuous streets south-to-north off the three main streets. In this context the presence of abrupt turning heads or cul-de-sac ends is hence considered acceptable where the development, in the main, provides a well-reasoned layout with active frontages to streets and public areas.

In terms of other elements of the basic layout there is a central diagonal belt of public greenspace that provides both play opportunities and some general relief to the wider built form at the heart of the development. The location and scale of this landscaped public space is considered acceptable, and it provides a convenient hub for play and outdoor recreational use whilst also connecting most parts of the site.

In terms of broad legibility, the development is largely singular in character with a relatively even density and form throughout. There are some elements of the design that heighten the role of the central street, which is welcomed, with a wider avenue form which includes street planting that isn't present elsewhere. This presents some prestige to the street and reinforces its role as a central link between the entrance and the central greenspace, and beyond to the linking route for pedestrians and cyclists' southwards to Long Road.

In terms of permeability the road-based footpath network and the pedestrian links connecting areas to the central green space are considered to provide adequate permeability within the development. In terms of external connections there is pedestrian access/egress eastwards at the location of the main entry point into the site and there is a pedestrian/cycle route southwards that connects to Long Road. Considering the border constraints these routes are considered adequate for the development. It is noted that pedestrian routes in the northeast and southeast corners of the site have been removed since the initial submission and although these routes did provide some benefit in terms of convenience and connectivity, their omission is not considered to be demonstrably harmful as the central access to Brixham Road is nearby.

In terms of seeking to deliver a safe and secure residential environment, which is informed by activity within the streets and natural surveillance of public areas and routes, the development is considered suitably resolved. The housing arrangement provides natural surveillance to all streets and the central greenspace will be naturally overlooked by a number of properties. In addition, following officer discussions side facing windows have been added to certain plots to improve the surveillance to short sections of footpaths.

In terms of appearance the development proposes a somewhat progressive and innovative built environment that moves away from the more widely established character of render/brick 2-3 storey dwellings under uniform tiled roofs. The building form is quite varied with a dozen house types, which present some clear variety in the built form whilst also offering some pleasant homogeneity. The built form is expressed as offering 'playful pitches' and 'roof expressions' that focuses on 'providing quality internal spaces, dynamic streetscape and identity to Devonshire Park'. The palette of materials is principally timber and flat metal panel cladding, under zinc standing seam cladded roofs. Render is present but it is used sparingly across the development as an emphasising material more than anything. Although the development steps away from the more widely established character the appearance and materials of the buildings are considered to be high quality and somewhat innovative and is supported as a detailed concept.

In terms of scale the dwellings present a varied build height to the public realm with house

types offering a mixture of 1, 2, 3 and 4 storeys to the street. The prevailing residential build height within the area is 2-storeys with pockets of 3-storeys within the more recent developments to the north (Yannons Farm) and further south (White Rock). The development hence presents areas that offer a building height above the prevailing height, which presents some tension with Policy DE4 (Building Heights) of the Torbay Local Plan, which informs that new development should be constructed at the prevailing height (the most commonly occurring height) unless there are sound urban design or socio-economic benefits to justify deviation from this approach. The proposal also deviates from the suggested outline proposal where the Design and Access Statement cited that all residential house types have a height of 9m to the ridge line. Scale was not fixed and hence there is some flexibility to consider the heights now proposed however the merit does need due consideration. In the context of the design, which presents quite unique buildings finished in high quality materials, the proposed scale and height across the development is considered acceptable. A similar scale and height of buildings across the development in a more traditional form of residential buildings is unlikely to have presented such a successful scheme as it is principally the level of 'delight' offered by the form and materials that mitigates the scale, height and arrangement of buildings within a relatively dense layout, which has limited landscaping away from the central belt and principal avenue. In terms of the two apartment blocks these are proposed to deliver 4-storeys with a recessed upper floor. This deviates again to the outline detail that suggested 3-storeys, although the overall heights are relatively aligned being expected up to 12m in height and being proposed at 12.5m. The scale and heights are considered acceptable adjacent to such a wide avenue (Brixham Road) and where southwards there is a transition to larger commercial buildings at roadside. This is in the context of the quality of materials and elevational treatment.

As the quality of the scheme is paramount in terms of part justifying the scale and heights it is important that high quality finishes are secured. It is suggested that a sample materials palette is secured prior to installation of materials to ensure that the well-presented concept is delivered as shown. The subtle colourings of timber shown, which add some variety, should also be secured within this palette in terms of a detailed timber cladding schedule so this is also secured.

In respect of materials the materials specification for each dwelling clearly references the façade material (where applicable) as timber. Under this there is a secondary note that cites "Treated/Artificial horizontal timber cladding with secret fixings". It is further noted that the Design and Access Statement cites that the materials utilise treated/artificial timber, and that utilising a render system in small quantities is to contrast the metal and timber to provide a soft edge to the materials. The Statement furthers that from the outset a complimentary palette of timbers, zinc and renders were established as key drivers for the spirit of the site. In light of the schemes presentation it is clear that the material finish suggested, and thus expected, is timber, whether that is natural or artificial in terms of a composite or treated timber alternative, as may be approved. As such non-timber cladding, such as fibre-cement products (commonly cedral or similar) is not considered to accord with the materials schedule proposed and supported.

Linked matters of landscaping, which influence the developments design and visual impact are addressed within the following section.

All matters considered regarding design and visual impact the proposals are considered to be consistent with Policies DE1 and DE4 of the Torbay Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan and advice contained within the NPPF in terms of securing good design.

### **3. Landscaping**

The proposals largely accord with the landscape strategy shown at outline stage by providing a central swathe of greenspace at the heart of the development and a landscaped edge to the

Brixham Road.

As a holistic judgement in terms of tree provision and linked landscaping the proposal is considered positive when reflecting on the previous context, where there was little landscaping present during its previous use and very little landscaping or ecological value in its current state. There are however other issues to consider which are touched on below.

In terms of the central belt this is considered to present a very pleasant and well considered landscaping feature. Street tree planting to the east of the landscaped area along the central avenue is also supported.

In terms of the landscaping around the Brixham Road this needs to be carefully considered as it fronts a key arterial route, and the development to the north of the entrance (excluding the flat complex) presents the rear of several residential properties. At present the planting proposals along the Brixham Road offer a grassed Devon Bank adjacent to the footpath with intermittent tree planting between the bank and the rear plot boundaries, which are defined by a brick wall of undetermined height. As the adjacent arterial route and public footpath sits higher than the adjacent proposed plots the rear of buildings (including gardens) will be visually apparent unless they are sufficiently screened. As it stands the landscape proposals along this border are will not provide sufficient screening to the properties. One suggestion to tackle the drop in levels is to deliver a hedge on top of the proposed Devon bank and increase the density of trees in the area with larger canopy trees to be included and allowed to extend from the hedge below and form fully grown trees. It is suggested that any approval is subject to a condition for further landscaping proposals for this area to address these concerns.

In term of the landscaping proposals within the streets away from the central avenue there is very little street planting of any scale and there are only occasional pockets where tall shrubs are proposed within private spaces forward of the front building lines. As a result there is hence quite extensive areas that offer very little softening of the built form, with small shrub or hedge planting present that will in the main be largely obscured behind rendered boundary walls. Although the form of the development is somewhat softer than more traditional built forms and thus offers some inherent mitigation on this concern, the development is still considered unduly hard and lacks adequate landscaping within various streets. This matter has not been resolved despite quite extensive officer/applicant discussions. In the context it is recommended that a condition is attached to any grant of planning permission to deliver a more robust planting proposal through the development to adequately soften the harsher elements of a residential environment, these being the buildings, roads and cars.

The progression of improvements to the landscape offer cited above would be consistent with the National 'build beautiful' agenda outlined within Section 12 of the NPPF, and would be consistent with Para 131, which states that trees make an important contribution to the character and quality of urban environments, which can also help mitigate and adapt to climate change, and that planning policies and decisions should ensure that new streets are tree-lined.

Subject to conditions to address concerns regarding the Brixham Road Frontage and streets within the development that are absent of trees or specimen shrubs, the landscape proposals are considered acceptable and considered compliant with Policies DE1 and C4 of the Torbay Local Plan and policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

#### **4. Residential Amenity**

##### Future Occupiers

In terms of assessing the quality of the future residential environment it is important to consider the size and quality of the internal living spaces, the levels of outlook and natural lighting

afforded key habitable rooms, levels of privacy, along with the quality of outdoor spaces and access to waste, cycle and car parking facilities, which are all integral elements for household developments. The aspiration is to secure good level of amenity for future residents.

The development proposes a variety of house types, some of which are split level with under-builds that in the main deliver single-aspect access and integral car parking where the levels rise.

The layout presents open aspects to both the front and rear of all properties, which provides natural lighting and good outlooks to all key habitable spaces. Internal privacy is duly offered with back-to-back distances between dwellings largely set at around 20/21m. There will be some natural overlooking of gardens, but this is commonplace within suburban living and it is deemed that there are no unacceptable relationships. In terms of noise considerations there is an acoustic fence in place to the southern border and the accompanying sound assessment proposes fencing to the southwest corner and north border adjacent to the commercial uses, and heightened sound dampening to dwellings within three identified zones. These zones are buildings adjacent to the Brixham Road, dwellings adjacent to the service yard on the northern border, and dwellings in the southwest corner near to plant associated with the college site. Subject to securing the mitigation by planning condition the internal living environments will be acceptable in terms of noise nuisance. In terms of the internal living spaces all houses and flats exceed the national internal living spaces standards that are engrained within the Development Plan (Policy DE3).

In terms of ancillary elements waste storage, cycle parking and car parking are engrained within all residential plots and apartment blocks. Waste storage is either proposed within decreet enclosures to the front of or to the rear of each dwelling. Cycle parking is delivered again to the front or rear within designated sports, or within garages. Within the apartment blocks the waste and cycle storage areas are separate and offered within safe and secure undercroft zones. Parking for dwellings is provided in a mix of driveways and/or integral or attached garages. The ratio is 2 per dwelling which accords with the level expected within the Development Plan. Apartment blocks are supported by communal parking courts. Block 1 (12 units) has 11 spaces with one accessible space with an annex provision across the road that hold 4 spaces (including 1 accessible space). This provision, combined, is considered adequate and a planning condition is suggested to secure these spaces for the apartment block. Block 2 (41 units) is supported by 50 spaces which includes 4 accessible spaces which is considered adequate in terms of occupier and visitor spaces. It is recommended that some certainty is secured in terms of visitor provision and electric charging provision, which is proposed through the imposition of planning conditions as outlined in the schedule of conditions. The delivery and retention of private/assigned parking spaces generally is secured by a planning condition attached to the outline consent.

All these matters combined present good quality living spaces throughout the development. Subject to conditions as suggested the proposed residential environment is considered acceptable for all future users and would accord with Policy DE3 in the Torbay Local Plan and advice contained within the NPPF regarding creating good quality living environments.

The proposals accord with condition 5 of the outline consent which required the reserved matters to include noise mitigation measures in accordance with the Noise Impact Assessment (24 Acoustics, September 2014) submitted with the application. The condition also secured the implementation of the resultant mitigation approved.

### Adjacent Occupiers

The commercial and educational uses to the south and west would not be impacted by the development due to the form of use and the relationship of the built forms.

To the north there are residential uses which require due consideration. Amendments have been secured towards the western part of this border to deliver enhanced separation distances with properties within the 'Bovis' development across this section of the northern border. Toward the eastern edge of the site occupancy of the adjacent semi-detached property would not be unduly impacted due to the distances and orientation of the proposed dwellings in this corner of the plot. Public concern is noted regarding the relationship to adjacent properties in this corner however the evolved relationships are considered acceptable.

The development, for the reasons above, is considered to provide an acceptable relationship that protects the adjacent occupiers' amenity, in-line with policy DE3 of the Torbay Local Plan and in accordance with advice on delivering good living environments for all users, as guided within the NPPF.

## **5. Highways, Movement and Parking**

### Vehicular Access

The access into the site was approved at outlines stage and hence is not considered as part of this reserved matters application.

### Other access points

The outline proposal established the principle of a pedestrian/cycle route linking the residential element of the mixed-use scheme to Long Road south of the site, an access which was also suggested to provide an emergency access for the emergency services to address safety concerns regarding the scale of development being served off one access point.

The reserved matters include a link to Long Road with a 3m wide pedestrian route within a 9m wide landscaped corridor. Greater clarity on securing this as a dual pedestrian/cycle and route for emergency vehicles is considered necessary. The Highway Authority has requested vehicles tracking detail through the site illustrating that emergency vehicles can safely access all areas of the site. It is suggested that this should include detail illustrating that the link to Long Road works as an emergency access route for the emergency services. It is suggested that the swept path detail is secured prior to determination and the delivery is secured by planning condition prior to the occupation of the 101<sup>st</sup> dwelling. In addition to securing an accessible route it is necessary to secure the route for such purposes and also to secure detail on any restrictive barrier that permits cycle and pedestrian use only but permits emergency access if needed. It is considered that the provision and continued availability, and the detail of any barrier system, can be secured by planning conditions.

The outline principles also showed pedestrian movement out of the site eastwards onto the footpath adjacent to Brixham Road. The suggested pedestrian links onto Brixham Road have been removed and the access and egress along the Brixham Road relies on the central vehicular and pedestrian access point. The loss of these dedicated pedestrian links is not considered substantially harmful as routes eastwards are still relatively direct from all parts of the site.

### Internal Road Network

In terms of vehicular movement within the site the layout largely accords with that suggested at outline stage, which provides most of the road layout in an east-west direction to limit the design and structural implications of traversing the rising levels south-north.

The proposed network is considered acceptable with widths according with the expected design standards and pedestrian footpaths provided throughout the scheme. Tracking detail has been submitted which shows the ability of refuse vehicles accessing all areas of the site. Notwithstanding this the Highway Authority has requested tracking detail that shows that

emergency vehicles can access all areas of the site. It is recommended that acceptable detail is secured prior to the formal determination of the application to secure any necessary minor amendments. The detail has been requested.

Regarding other demonstrable matters raised by the Highway Authority it has been requested that visibility splay information for the main junctions within the site is submitted to illustrate compliance with Torbay Design Standards. As a highway safety issue it is reasonable that this detail is secured prior to the formal determination of the application to secure any necessary minor amendments. The detail has been requested.

As a final demonstrable matter the Highway Authority has requested that the applicant amends the site plan to ensure that a turning head is provided for refuse vehicles, or an alternative refuse management plan is developed, in the northerly spur in the southwestern corner of the development. The spur serves 5 houses. The concern is that it is unacceptable for refuse vehicles to reverse onto the main carriageway, in the interest of highway safety. The submitted adoption plan suggests a partial adoption of the spur with an expectation that it itself works as a turning head for refuse vehicles. This is considered a reasonable suggestion. Notwithstanding this judgment there is a concern on the potential inability for cars or small vans using the longer spurs within the development where there is no purposely designed turning designed in to the scheme. Cars that aren't using the private drives, i.e. visitors or smaller delivery vehicles, are likely to be far more frequent than refuse vehicles and also they will be driving into the spurs in a forward gear. In light of this concern it is recommended that detail of a highway design to aid turning of smaller vehicles is secured prior to formal determination of the application for the identified spur and the southwards spur in the northwest corner of the site. The matter has been raised with the agent and a response requested.

The proposals are, subject to the satisfactory resolution of the details suggested above, considered to present an acceptable layout in terms of movement, in accordance with Policies DE1 and TA1 of the Torbay Local Plan.

### Car and Cycle Parking

Car parking is proposed at a level of 2 spaces per dwelling provided through a mix of driveway and garage spaces. All parking spaces are considered adequately arranged and sized in order to provide workable spaces and ensure unobstructed pedestrian access to all dwellings. The provision and retention of the parking spaces for such purposes should be conditioned to ensure that these facilities are provided and maintained.

Car parking for the apartment blocks provides a policy compliant level of 1:1 parking with visitor parking and disabled parking also provided within each blocks arrangement. The spaces are suitably sized and arranged. Certainty on the provision of the disabled and visitor parking should be secured by condition.

Cycle parking is provided within all dwellings and is detailed within both apartment blocks to acceptable levels, in secure undercroft facilities. Condition 06 of the outline consent secures the provision of the approved cycle parking facilities. Visitor cycle parking has not been detailed and each apartment block should provide a suitable level of secure cycle parking within legible and naturally overlooked spaces. Detail should be sought and secured by a planning condition. Public cycle parking facilities are provided within the central greenspace near to the southern border. These facilities are welcomed and their provision should be secured by a planning condition.

All matters considered, subject to the conditions outlined above, the cycle facilities are considered policy compliant and suitable for approval in-line with Policy TA3 of the Torbay Local Plan and policy PNP1(h) of the Paignton Neighbourhood Plan.

## **6. Ecology:**

The ecological context was duly considered when the outline consent was granted.

A Habitat Regulations Assessment was undertaken to assess its likely significant effect on the South Hams SAC, in accordance with the Habitats Regulations, and the conclusion was that the development would not have a likely significant effect (alone or in-combination with other developments) on the SAC. The original consent, and the amending permissions, was subject to a condition to secure a detailed lighting strategy for the site based on the measures contained in the submitted Ecology and Landscape Report. The condition also secured implementation and continuing compliance. Reserved matters applications will not normally need to re-consider HRA and as the proposed development principally accords with the form and layout of development previously presented it is not considered necessary to carry out a further HRA.

In terms of broader ecological matters the outline consent is subject to conditions that manage the ecological constraints, secure mitigation, and secure ongoing management. With conditions attached via outline stage the proposal requires no further ecological consideration.

As part of the scheme of mitigation the reserved matters proposals include 7 bat boxes and 7 bird nesting boxes strategically located through the development.

The previous outlines conditions ensure the development accords with policy NC1 of the Torbay Local Plan and policy PNP1(c) of the Paignton Neighbourhood Plan.

## **7. Flood Risk**

Flood risk was duly considered in detail at outline stage with an approved outline strategy and a conditional requirement for further detail being submitted.

The Councils Drainage Engineer has confirmed that there is no objection but an expectation that further detail is submitted prior to commencement to accord with Condition 8 previously attached. South West Water do not object.

The proposal, due to the condition attached via the consenting outline permission, is considered acceptable on flood risk and surface water drainage grounds, in accordance with policies ER1 and ER2 of the Torbay Local Plan and policy PNP1(i) of the Paignton Neighbourhood Plan.

## **8. Low Carbon Development**

The proposal for consideration relates to layout, scale, appearance and landscaping. It is noted that the outline consent, as revised, does not require the reserved matters to include details relating to low carbon development. The matter is hence not relevant to this application.

## **9. Affordable Housing**

Affordable housing provision was considered and secured through the outline consent through the accompanying S106 legal agreement.

The provisions of the legal agreement reflected the context of the site in terms of it being a brownfield site and a contaminated site and secured no less than 4% affordable provision on site. This equates to 11 units on a scheme of 254 units. The legal agreement secures provision for the Council's Affordable Housing Manager to agree the location and the mix that

accords with the policy expectation outlined in the Council's Planning Obligations and Affordable Housing SPD. The requirement is to secure the location and mix prior to each phase of development.

As the matter is secured through the outline consent the level and location is not relevant to this reserved matters application.

## **10. Housing Supply**

The Council cannot currently demonstrate a 3- or 5-year housing land supply, as sought by Government. The five-year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

Considering the housing supply position it is advised that in determining the application, the presumption in favour of sustainable development at Paragraph 11 of the NPPF must be applied. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were Members of a different judgment and were to consider the proposal to conflict with the Development Plan it should be noted that the absence of a 3- or 5-year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

## **Sustainability**

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. The development would see the use of an empty site that has an outline consent for housing. Once the development is 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 dwelling to be provided must carry significant weight in this balance.

The site has not been used for some time and the provision of housing would provide an appropriate use and offer units within a sustainable location. 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 especially relevant to the proposed development are impacts on ecology and biodiversity, contamination and drainage. These matters have been considered in the outline consent and the environmental benefits identified are deemed positive in the case of biodiversity net gain, addressing contamination, and mitigating flood impacts. There is an environmental benefit to providing 254 units within a sustainable location where dependency on car use could be limited.

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.

## **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 to this development.

### **S106**

Not Applicable to this reserved matters for layout, scale, appearance and landscaping. The outline consent is subject to a S106 legal agreement.

## **EIA/HRA**

EIA: Considered at outline stage, which concluded that due to the scale, nature and location the development it would not have significant effects on the environment and therefore was not considered to be EIA development. Considering these reserved matters aside the outline proposals it is not apparent that the project would likely have significant effects on the environment and hence no further formal screening is considered necessary.

HRA: Considered at outline stage, which concluded that due to the scale, nature and location the development was not considered to have a likely significant effect on European Sites. Reserved matters applications will not normally need to re-consider HRA and as the proposed development principally accords with the form and layout of development previously presented it is not considered necessary to carry out a further HRA.

### **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.

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

As a general position the proposal is positive and presents a high-quality and somewhat transformational residential scheme that will deliver a substantial number of houses. The built form and central public amenity space are well resolved and the internal residential environments will provide a good standard of living.

There is some concern on the quality of the landscaping to the Brixham Road and the level of planting within several streetscenes, where planting proposals omit trees or specimen shrubs that would grow to a height that offers local visual value. There is also some further consideration required of the use of timber fences to public borders around the central green space. These matters can be addressed by planning condition.

There are some minor highway matters and the recommendation is subject to the resolution of concerns on the lack of turning heads on two of the cul-de-sacs and the lack of detail on the visibility around the main junctions.

Subject to resolving the minor highway 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 for the reasons stated within this report.

### **Officer Recommendation**

Approval: Subject to;

The resolution of identified highway matters to be delegated to the Divisional Director of Planning, Housing and Climate Emergency.

The conditions as outlined, with the final drafting of conditions delegated to the Divisional 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 Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **Materials Schedule**

Prior to the installation of the external materials hereby approved within each building a detailed materials schedule for that building or building type, either physical or (if agreed with the local planning authority) digital shall be submitted to and approved in writing by the Local Planning Authority. Each

building shall be externally finished in full accordance with the approved materials schedule for that building and the material form shall be retained as such at all times thereafter.

Reason: To secure an appropriate form of development in accordance with Policies SS11, DE1 of the Torbay Local Plan 2012-2030, Policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

### **Detailed Design**

Prior to their installation within the development details of the following shall be submitted to and approved in writing by the Local Planning Authority;

Detailed drawings of all proposed windows, doors, sills, balcony enclosures, fascia's, eaves, rainwater goods and meter boxes, and section / reveal detail to a scale of between 1:1 and 1:10 and means of opening where applicable.

The development shall proceed in full accordance with the approved detail.

Reasons: In order to protect visual amenity in accordance with Policies SS11, DE1 and DE3 of the Torbay Local Plan 2012-2030, Policy PNP1(c) of the Paignton Neighbourhood Plan and advice contained within the NPPF.

### **Emergency Access Provision**

Prior to the occupation of the 101<sup>st</sup> dwelling, unless an alternative phasing plan is submitted and approved pursuant to this condition, a dual pedestrian/cycleway that also provides an emergency access route (to a minimum width of 3m), linking the development to Long Road, (as shown on the plans hereby approved) shall be implemented in full and made available for use. The route shall be built in accordance with the Torbay Highways Design Guide for new developments in operation at the time of construction and shall incorporated the measures approved under the next condition "Emergency Access Management".

The public route for pedestrian and cyclists, and emergency access, shall be retained solely for use as a pedestrian/cycle way and emergency access and managed and maintained at all times thereafter to serve the development.

Reason: To secure an acceptable form of development and in the interests of safety, in accordance with Policies SS11, TA1, TA2 and DE1 of the Torbay Local Plan 2012-2030, Policies PNP1(c) and PNP1(h) of the Paignton Neighbourhood Plan and the NPPF.

### **Emergency Access Management**

Prior to the provision of the pedestrian/cycle and emergency access to Long Road the means of managing access at either end of the route shall be submitted to and approved in writing by the Local Planning Authority. The details will show how access will be provided for pedestrians and cyclists and restricted for motor vehicles except at times of emergency and the emergency access arrangements submitted should be agreed by the relevant emergency services. The approved details shall be implemented in full prior to the first public use of the route and shall be retained, managed and maintained for the lifetime of the development.

Reason: To secure an acceptable form of development and in the interests of safety, in accordance with Policies SS11, TA1, TA2 and DE1 of the Torbay Local Plan 2012-2030.

### **Connectivity**

Prior to the occupation of the 200<sup>th</sup> dwelling, notwithstanding the layout and landscaping plans hereby approved on land north of the turning head and visitor parking in the north west corner of the site, plans and details of the phasing of the works shall be submitted to and approved in writing by the Local Planning Authority for the delivery of a pedestrian/cycle connection (a sustainable movement link) that extends either of the proposed pavements that flank the two visitor car parking spaces, to the edge of the site.

The area shall be landscaped in accordance with the plans hereby approved until the sustainable movement link has been delivered, within the time period approved by the Local Planning

Authority, and the land shall not be used for any other propose. The link shall be built in accordance with the Torbay Highway Design Guide in operation at the time of the development and once provided it shall be maintained as a public route at all times thereafter.

Reason: In the interests of connectivity and to secure long-term promotion of sustainable local travel modes, in accordance with Policies SS11, DE1, TA1 and TA2 of the Torbay Local Plan 2012-2030, Policies PNP1(c) and PNP1(h) of the Paignton Neighbourhood Plan and the NPPF.

### **Permitted Development Rights**

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to F, and Part 2;

- i. No enlargements, improvements or other alterations shall take place to dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, with the exception of one ancillary structure each up to 10 cubic metres in volume,
- ii. No additional means of hard surfacing shall be provided forward of the principal building line of each dwelling hereby approved, and
- iii. No alternative means of enclosures shall be erected.

The development shall accord with the above unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and in accordance with Policies SS11, DE1 and DE3 of the Torbay Local Plan 2012-2030, Policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF, having regard to the particular design and layout of the dwellings.

### **Means of Enclosures and Retaining Walls**

Prior to their installation within the development the following shall be submitted to and approved in writing by the Local Planning Authority;

- i. The type of brick, colour and height of the boundary wall facing Brixham Road (as coloured orange on the approved boundary details plan),
- ii. The colour and height of all rendered boundary walls enclosing dwelling plots (as coloured blue on the approved boundary details plan),
- iii. The finish, colour and height of all public rendered walls (as coloured blue on the approved boundary details plan), including details of planting or other mitigation to secure a visually acceptable form of development,
- iv. The type of brick, colour, and height of all dividing brick walls (as coloured pink on the approved boundary details plan),
- v. The form and height of all slatted timber fences dividing private plots (as coloured red on the approved boundary details plan),
- vi. Notwithstanding the approved boundary plan, details of a suitably robust alternative boundary treatment to fencing (coloured red on the approved boundary plan) to the side and rear of plots facing on to the central public greenspace, including the accessways to the northwest and east, shall be submitted, unless demonstrated that the current fencing proposal is suitable as a public border. The detail shall include form, colour and height.

The development shall proceed in accordance with the approved detail and all boundary treatment shall be always retained as such thereafter.

Reason: To secure an appropriate form of development in accordance with Policies SS11 and DE1 of the Torbay Local Plan 2012-2030, Policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

### **Visitor Car Parking**

Prior to the first occupation of each apartment block plans identifying the assigned visitor spaces shall be submitted to and approved in writing by the Local Planning Authority, which shall include the form of demarcation. The approved visitor spaces shall be demarcated and made available for use prior to the buildings occupation and shall be retained and marked out for such purposes at all times thereafter.

Reason: To secure an acceptable form of development and ensure communal buildings provide adequate parking for visitors to the site, in accordance with Policies SS11, DE1 and TA3 of the Torbay Local Plan 2012-2030., Policy PNP1(d) of the Paignton Neighbourhood Plan and the NPPF.

### **Visitor Cycle Parking**

Prior to the first occupation of each apartment block plans identifying the form and location of secure visitor cycle parking shall be submitted to and approved in writing by the Local Planning Authority, which shall include the form of demarcation. The approved facilities shall be provided and made available for use prior to the buildings occupation and retained at all times thereafter.

Reason: To secure an acceptable form of development and to ensure adequate facilities for visitors, in accordance with Policies SS11, DE1 and TA3 of the Torbay Local Plan 2012-2030, Policy PNP1(d) of the Paignton Neighbourhood Plan and the NPPF.

### **Public Cycle Parking Provided**

Prior to the first use of the central greenspace the public cycle parking facilities, as detailed on the plans hereby approved, shall be implemented and made available for use. The facilities shall be retained at all times thereafter.

Reason: To secure an acceptable form of development, in accordance with Policies SS11, DE1 of the Torbay Local Plan 2012-2030 and Policy PNP1(d) of the Paignton Neighbourhood Plan.

### **Highway Standards**

Construction of the internal roads and footpaths within the development shall be in accordance with the Torbay Highways Design Guide for new developments in operation at the time of construction. Roads serving each phase of development shall be completed to adoptable standards prior to the first use of each phase and made available for public use and always maintained as such thereafter.

Reason: To secure an acceptable residential environment and to ensure highway safety is not impaired, in accordance with Policies SS11, TA1, TA2 and DE1 of the Torbay Local Plan 2012-2030.

### **Adoptable Streets**

No development relating to the creation of the roads shall be commenced until full engineering, drainage, street lighting and constructional details of the streets proposed for adoption 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, unless otherwise agreed in writing with the local planning authority.

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies SS11, DE1, SS11, TA1 and TA2 of the Torbay Local Plan 2012-2030.

Informative: The applicant is advised to obtain a technical approval for all estate street details from the local highway authority prior to the submission of such approved details to the local planning authority.

### **Management and Maintenance of Estate Roads**

No works shall be carried out for the formation or construction of any road unless the local planning authority has approved a Road Maintenance Plan for that road including the arrangements for either adoption by the highway authority or the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road and refuse collection throughout the lifetime of the development.

Where it is proposed that the estate roads shall be privately maintained no works shall be carried out above ground level until a Private Road Management Scheme has been submitted to and approved in writing by the local planning authority and which shall provide for;

- (a) Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").

- (b) How the company and the future management and maintenance of the road and refuse collection is to be financed including initial capital investment with subsequent funding.
- (c) The rights for and obligations on the Management Company to manage and maintain the road and collect refuse
- (d) Arrangements for the management and collection of refuse and waste from the dwellings.
- (e) A road management and maintenance and refuse collection schedule.
- (f) How refuse and waste will be managed on site including the location of individual and communal refuse and waste collection facilities and the locations where refuse and waste is to be transferred off-site.
- (g) Confirmation from the relevant waste collection company that they have agreed to collect the refuse and waste from the development in accordance with the approved details.

The development shall be carried out in accordance with the Road Maintenance Plan and the Private Road Access Scheme which shall thereafter be fully complied with and implemented.

No dwelling shall be occupied unless it connects directly to a road (including a footway and carriageway) which is:

- (a) Adopted by the highway authority as a highway maintainable at the public expense or
- (b) Subject to an agreement with the highway authority under section 38 of the Highways Act 1980 for the adoption of the road; or
- (c) Subject to a Private Road Management Scheme where the Management Body has been established and is responsible for the management and maintenance of the road and the collection of waste and refuse from the date of occupation of the dwelling.

Any roads (including carriageways and footways) which do not form part of the highway maintainable at the public expense shall be permanently maintained to an adoptable standard and retained and made available for public use or the lifetime of the development

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies SS11, DE1, SS11, TA1 and TA2 of the Torbay Local Plan 2012-2030.

### **Tree Pit Design**

Prior to the commencement of development the following documents and information should be submitted and approved in writing by the Local Planning Authority for that phase:

- 1) Detailed Arboricultural Method Statements, including (but not exclusive to) sequence of site operations, pre-commencement site meeting for tree protection measures, initial sign off on tree protections, monthly visits to ensure the Tree Protection Fencing is in place and fit for purpose, timing of fence removal, protection of Root Protection Areas during landscaping,
- 2) Details of underground structured planting pits to provide sufficient soil volume for the trees and specimen shrubs within highways and car parking areas.

The development shall proceed in full accordance with the approved details.

Reason: In the interests of amenity, design and ecology, in accordance with Policies SS11, NC1, DE1 and C4 of the Torbay Local Plan 2012-2030, the NPPF. These details are required prior to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

### **Landscaping Amendments**

Notwithstanding the landscape and other relevant plans submitted and/or approved, prior to the first occupation or use of the development hereby permitted the following shall be submitted to and approved in writing by the Local Planning Authority.

- i. A revised landscaping proposal for the Brixham Road boundary to the north of the vehicular access and to the rear of the residential units which principally seeks to provide enhanced

screening of the rear of the buildings and gardens, and also provides a substantial tree-lined avenue to Brixham Road, and;

- ii. A revised landscape proposal for the front of private plots or within the highway that addresses concerns on the lack of streetscene landscaping, which enhances the presence of trees or specimen shrubs and secures adequate softening of the built form, including public retaining walls.

The landscaping approved pursuant to this condition shall be implemented in full and in conjunction with wider approved landscaping hereby approved,

The soft landscaping shall be planted in the first planting season following the occupation/use of the development, or in earlier planting seasons wherever practicable, or within a phased basis as agreed by the Local Planning Authority pursuant to this condition.

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 planting season with others of a similar size and species, unless the Local Planning Authority gives written consent to any variation.

Reason: In the interests of amenity and design in accordance with Policies DE1, C4 and NC1 of the Torbay Local Plan 2012-2030, a Policy PNP1(c) of the Paignton Neighbourhood Plan and advice contained within the NPPF

### **Noise Measures**

Prior to the occupation of any dwelling that has been identified within the submitted and approved Noise Impact Assessment (24Acoustics: Dated 21.06.2021) as requiring noise mitigation measures, the identified measures for the dwelling and plot shall be implemented in full. The measures shall then be retained in full throughout the lifetime of the development.

Reason: In the interests of occupier amenity and to retain a viable operating environment for established commercial activities, in accordance with Policies DE1 and DE3 of the Torbay Local Plan 2012-2030

### **Informative(s)**

01. The development shall accord with conditions cited within this decision notice and those attached to the outline consent. Please refer to the relevant decision notice for the relevant outline conditions, approved under planning permission P/2014/0947 (as revised by S73 applications P/2016/1372, P/2017/0123, P/2017/0571 and P/2017/1041), which include matters pertaining to construction management, ecological mitigation and management, lighting restrictions, provision of enhanced sound insulation measures within identified zones, secured by design measures, drainage design approval, cycle and waste provision in dwellings, construction, ecological and landscape management, and travel planning.

02. 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**

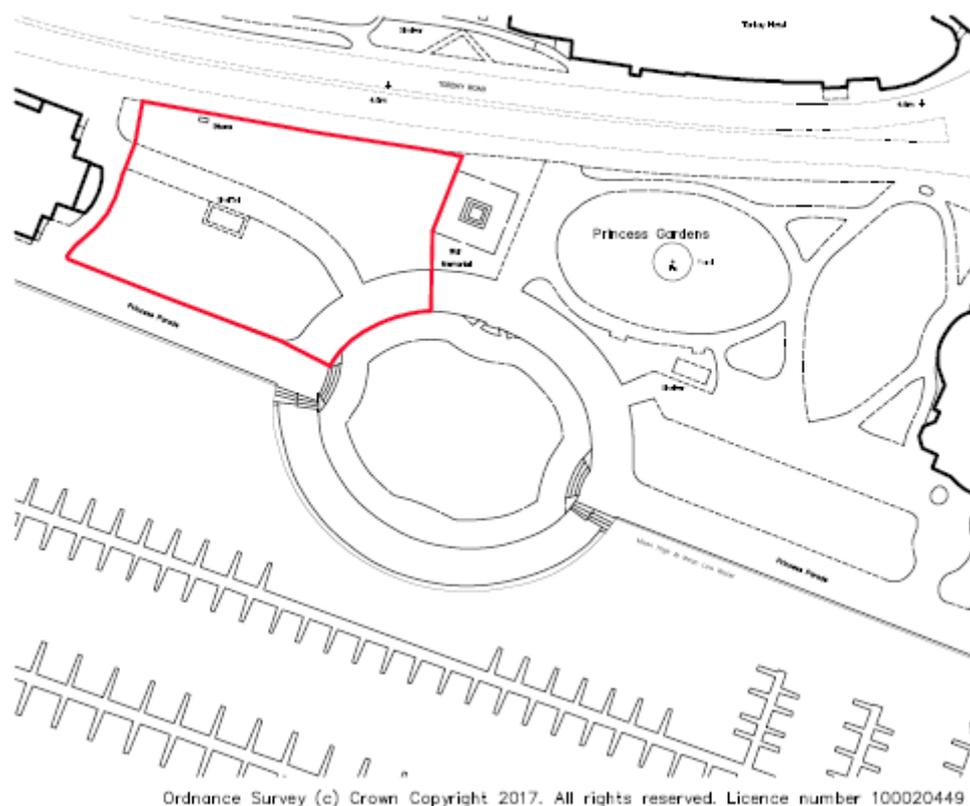
#### **Development Plan Relevant Policies**

- SS1 - Growth Strategy for a prosperous Torbay
- SS3 - Presumption in favour of sustainable dev
- SS8 - Natural Environment
- SS9 - Green Infrastructure
- SS11 – Sustainable Communities
- SS12 – Housing

SS13 – Five year housing land supply  
SS14 - Low carbon development and climate change  
H1 – Applications for new homes  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 – Parking requirements  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ES1 - Energy  
W1 - Waste management facilities  
W2 – Waste audit for major development and significant waste generating developments  
NC1 - Biodiversity and geodiversity

PNP1 – Area wide  
PNP1(c) – Design Principles  
PNP1(d) – Residential Development  
PNP1(g) – Designing out crime  
PNP1(h) – Sustainable transport

Application Site Address	Land At Princess Gardens Off Torbay Road Torquay TQ2 5EY
Proposal	Change of use of land for temporary erection/operation of observation wheel, with ancillary development. One-year season (between period of March to October 2022).
Application Number	P/2022/0211
Applicant	James Mellor Ltd
Agent	GPS Planning and Design Ltd
Date Application Valid	17.02.2022
Decision Due Date	14.04.2022
Extension of Time Date	N/A
Recommendation	<p>Approval: Subject to;</p> <p>The receipt of Historic England comments and The Devon Gardens Trust comments to the satisfaction of the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>The conditions as outlined, with the final drafting of conditions delegated to the Director of Planning, Housing and Climate Emergency.</p> <p>A S106 Legal Agreement to secure a 'conservation gain' to the sum of £20,000 through an upfront payment or S106 legal agreement, for restoration works to the adjacent listed War Memorial.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional 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	Torbay Council Land.
Planning Case Officer	Scott Jones



### **Site Details**

This is a sensitive location, it is prominent within the Torquay Harbour Conservation Area, is near to a Grade II Listed building (Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

The site is also in a Core Tourism Investment Area (CTIA), a Coastal Change Management Area, and a Flood Risk Area, as designated within the Torbay Local Plan. The site and wider area is also a Local Green Space, as designated within the Torquay Neighbourhood Plan.

The land is owned by Torbay Council.

### **Description of Development**

This application seeks the erection of a 50m observation wheel, two ticket offices, and an ancillary catering unit with seating area, within Princess Gardens, Torquay. The application seeks the temporary change of use of land for these purposes for one 'summer' season (between period of March to October 2022).

The observation wheel is to be sited between the War Memorial and Princess Theatre, perpendicular to the adjacent highway.

Ticket offices are set either side of the wheel, one being 3.5m by 3.5m and one being 4m by 2m. The catering unit is 6m by 2.5m and is proposed just to the seaward side of the wheel, with a seating area temporarily dressed with AstroTurf.

### **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 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**

#### **Observation Wheels:**

P/2012/0690: Temporary consent for Observation Wheel between 13th August and November 2012: Approved 15.08.12.

P/2013/0167: Temporary Consent for period 24th May- 5th November: Approved 8.04.13.

P/2014/0193: Temporary consent for period March-October 2014.  
Approved: 15.04.14.

P/2015/0042: Temporary consent for period March-November 2015.

P/2016/0384: Temporary consent for a period until 31st October 2016. Approved: 19.05.2016.

P/2017/0092: Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5 year period between the period of March to the 31st October). Approved 08.05.2018.

P/2021/0708: Variation of Condition relating to application P/2017/0092 (Change of use of land for the temporary erection and operation of a 50m observation wheel, carousel and associated ancillary development (5 year period between the period of March to the 31st October)). Condition: 01 - Temporary Use (Mar-Oct). Extension of usage time ending from October 2020 to October 2021. Pending Decision.

## **Summary of Representations**

One, as summarised below. An update will be offered on the amount and content of any representations as the consultation period for public representations runs until 23.03.2022.

Torbay Heritage Trust: The application should be withdrawn or unquestionably refused. The principle of the Mellor Wheel is supported, but not located in this sensitive location, a Grade II Listed Park at risk.

## **Summary of Consultation Responses**

The majority of expected consultee responses are awaited. An update will be offered on consultations received at the point of the planning committee as the period for consultee comments runs until 23.03.2022.

### **Torquay Neighbourhood Forum**

#### **Historic England**

##### **Torbay Council Heritage Advisor**

The adopted Torbay Heritage Strategy includes an objective to ensure 'Princess Gardens and Royal Terrace Gardens are maintained and protected for the future'. I am therefore conscious of this proposal and its impact on the registered Princess Garden and the character and appearance of the Torquay Harbour Conservation Area. I have reviewed the planning history and noted the evolving discussion around the public benefits and conservation gain associated with this and previous applications. The restoration of the fountain and recent public realm works, including surfacing, have been a significant step forward in terms of this conservation gain. It would be useful to see an itemised list of what has taken place within the gardens to understand the cumulative effects of these improvements.

I have also recently spoken to Historic England regarding the gardens remaining on the Heritage at Risk register. This is clearly something we need to resolve, particularly given the link to our Heritage Strategy. This current application could contribute to resolving any features which keep the gardens at risk. It is important we consider and protect the overall integrity of the gardens and understand what is the next priority for repair and restoration.

In terms of this current application and conservation gain, the war memorial seems the most logical choice as it is listed in its own right. I would like to see an assessment demonstrating the potential for restoration particularly of the stonework and lettering.

As for future applications and the long term siting of the wheel, it is clear that the gardens have seen recent improvements and there could be other prioritised works which could be defined as being of public benefit. However, it is unlikely that this could be a rolling programme and there will come a time when the issues are resolved and we can request that the gardens be removed from the at risk register.

Returning to my first point, the wheel has a significant visual impact on the highly sensitive Princess Gardens and the Torquay Harbour Conservation Area. The surfacing, additional supporting structures and buildings also contribute to the impact on the gardens. I would therefore welcome a continued dialogue on the future use of the gardens for the wheel.

The Devon Gardens Trust

Environment Agency

Drainage Engineer (Swisco)

Community Safety Officer

Further to your recent consultation regarding the above application I would confirm that having reviewed the lighting impact assessment submitted by the applicant I have no objections.

Arboricultural Officer (Swisco)

Highway Authority (Swisco/WSP)

Engineers

Marine Management Organisation

### **Planning Officer Assessment**

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

1. Principle of the development,
2. Impact on heritage assets,
3. Design and visual impact
4. Impact on adjacent amenity,
5. Impact on trees,
6. Ecology and the marine environment.
7. Flood risk

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

The site is a designated Local Green Space within the Torquay Neighbourhood Plan under Policy TE2 (TLGST2). The policy guides that development is ruled out, other than in very special circumstances. The policy cites that very special circumstances may include minor improvements to community access, or facilities that support their use for public recreation or amateur sports, or development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation. The proposal is temporary in nature and is a unique tourism facility. In the context the development, subject to wider considerations, is considered to accord with the principles of the policy and the guidance contained within Policy TE2, and thus is an acceptable form of development within the designated greenspace.

In terms of the Torbay Local Plan Policies SDT2 (Torquay Town Centre and Harbour), TC1 (Town centres), TO1 (Tourism, events and culture) and TO2 (Change of use of tourism accommodation and facilities) provide relevant policy guidance on the principal of a leisure attraction on the edge of Torquay Town Centre and Harbour.

Policy SDT2 seeks to reinforce Torquay Town Centre as the principal retail and leisure centre of the Bay, to become the key sub-regional retail and leisure destination and to provide a vibrant and more enjoyable shopping and leisure environment.

Policy TC1 centres on retail and town centre uses and reinforces the town centre first approach. Two criteria apply and there is a notion of support for development for mixed use edge of centre developments that help achieve more balanced communities by delivering a mix of uses including employment and leisure, which is relevant (Criterion v), and the use of heritage assets, public art and public space, events, exhibitions and festivals to provide a more enjoyable, creative environment (Criterion viii).

Policy TO1 seeks that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. It furthers that tourist facilities will be improved and modernised and new tourism facilities provided, in order to attract new visitors. The policy supports in principle the provision of new tourist attractions, subject to other Policies in the Local Plan. The policy supports the retention, improvement and creation of high quality tourism and leisure attractions in sustainable, accessible, locations with a particular focus on Core Tourism Investment Areas as the areas for investment in tourism.

Policy TO2 seeks that within Core Tourism Investment Areas that the role of premises should be retained and enhanced commensurate with their contribution to the area's tourism offer.

Then provision of an observation wheel within a well-located, central and sustainable location within what is a Core Tourism Investment Area is considered to be supported in principle when considering the town centre and tourism policies cited above, subject to other material considerations.

In conclusion the principle of the temporary provision of an observation wheel is considered to align with the development plan aspirations in terms of supporting and promoting tourism facilities, subject to wider considerations, including the heritage impacts.

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

This is a sensitive location, it is prominent within the Torquay Harbour Conservation Area, is near to a Grade II Listed building (Pavilion) and set within Princess Gardens which is a Grade II entry on the Register of Historic Parks and Gardens. It is adjacent to the War Memorial and near to the Fountain, which are both also Grade II listed structures.

In terms of the Torquay Neighbourhood Plan Policy TT2 (Change of Use in

Conservation Areas and Listed Buildings) provides some key guidance. The policy guides that within designated Conservation Areas or where Listed Buildings are involved, whether inside or outside of a CTIA, change of use from tourist accommodation and other development proposals requiring consent will be supported in principle (subject to other policies in this Plan) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

Policies SS10 and HE1 provide key advice within the Torbay Local Plan. Policy SS10 requires development to sustain and enhance assets and adds that all assets will be conserved proportionate to their importance and concludes that proposals that enhance heritage assets or their setting will be supported. Policy HE1 central guidance is that development proposals should have special regard to the desirability of preserving any listed building and its setting.

The NPPF also provides advice, with Para 197 citing that local planning authorities should take account of;

- i) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- ii) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- iii) the desirability of new development making a positive contribution to local character and distinctiveness.

The NPPF also provides key advice in terms of considering potential impacts, with Para 199 guiding that great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be), and Para 200 furthering that any harm should require clear and convincing justification.

The proposal presents a significant change to the character of the registered park and garden for a temporary period, in this case one summer period. This presents some harm to the character of the park and some harm to the setting of the nearby listed Pavilion building and listed structures within the park. The key consideration is the judgment on the temporary harm of placing the wheel over the medium/long term benefit of the direct 'conservation gain' being proposed. In this application the proposal is to provide £20,000 for identified improvements works to the nearby listed war memorial.

This concept of seeking to offset short term harm with demonstrable conservation gain follows the concepts tabled within previous applications for the temporary placement of the wheel in the park. Notably the previous 5-year temporary permission secured around £130,000 that directly funded the recent restoration of the adjacent listed fountain.

The observation wheel will be close to the Listed War Memorial and within the setting of the Listed Fountain, but care has been taken to ensure a suitable gap to the War Memorial and retain horizontal and vertical space and retain circulation, so as not to unduly crowd or restrict access around this structure. The proposal does have an impact upon the setting but does not impact the Listed structure itself. The impact

upon the setting of the Listed Fountain is less due to the distance and again the impact is one of setting and it does not impact the Listed Structure itself.

More broadly in terms of the visual prominence and setting of the Registered Park the observation wheel, when approached from the east (from Cary Green / the Pavilion) the wheel will be partially set against the backdrop of the theatre building, which will lessen its visual prominence. From the west the theatre building will partially obscure views on the approach. From the north along Torbay Road and/or Rock Walk, the wheel will be partially obscured by the line of mature London Plane trees. From the south, from the sea or pier, the cliffs of rock walk provide a frame behind the structure that will also lessen its visual prominence. Having considered the context and constraints it is considered that the site appears the least harmful location for the wheel if it is to be placed within the Registered Park and Garden, but it still presents harm, which is considered less than substantial, due to the temporary nature of the development and the permeability of the structure in terms of views through the wheel.

Regarding the other forms of development proposed these elements are far more diminutive in scale and hence the potential harm is more limited. The proliferation of clutter is however an issue of concern for the Registered Park and Garden. It is however considered fair to assume that the accumulation of structures will present some form of harm, which is less than substantial.

The submission presents that the heritage impact of granting permission for one summer would be offset through the proposed ring-fenced investment in the Registered Park and Garden of £20,000. It is suggested that the potential conservation gains proposed, together with the economic and tourism benefits, adequately offset the less than substantial harm on the heritage assets, in accordance with the NPPF guidance.

Comments are awaited from Historic England and the Devon Gardens Trust. The council's conservation advisor has advised that the concept of securing improvements to what is an 'at risk' registered park and garden is aligned with the Council's recently adopted Heritage Strategy, and that funding of the war memorial is a logical step.

Subject to the comments of Historic England and The Devon Gardens Trust it is considered that the impacts are short term and reversible in nature, and any harm would be sufficiently offset by the 'conservation gain', which is funding towards the restoration of the listed War Memorial.

It also remains pertinent that wheel has been immensely popular, has attracted tourists, created a dramatic and striking feature within the townscape and has generated economic benefits for the town in terms of increased spend. Once removed, the former site has been quickly reinstated to its former condition and such arrangements could again be secured by condition for its new location.

In the circumstances, given the conservation, economic and tourism benefits of the wheel, subject to the pending comments of Historic England and the Devon Gardens Trust, and subject to achieving the identified conservation 'gains' to offset the less than substantial harm, there would appear sufficient public benefit to permit a one year (summer season) permission in the location proposed when considering the level of

harm to heritage assets.

The scheme, subject to the above, would be compliant with Policies SS10 and HE1 of the Torbay Local Plan, Policy TT2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF regarding heritage assets and less than substantial harm.

The above conclusion has considered the duty to have special regard to (1) the desirability of preserving any listed building or its setting or any features of special architectural or historic interest which it possesses and (2) the desirability of preserving or enhancing the character or appearance of any conservation area, as detailed within the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **3. Design and visual impact**

Regarding the impact of the development upon the wider townscape Policy DE1 (Design) provides pertinent advice.

Policy DE3 states the development should be well-designed, respecting and enhancing Torbay's special qualities, with design considerations on (i) function, (ii) visual appeal and (iii) quality of public space.

In terms of function the structures are temporary in nature and the temporary impact of placing them within Princess Gardens will not alter the adaptability of the space in terms of future change and need. The development is also aligned with functionality in terms of providing diversity to the Park's longstanding tourism and recreation use. The development will also integrate within the constraints of the green infrastructure and principal routes through the Park, with the main thoroughfares unaffected.

In terms of visual appeal the observation wheel is a very prominent and distinguished structure that would be very striking within the townscape. The character and permeability of the wheel will however protect long-distance public views and, through its use, the wheel will also introduce new view-points for residents of and visitors to Torbay. Overall in terms of visual appeal the wheel will have an impact upon the townscape due to its scale and prominence, however the impact is considered limited as the structure is temporary in character, lightweight in terms of how it retains views through it.

In terms of the quality of the public space the location of the development seeks to respond to and address the key public routes through the Park and limit the impact upon these routes. As a unique attraction that is only in a handful of locations nationally the development has the potential to enlighten the experience of the Park and wider promenade as a recreational destination.

Considering the character, form and location the development is considered suitable for the context and in accordance with the aims and objectives of Policy DE1 of the Local Plan 2012-2030.

### **4. Amenity**

Policy DE3 (Development amenity) of the Torbay Local Plan seeks to secure

development that does not unduly impact upon the amenity of neighbouring and surrounding uses, with impact being assessed to include noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.

The scale and location are consistent with a previous consent for a 5-year period. Its form and location would have little impact upon the commercial operations around the gardens and immediate area, due to its form and location. The development may have a more demonstrable beneficial impact on neighbouring commercial operations where they may benefit from the additional footfall and tourism interest that the wheel and carousel is likely to generate.

In terms of residential impact the nearest adjacent properties on Warren Road sit on higher ground to the north of the wheel, approximately 100 metres from the proposed location. It has previously been determined that the impact on privacy and noise nuisance to residential properties 100meters away are not sustainable reasons to resist the wheel, subject to conditions to restrict the hours of operation and lighting. This opinion is maintained.

There is a lack of clarity on the extent of lighting, however it has been stated that the wheel will be lit in a similar way to the previous operations/consents. The lighting has been previously considered acceptable and if similarly lit the wheel would not unduly impact neighbours.

In terms of amenity, subject to lighting similar to the previous operation, and operating our restriction, the wheel would be acceptable on amenity terms and compliant with Policy DE3 of the Torbay Local plan

## **5. Arboricultural impact**

There is a linear row of mature London Plane trees to the north of the proposed location, which are set along the adjacent footpath and frame the highway. These provide significant visual benefits to the character of the area and the setting of the Registered Park and Garden.

The location of the wheel appears to respond to the crown and rooting protection area of these trees and would appear to present a sustainable relationship. This location was previously considered acceptable on arboricultural grounds under the previous planning permission for the wheel, P/2017/0092.

There appears sufficient access to the site from the northwest adjacent to the Theatre which presently receives heavy goods vehicles to service theatre productions.

Comments from the Arboricultural Officer (Swisco) are awaited, and members will be updated.

The proposal is, subject to the pending comments stated above, considered acceptable on arboricultural merit and aligned with policies DE1 and C4 of the Torbay Local Plan.

## **6. Ecology and Marine Environment**

Policy TE7 - Marine Management Planning Development proposals on land adjacent to the coastline will be supported where do not have an adverse effect on a marine policy or management plan. Comments from the Marine Management Organisation are awaited, however it is noted that no objection was offered to the 5-year consent applied for in 2017. Members will be updated.

The proposal is not considered to present any ecological impacts due to its location within an urban location and managed (closely mown) habitat. Although close to the coast the development is temporary in nature and sits above ground without disturbing the land. The operation is unlikely to impact the adjacent marine environment for these reasons.

## **7. Flood Risk**

The development is temporary in nature and involves limited areas where development/structures sit on top of the established land without presenting permanent change. These are the foot pads for the wheel, the small catering and kiosk units, and the Astro turf covering. The development is not considered likely to increase flood risk.

## **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**

Tourism is an important economic sector and there would be economic benefits of from the wheel in supporting this sector and enhancing the facilities available during tourism trips and possible temporary employment opportunities. There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is in favour of the development.

### **The Social Role**

The principle social benefit of the proposed development is that it would help deliver job opportunities in the local area. the development will support this aspiration. The short terms benefits weigh in favour of the development.

### **The Environmental role**

The environmental benefits are considered neutral, with the form of development and planning conditions principally aligned with encouraging a sustainable form of development without impact. 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**

The development is a significant tourist attraction and is likely to increase footfall in the gardens.

### **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. There are no wider material considerations beyond the development plan.

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

It has always been accepted that a permanent occupation of land within the park for an observation wheel would be, in the long term, harmful to the architectural and historical character of the site.

The proposed location is considered less impacting on the Grade II Listed Pavilion building than previous locations nearer to it. It is also considered the least impacting location within the Registered Park and Garden.

Conservation gain is proposed to offset the less than substantial harm caused to the heritage asset/s. Comment is awaited from the Historic England and the Devon Gardens Trust to inform whether this gain is sufficient at the level indicated.

Subject to securing an acceptable level of conservation gain the development proposals for a one year period will accord with the aims and objectives of policies TC1, TO1, TO2, HE1, SS10, C4, DE1 and DE3 of the Torbay Local Plan 2012-2030, Policies TT2 and TE2 of the Torquay Neighbourhood Plan, and advice contained within the NPPF.

### **Officer Recommendation**

Approval: Subject to;

The receipt of Historic England comments and The Devon Gardens Trust comments to the satisfaction of the Divisional Director of Planning, Housing and Climate Emergency.

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

A S106 Legal Agreement to secure a 'conservation gain' to the sum of £20,000 through an upfront payment or S106 legal agreement, for restoration works to the adjacent listed War Memorial.

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

### **Conditions**

#### Time Limit

01. The permission, allowing occupation of the site by the observation wheel and ancillary development, shall be for a temporary period only between the periods of March 15th 2022 and the 31st October 2022. The observation wheel and ancillary development shall be removed before 1<sup>st</sup> November 2022 and following removal the gardens shall be reinstated in accordance with details that shall have previously been submitted to and agreed in writing with the LPA. The agreed scheme of reinstatement shall be implemented in full within two weeks following the removal of the development.

Reason: The use of the site by the development is only acceptable on a short term basis and more lengthy occupation would be harmful to the setting of the listed buildings, to the character of the Registered Gardens and the wider Torquay Harbour Conservation Area contrary to Policies HE1 and SS10 of the Torbay Local Plan 2012-2030 and Policies TT2 and TE2 of the Torquay Neighbourhood Plan.

#### Lighting condition

02. Prior to operation a lighting scheme shall be submitted and approved in writing by the Local Planning Authority. The development shall at all times accord with the approved lighting scheme. The development shall only be lit during the approved operational hours.

Reason: To ensure that disturbance to residents who overlook the site is minimised and to protect the wider visual character of the area, in accordance with Policies DE1 and DE3 of the Torbay Local Plan 2012-2030.

#### Operating hours

03. The observation wheel and the associated ancillary catering facilities shall only operate, and be lit, between the hours of 10.00 and 22.00 hours daily.

Reason: To ensure that disturbance to residents who overlook the site is minimised in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

#### Operational management

04. Prior to the wheel arriving on site a traffic and operational management plan and details of the operational control during construction and dismantling, which shall include due consideration and information regarding the protection afforded adjacent trees during operations, shall be submitted to and approved by the Local Planning Authority. The operation of moving the wheel onto and off the site shall accord with the approved details.

Reason: In order to protect the structural integrity of the site, in accordance with Policies HE1 and SS10 of the Torbay Local Plan 2012-2030 and Policy TT2 of the Torquay Neighbourhood Plan.

#### Tree protection

05. No storage of materials within the defined Root Protection Area depicted in plan ref. CT\_4423.17\_TCP.

Reason: To protect the rooting area of significant trees within the locality, in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

### **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**

DE1 - Design  
DE3 - Development Amenity  
TC1 - Town Centres  
TC5 - Evening and night time economy  
TO1 - Tourism, events and culture  
TA2 - Development access  
HE1 - Listed Buildings  
ER1 - Flood Risk  
SS4 - The economy and employment  
SS10 - Conservation and Historic Environment  
SDT2 - Torquay town centre and harbour  
C4 - Trees, hedgerows and natural landscape  
NC1 - Biodiversity and Geodiversity\_

TT2 - Change of Use in Conservation Areas and Listed Buildings  
TE2 – Local Green Spaces  
TS4 - Support for Brownfield and Greenfield development  
TH8 - Established architecture  
TE5 - Protected species habitats and biodiversity