

Friday, 4 November 2022

PLANNING COMMITTEE

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

Monday, 14 November 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 Dart

Councillor Barbara Lewis

Councillor Dudley (Vice-Chair)

Councillor Manning

Councillor Hill

Councillor Mills

Councillor Kennedy

Councillor Jacqueline Thomas

Together Torbay will thrive

Download this agenda via the free modern.gov app on your [iPad](#), [Android Device](#) or [Blackberry Playbook](#). For information relating to this meeting or to request a copy in another format or language please contact:
, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - 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 5 - 9)
To confirm as a correct record the Minutes of the meetings of this Committee held on 9 May and 10 October 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. **Greenway Farm, Kennels Road, Churston Ferrers, Brixham TQ5 0HJ (P/2022/0657)** (Pages 10 - 23)
Erection of general purpose agricultural building and associated works (retrospective)
6. **Land at Brokenbury Farm, Galmpton, Brixham (P/2021/0658)** (Pages 24 - 62)
Formation of a solar farm & associated equipment to include installation of fencing, CCTV, landscaping & ecological mitigation.
7. **Land at McKay Avenue, Torre (P/2022/0722)** (Pages 63 - 94)
Erection of 72 extra care apartments (use class C3) with parking, communal lounges, courtyard garden and cafe on ground floor.

8. **Former Debenhams Department Store, 12 - 14 The Strand, Torquay TQ1 2AA (P/2022/0806)** (Pages 95 - 129)
Redevelopment of the former Debenhams department store for a mixed-use, including 5 commercial, business and service units (Use Class E), 16 two bedroom residential apartments (Use Class C3), residents parking court and public square.
9. **Beach Cafe, Broadsands Road, Paignton TQ4 6HL (P/2022/0811)** (Pages 130 - 152)
Formation of additional decking areas and ramps, alterations to existing decking, extensions and alterations to building, formation of sports equipment storage and changing area, refuse area, ground floor retail unit, internal alterations to increase internal seating, solar PV and associated works.

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 before 11 am on the day of the meeting.

We are trialling hybrid meeting arrangements to give registered speakers the opportunity to either attend the meeting in person to give their views or to attend the meeting remotely via Zoom. If you would like to attend the meeting remotely to speak you will be provided with a Zoom link to join the meeting. We also ask that you provide a copy of your speech to governance.support@torbay.gov.uk, before 11 am on the day of the meeting, so that the Clerk will be able to continue to read out your speech if you lose connection or cannot be heard in the physical meeting. Remote attendees who lose connection may still be able to follow the meeting via the live stream on the Council's YouTube channel.

Councillors who are not members of the Planning Committee will also be able to join the meeting via Zoom and must use their raise hand function to declare any interests.

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 November 2022. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Meeting Attendance

Please note that whilst the Council is no longer implementing Covid-19 secure arrangements attendees are encouraged to sit with space in between other people. Windows will be kept open to ensure good ventilation and therefore attendees are recommended to wear suitable clothing.

If you have symptoms, including runny nose, sore throat, fever, new continuous cough and loss of taste and smell please do not come to the meeting.

Live Streaming

To encourage more people to engage in our public meetings the Council is trialling live streaming our Planning Committee meetings on our YouTube channel in addition to recording the meetings and publishing the recording on our website. To watch the meeting live please visit <https://www.youtube.com/user/torbaycouncil>.

Minutes of the Planning Committee

9 May 2022

-: Present :-

Councillor Pentney (Chairman)

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

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

108. Apologies for absence

It was reported that, in accordance with the wishes of the Liberal Democrat Group, the Membership of the Committee had been amended to include Councillor Long instead of Councillor Dart.

109. Minutes

The Minutes of the meeting of the Planning Committee held on 14 March 2022 were confirmed as a correct record and signed by the Chairman.

110. Urgent Items

The Board considered the items in Minutes 113 and 114, and not included on the agenda, the Chairman being of the opinion that they were urgent by reason of special circumstances i.e. the matters having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

111. Land At Nightingale Park, Barton Hill Way, Torquay - P/2021/1287

The Committee considered an application for the installation of solar panel array and associated infrastructure. Installation of fencing, exercise equipment, information boards and CCTV. Landscaping to include new planting and widening of circular path.

At the meeting Members noted details of a well-attended public consultation on this matter and the planned improvements to the existing pathways.

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 Dr Rodney Horder addressed the Committee in support of the application on behalf of the Torquay Neighbourhood Forum and Mr Ed Brown addressed the Committee in support of the application on behalf of the Torbay Economic Development Company

Ltd. In accordance with Standing Order B4.1 Councillor Chris Lewis addressed the Committee to object to the application.

Resolved (unanimously):

Approved subject to:

1. the conditions as outlined in the submitted report, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency; and
2. 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.

112. Municipal Chambers, Union Street, Torquay - P/2022/0089

This application was withdrawn prior to the meeting.

113. Exclusion of the Press and Public

Prior to consideration of the item in Minute 114 the press and public were formally excluded from the meeting on the grounds that the item involved the likely disclosure of exempt information as defined in paragraph 1 of Part 1 of 12A of the Local Government Act 1972 (as amended).

114. Land off Brixham Road - Known as White Rock, Paignton, TQ4 7RZ

Members considered the submitted exempt report on a proposal under Section 106A of the Town and Country planning Act 1990 to modify a planning obligation dated 26 April 2013 (as amended).

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit. At the meeting the Council's Solicitor advised members that the developers were seeking to take the application to appeal to amend the conditions of the planning obligations. In accordance with Standing Order B4.1 Councillor David Thomas addressed the Committee to object to the proposal.

Resolved:

Approved subject to:

1. an additional condition that 13 units of affordable housing are delivered to Torbay Council (4 delivered to the Council and 9 where the Council has nomination rights) and Aster grant the Council nomination rights by December 2023, if this condition is refused then the Council should continue to take this application to appeal.

2. Vistry's proposal being accepted and that a Settlement Agreement in the form annexed to the submitted report is entered into prior to Friday 13 May 2022.

The Settlement Agreement and Deed of Variation together will:

- i. secure at nil consideration the transfer to the Council of 4 dwellings (plots 20, 353, 354, 355);
 - ii. secure the provision by Aster Homes Limited of 9 additional affordable dwellings on Phase 4 (plots 7,8,17,18,19,23, 24,25,26) including nomination rights for the Council;
 - iii. replace Part B of the Third Schedule of the s.106 dated 26 April 2013 with a requirement to reassess the profitability of the scheme using costs of development as well as receipts; and
 - iv. release the Developer and the Council from the provisions of the Deed of Variation dated 20 September 2019 ; and
3. if the Settlement agreement is not completed by 13 May 2022, the Council will continue to defend the appeals.

Chairman

Minutes of the Planning Committee

10 October 2022

-: Present :-

Councillor Dudley (Vice-Chairman)

Councillors Dart, Hill, Barbara Lewis, Mills and Jacqueline Thomas

(Also in attendance: Councillors Barrand (virtually), Brooks (virtually) and Chris Lewis)

12. Apologies for absence

Apologies for absence were received from Councillors Kennedy, Manning and Pentney. Councillor Dudley, Vice-Chairman of the Planning Committee chaired the meeting in the absence of the Chairman, Councillor Pentney.

13. Minutes

The Minutes of the Planning Committee held on 22 September 2022 were confirmed as a correct record and signed by the Vice-Chairman.

14. 284 Totnes Road, Paignton, TQ4 7HB (P/2022/0295)

The Committee considered an application for a proposed new vehicle wash and valeting service station.

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

The Planning Officer drew Members attention to a late representation submitted by the Applicant's Agent that had also been circulated to Members of the Planning Committee. Members were advised that whilst the representation provided additional information, the concerns raised by Highways Officers had still not been addressed.

Resolved:

Refused, for the reasons set out in the submitted report.

15. St Edmunds, Victoria Park Road, St Marychurch, Torbay, TQ1 3QH (P/2022/0741)

The Committee considered an application for the construction of two single-storey one-bedroom temporary living spaces and associated landscaping including works to existing car park.

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were available on the Council's website.

Resolved:

Approved subject to:

1. The following additional condition:

Prior to the first occupation of the development hereby permitted the refuse and recycling bin stores shall be provided in accordance with the details illustrated in Drawing Number P218-3-500 and in the location identified on Plan Number P218-3-400. The bin stores shall be retained thereafter in that condition for the lifetime of the development.

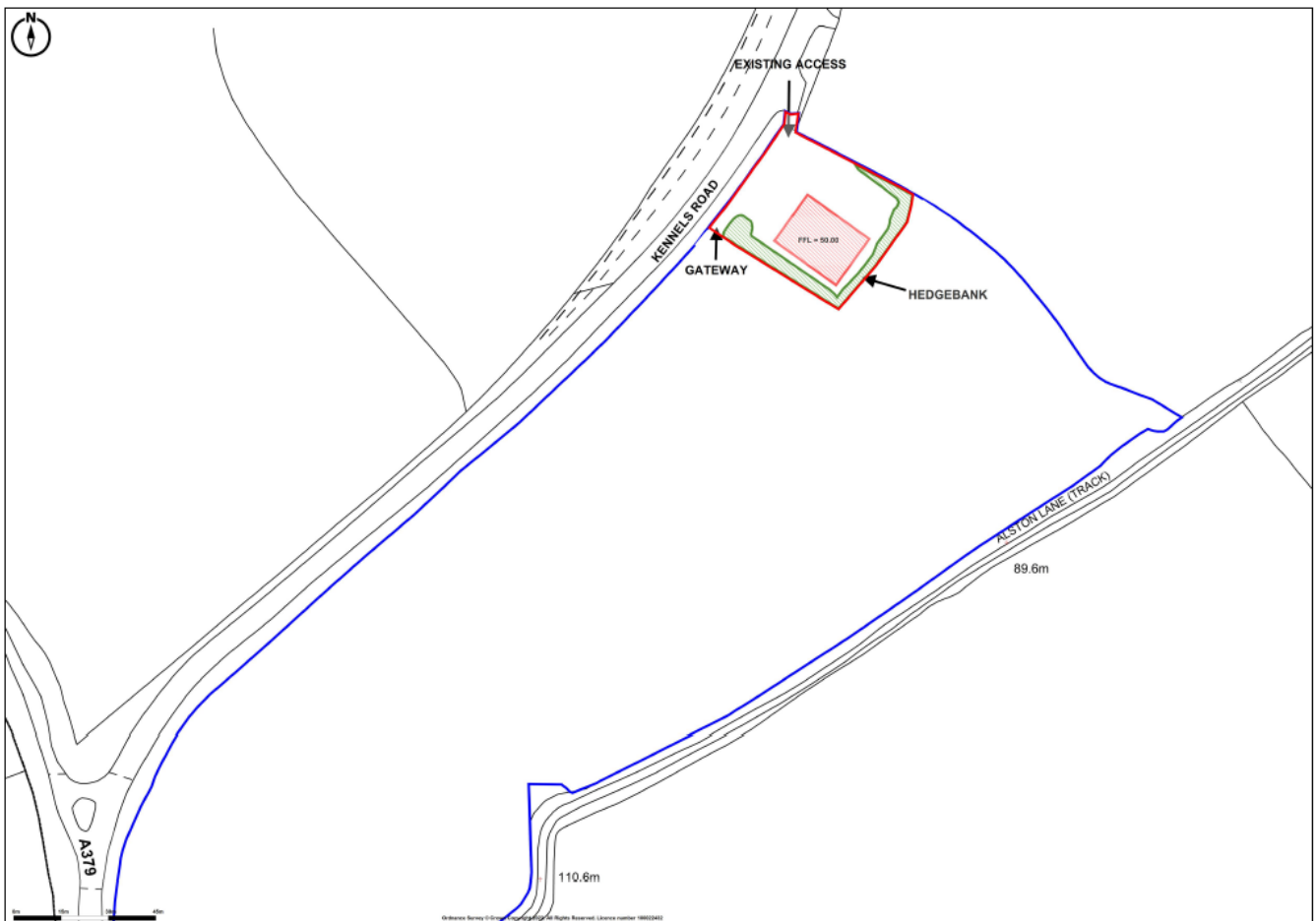
2. The planning conditions outlined in the submitted report, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency; and
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Chairman

TORBAY COUNCIL

Application Site Address	Greenway Farm Kennels Road Churston Ferrers Brixham TQ5 0HJ
Proposal	Erection of general purpose agricultural building and associated works (retrospective)
Application Number	P/2022/0657
Agent	Mrs. Amanda Burden
Applicant	Mr. PA & J Vennelle
Date Application Valid	28/10/2022
Decision Due date	28/10/2022
Extension of Time Date	18/11/2022
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below 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	<p>Cllr Kennedy has called the application to committee for the following reason:</p> <p>“I have a number of concerns all relating to the government guidelines regarding permitted development rights for Agriculture and Forestry. I believe the first application failed to cover this adequately and your report makes no mention of it.</p> <p>Additionally this is contrary to both the Local Plan and Neighbourhood Plan policies.”</p> <p>Cllr Mills has called the application to committee for the following reason:</p> <p>“I have read through your officer's report and your recommendation for approval. I have serious</p>

	<p>concerns about this application and do agree that the BCG forum has made some valid points. I also believe that, as there has been substantial relevant representation made by residents objecting to this application that it should be presented to the planning committee.”</p>
<p>Planning Case Officer</p>	<p>Verity Clark</p>



Site Details

The site, Greenway Farm, Kennels Road, Churston Ferrers, Brixham is an agricultural field. As the proposal is retrospective the field includes an agricultural building which is the subject of this application located on a levelled yard area. Beyond the yard the site levels drop to the field which slopes from south west to north east.

The site benefits from an existing access in the northern corner of the site onto the A379 Kennels Road via a layby.

The site is designated as countryside under Policy C1 of the Local Plan and is within the South Hams Special Area of Conservation sustenance zone for greater horseshoe bats. The site is also adjacent to the Kennels Road other site of wildlife importance and the South Devon AONB is located approximately 90m to the south east of the site and at a greater distance to the south west.

Description of Development

The application seeks retrospective permission for the erection of a general purpose agricultural building to store straw and crops.

The proposed building measures 18m x 24m metres with an eaves height of 7m and a ridge height of 9m. The building features a grey fibre cement roof with concrete panels to 1.5m height and dark grey box profile sheeting above. The building features a sliding door opening on the north west elevation.

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:

Development Plan

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

Material Considerations

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

Summary Of Consultation Responses

Highways:

Standing advice applies.

Drainage:

As the development is located in Flood Zone 1 and the developer is proposing to discharge his surface water drainage using soakaways, please use the recently agreed standing advice for this planning application.

DCC Ecology:Response dated 30/9/2022:

Further information required - It is understood that this is a retrospective application for the erection of the agricultural barn. However, given the location of the barn within a sustenance zone for Greater Horseshoe bats associated with the South Hams SAC, the consultant ecologist needs to provide clarification on the impacts the erection of the barn may have had on this site. Clarification is required as to whether the grassland in which the barn has been erected was suitable in supporting foraging greater horseshoe bats.

Response dated 24/10/2022 following the submission of further information:

Ok, subject to conditions.

Natural England:

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

Broadsands Churston and Galmpton Neighbourhood Forum:

The Broadsands, Churston and Galmpton Neighbourhood Forum believe that this application breaches the Government guidelines regarding permitted development rights for Agriculture and Forestry. Namely it is too close to the road, has been built on the skyline and has not been assimilated into the landscape. For these reasons the development should not be permitted to remain.

Summary Of Representations

Publication type: Neighbour notification letters/site notice.

At the time of writing 22 letters of objection and 8 letters of support have been received (these are available to read in full online). Issues raised:

Objection:

- Undeveloped field with no other nearby buildings
- Blocks view
- Impacts views from John Musgrave Heritage Trail
- Impact on AONB
- Barn is on skyline
- Landscape impacts
- Potential for other development
- Sets precedent
- Easily converted to a dwelling
- Urban sprawl
- Height
- Could be sited in a more appropriate location
- Sited away from other farm buildings
- Proximity to the road
- Located at highest point of field
- Imposing and dominant
- Not essential to the operation of the farm
- Highway safety
- Wildlife
- Materials
- Houses in Alston Lane adversely affected
- Not in keeping
- Size
- Colour of materials
- Tree planting required
- Good road access
- Suitable distance from residential housing

Support:

- Help and improve the farm
- Appropriate addition to farming business
- Barn required to meet standards
- Farm provides employment
- Siting keeps modern farming vehicle off roads
- Will blend into landscape
- Previous consent
- In keeping with farming surroundings

- Existing farm conservation work
- Landscaping around barn
- Difference in location to that approved will not make any difference

Relevant Planning History

P/2018/1221 Provision of agricultural storage building. Prior approval not required
28/01/2019

Planning Officer Assessment

Key Issues/Material Considerations

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

1. Principle of development
2. Impact on the character and appearance of the streetscene and surrounding area
3. Impact on residential amenity
4. Transport Issues
5. Ecology
6. Flooding and drainage

1. Principle of development

The proposal is for the erection of a general purpose agricultural building. The site is designated as countryside under Policy C1 Countryside and the Rural Economy of the Local Plan. Policy C1 states that outside settlement boundaries development required for agriculture would be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment. Policy C1 goes on to state that development in the countryside should not have adverse effect on the integrity of the South Hams SAC or other important habitats.

Policy E3 Settlement Gaps of the Neighbourhood Plan states that within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported.

The site is located in the Neighbourhood Plan settlement gaps E3 2 and 5. The proposal for an agricultural building is considered acceptable in principle in a countryside location and therefore complies with Policy C1 of the Local Plan and E3 of the Neighbourhood Plan. This is on the consideration of principle; other material planning considerations will be detailed later in the report.

The planning statement submitted in support of the application states that the applicant's farm 620 acres (250.9 hectares) which form the basis of a beef and arable farming enterprise. The barn will be utilised to store straw and occasionally crops from the land at Higher Greenway Farm. Justification for an approved barn of the same size and scale but slightly different location submitted via P/2018/1221 states that "the proposed building is essential to the continued successful operation of the farming enterprise and will provide much needed straw storage on the applicant's arable land. The building will provide easy access for machinery coming in and out of the site and will provide a suitable access for any articulated vehicles that may collect straw and/or grains from the site." This justification for the proposal is considered reasonable and the extent of agricultural land is considered to justify the need for storage buildings within the agricultural unit. The proposal would be complimentary to the existing viable operations on the site and are therefore considered to justify a countryside location.

A condition is recommended to ensure the building is used for the agricultural purposes applied for only. This condition is required as the development is only recommended for approval on the basis of the agricultural need.

2. Impact on the character and appearance of the streetscene and surrounding area

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 Design of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Brixham Peninsula Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area and Policy E3 of the Neighbourhood Plan states

that no development that visually and or actually closes the gaps between urban areas identified as settlement gaps will be supported.

The proposal follows prior notification application P/2018/1221 which the Local Planning Authority issued a decision of prior approval not required for the formation of an agricultural storage building. This prior notification was submitted via Part 6 Class A of the GPDO 2015 (as amended). This granted consent in 2019 for the formation of a 18m x 24m agricultural building with a total height of 9m. The officer report concluded that the proposal fell within the permitted development rights and was necessary for the purposes of agriculture. No further consideration was given to the siting, design and external appearance of the development as can be considered via the prior approval process, however the decision notice stated that “No further details are required as it is considered that the development would not detrimentally impact on the character and appearance of the open countryside or its visual amenity. The development can be carried out in accordance with the submitted details.” Full details of the siting and elevation plans were submitted with this notification and were subsequently approved. A condition was added requiring that the proposed landscaping scheme detailed was undertaken in the interests of visual amenity and in accordance with Policy DE1 of the Torbay Local Plan.

The planning statement submitted in support of this application states:

Agricultural buildings are permitted under Permitted Development Rights providing that they are sited more than 25m from a classified road. While the permission for the barn was offered providing that the barn would be erected 25m from Kennels Road, the Applicant mistook the legislation for 20m, and consequently, the barn is sited just 23.85m from the Council Highway. Subsequently, this Application seeks permission to regularise the siting of the barn just 1.15m to the west of the location approved under the Prior Approval reference P/2018/1221. The yard area and Hedgebanks have been implemented in accordance with the approved plans.

As the building which has been constructed is not in accordance with the plans approved via P/2018/1221 the applicant seeks retrospective planning permission for the formation of the agricultural barn. The footprint, size, scale and design are all identical to that previously approved, apart from the fibre cement roof is now noted as ‘grey’ rather than ‘anthracite grey’. The only difference in the development is the siting of the building. As the siting is closer than 25m from the metalled highway, the siting as built would not constitute permitted development given it conflicts with A.1(h) of Part 6, Class A of the GPDO 2015 (as amended).

The siting is noted by the agent as 1.15m to the west of the location previously approved. When measuring comparable plans from the previously approved

application and the current application, the siting of the building appears to be approximately 2.54m closer to Kennels Road at the western tip of the building.

The previous approval and officer consideration in 2019 under the current policy of the Local Plan and Neighbourhood Plan that the siting, design and external appearance of the agricultural building in the location were acceptable are a material planning consideration in the determination of this current application.

The planning officer has visited the site and the surrounding area and would agree with representation received that the site is within a prominent location particularly visible when travelling along Kennels Road and the building is not located in close proximity to any other buildings or structures. A level of screening is provided by the hedgebank running adjacent to the road and the proposal seeks to reinforce landscape screening with hedgebanks along the south west and east of the building.

It is considered that the siting of the proposed building is not significantly different to the proposal which was previously approved. It is considered that the closer siting to the road does not materially alter the impact the building has on the landscape character and views which can be achieved at close range along Kennels Road and at longer range, nor do they result in greater impact on the nearby South Devon AONB than that previously approved and is therefore considered to have an acceptable impact on the setting of the AONB. The proposal is not considered to result in the closure of gaps between urban areas. The additional landscaping around the building will help to assimilate the building into the landscape which is recommended to be secured by condition.

Whilst the footprint of the building is typical of an agricultural building of this use, the height is somewhat large, however the size and scale were previously found to be acceptable.

On the basis of the previous approval on the site and the consideration on the differences the current application puts forward, namely the closer siting to the road, it is considered that the current proposal is no more harmful to the landscape character and appearance than what was previously approved. As the planning history is a material planning consideration, and issues of siting, design and visual appearance could be considered under the prior notification procedure via the current local and neighbourhood planning policy, refusal of the current application on the basis of the alteration in siting is not considered to be justified.

As such, on balance, and on the above basis, the size, scale and visual appearance of the proposed agricultural building is considered to be acceptable and in accordance with Policy DE1 of the Local Plan and Policies BH5 and E3 of the Brixham Peninsula Neighbourhood Plan and the guidance contained within the NPPF.

3. Impact on residential amenity

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

The site is within the countryside located a significant distance away from unrelated uses. Given the agricultural building is sited on agricultural land, is intended for storage purposes and the separation distance of the proposed building to the nearest unrelated residential properties, the proposal is considered to have an acceptable impact on neighbour amenity. As such, the proposal would not lead to any materially harmful impact on residential amenity by way of loss of light, loss of outlook, loss of privacy, noise, odour or overbearing impact.

The proposal therefore complies with Policy DE3 of the Local Plan.

4. Transport issues

Policy TA2 Development Access of the Local Plan states that all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy BH8 of the Brixham Peninsula Neighbourhood Plan states that all new development should comply with the relevant adopted standards.

As the building would serve an existing use on the site which has an existing access, it is considered that any additional vehicular movements associated with the proposed use (if any) would have a negligible impact upon the surrounding highway network. No highway safety concerns are therefore raised.

The proposal therefore complies with Policy TA2 of the Local Plan and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

5. Ecology

Policy NC1 Biodiversity and Geodiversity of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy E8 of the Brixham Peninsula Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms to Policy NC1 of the Local Plan

A bat and protected species survey has been submitted in support of the application which confirms that no bats nor active bird nests were identified in association with the barn. It is possible that bird nest site(s) could be established within or upon the building during any future bird nesting season(s). It is recommended that one bat roosting provision is provided on site as a compensation and enhancement measure for bat species, a new native hedgerow on the south west and south east of the barn is planted and that lighting will need to avoid illuminating any retained boundary hedge banks and trees, any created habitats and any areas beyond the site. It is recommended that bird nesting provisions are provided on site as a compensation measure for bird species, including one bird nesting box and that one bee brick/box is installed to provide biodiversity net gain.

DCC Ecology have noted that the development site lies within the South Hams SAC sustenance zone for Greater Horseshoe Bats. They have confirmed that the proposed development will not lead to the loss, damage, or disturbance to potential greater horseshoe bat commuting routes or foraging habitat. Nor will it lead to the loss damage or disturbance to a pinch point or an existing mitigation feature. In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), the proposals are not deemed likely to cause a likely significant effect on the South Hams SAC. A detailed HRA is not deemed to be required. They have recommended that planning conditions should be added requiring details of any proposed lighting, in addition to a condition requiring adherence to the ecology report and net gain measures and these are therefore recommended.

With the addition of the recommended conditions the proposal is considered to comply with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

6. Flooding and drainage

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment and the planning statement notes that surface water is disposed of via a soakaway. Given the nature of the proposal and the use of a soakaway the proposal is considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106/CIL

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

EIA:

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

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development when considered against that approved via P/2018/1221. As such it is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is considered acceptable, having regard to the previous approval and the Local Plan, the Brixham Neighbourhood Plan and all other material considerations.

Officer Recommendation

Approval: Subject to;

The conditions as outlined below 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

1. Ecology

The recommendations given in the 'Bat & Protected Species Survey' dated 19th July 2022, shall be followed, including the installation of one bat roosting provision and one bird nesting box. The bat and bird boxes shall be installed within 2 months of the date of determination of this application and shall be retained and maintained for the lifetime of the development

Reason: To safeguard protected and/or priority species, and to ensure biodiversity net gain in accordance with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

2. Lighting

No external lighting shall be provided within the site unless full details including their design, siting and levels/type of illumination have been submitted to and approved in writing by the Local Planning Authority. The external lighting shall thereafter be installed and retained in full accordance with the approved details.

Reason: To safeguard legally protected species, including safeguarding foraging paths for legally protected bats, and in the interests of biodiversity in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

3. Landscaping

All proposed planting and planting specification as detailed within plan reference 'P-2022-0657-1- (Site Layout Plan)' and within the Design and Access Statement section 'Biodiversity Enhancement and Landscaping' shall be planted and completed in full in the next planting season following the determination date of this application. The landscaping scheme shall thereafter be maintained for a period of 5 years. In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees/plants shall be replaced in the next planting season. The planting shall be maintained in accordance with the approved details.

Reason: To secure a landscape scheme that will complement the development in the interests of visual amenity, in accordance with Policies C1 and C4 of the Torbay Local Plan 2012-2030.

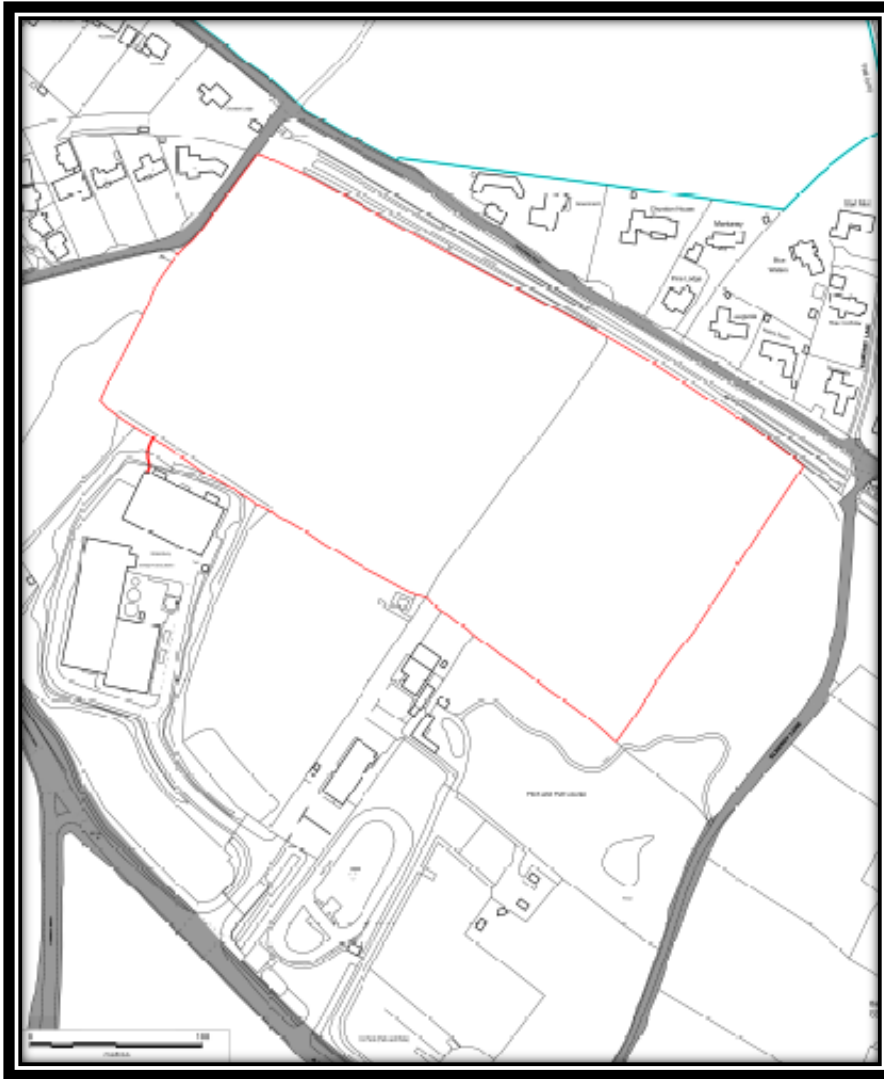
4. Agricultural use only

The building hereby approved shall be used solely for agricultural purposes in association with the agricultural use of the land and if no longer required for agricultural purposes shall be removed from the site.

Reason: In the interests of appropriate uses within the countryside area in accordance with Policy C1 of the Torbay Local Plan 2012-2030.

Application Site Address	Land at Brokenbury Farm, Galmpton, Brixham
Proposal	Formation of a solar farm & associated equipment to include installation of fencing, CCTV, landscaping & ecological mitigation.
Application Number	P/2021/0658
Applicant	TDA
Agent	Fisher German LLP
Date Application Valid	28.05.2021
Decision Due date	27.08.2021
Extension of Time Date	18.11.2022
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below 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 Planning Application
Planning Case Officer	Mr. Alexis Moran

Site Location



Update Report

At the Planning Committee meeting of 10.01.2022 this application for the formation of a solar farm & associated equipment to include installation of fencing, CCTV, landscaping & ecological mitigation, was recommended by the case Officer for approval. Members of the Planning Committee determined to defer the application in order to enable consultation to be carried out with Devon and Somerset Fire and Rescue Service in respect of the concerns raised about fire issues, to ask if the applicant would consider if the panels could be located in the adjacent field to improve the visual impact and to engage with the community on an acceptable scheme.

Whilst for clarity this report is presented as an addendum to the original report the original report is set out below and Members will be aware that this application and all material considerations need to be considered afresh at this meeting.

Revised Layout

The solar panels have been relocated within the site boundary with the majority now being sited in the eastern field over an area of 0.7ha. The remaining 33 panels are to be located to the eastern most point of the first field (over an area of 0.2ha) which also comprises the transformer kiosk and the temporary construction compound. The revised solar farm has an energy generation capacity of approximately 2MW.

The solar array will be enclosed with dark green perimeter fencing with a maximum pole height of 2.2m and fence height of 1.95m for health, safety and security reasons. Beyond the fence line is a gap of varying depths to allow maintenance access, avoid tree root protection areas and provide space for landscaping. A number of CCTV poles are periodically positioned around the perimeter to monitor the site.

Outside of the fenced area and to the northwest of the western field lies the associated construction parking, an access track is proposed along the southern and western boundary of the site, providing access from Bridge Road.

The proposal also includes additional hedge row boundary planting and local ground raising is proposed within the central area of the western field by 2.0m with 1:6 slopes extending northwards, this is to accentuate an existing raised landform on the centre of the field. The landscaping bund is made up of material from the excavation of the trackway and the parking area. These areas lie outside of the area noted as having archaeological significance.

The existing agricultural use of the western field will remain with access retained. The proposed development is temporary (30 years) and is proposed to be fully decommissioned at the end of the period restoring the land to agricultural use.

The solar panels do not require concrete foundations, and therefore little excavation is necessary.

Summary of Representations resulting from re-consultation

Four additional objections have been received with are summarised below;

- inappropriate location which will impact on a residential area
- the construction of this site would cause immense disruption to a quiet and peaceful location.
- impact on local wildlife
- health risks posed by increased radiation.
- loss of prime agricultural land

It should be noted that there is no clear evidence to suggest that electro-magnetic radiation or fire risk present a significant risk to health and safety and are not reasons which could reasonably be used to refuse the grant of planning permission.

Additional Consultations Responses;

Devon & Somerset Fire & Rescue Service - From a statutory Fire Safety perspective and if the proposal will be subject to Building Regulations, then the Regulatory Reform (Fire Safety) Order 2005 will likely apply. As such, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority at that time where items such as access and facilities for the fire and rescue service will be assessed. Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building Regulations.

I have forwarded your email onto my colleagues in the operational risk team. They will respond accordingly if they have any comments to make about fire risks.

Natural England – No objection subject to conditions. The previously agreed HRA does not require amendment.

DCC Ecology – No objection.

Brixham Town Council – Supports proposals for renewable energy but remains concerned by its location. It remains unclear what impact on nearby properties would be and Members raised concerns about the site having possible historic interest.

Highways - No objection, subject to the conditions previously proposed.

Environmental Health – No objection subject to accordance with the submitted CMS and the inclusion of restrictions on hours of construction works.

Climate Emergency Officer – Supports the application as per previous comments of 20.08.2021.

DCC Archaeology - The submitted archaeological evaluation report (Cotswold Archaeology, June 2022) for the revised location of the proposed panels, has established that this area does not contain any significant archaeological evidence or potential. Therefore, there is no objection to the development in this location.

However, there will still be groundworks, for the proposed entrance and access track, in the field containing the known Iron Age settlement enclosure and where Bronze Age artefacts have been found. The proposed groundworks for the access works have the potential to expose and destroy archaeological evidence. Albeit on a much reduced scale compared to the original proposal. The impact of development upon this should be mitigated by a programme of archaeological work that should record any archaeological evidence that will otherwise be exposed and destroyed by groundworks.

A pre-commencement condition requiring the submission of a Written Scheme of Investigation is necessary which sets out a programme of archaeological work to be undertaken in mitigation for the loss of any heritage assets with archaeological interest. The condition will ensure that archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

Key Issues/Material Considerations

Planning Officer Assessment

1. Revised Visual Impact and Landscaping
2. Fire Safety.
3. Impact on Residential Amenity.
4. Ecology and Biodiversity
5. Archaeology

The key considerations resulting from the deferment of the application at the Planning Committee meeting of 10.01.2022 are the visual impact resulting from the solar panels being located in the adjacent field and the outcome of the consultation with Devon and Somerset Fire and Rescue Service.

The addendum to the Statement of Community Involvement advises that additional consultation was undertaken.

Other considerations include the impact on residential amenity, the impact on ecology and archaeology that result from the revisions to the siting of the solar panels and associated development.

Revised Visual Impact and Landscaping

Concerns from Members related to the visual impact of the solar panels on the landscape with Policy E6 (Views and Vistas) of the BPNP being of relevance as the site is displayed in View Point 6 (a field gate on Bridge Road), which is recognised for its role in providing views towards Churston Village.

As per the requirements of Policy E6, a Landscape and Visual Impact Assessment (LVIA) has been carried out to understand the potential effects of the revised location of the solar panels on the landscape character and the visual context.

The proposal includes additional planting and hedge rows as well as some localised ground raising at the centre of the site. The purpose is to provide additional visual screening towards the solar arrays and the associated buildings in views from Bridge Road. The existing raised landform in the centre of the field will immediately provide some screening and the additional ground raising will block views from Bridge Road

(including the entrance gate) and the oblique views from the rising road approaches to the disused railway line overbridge.

Additionally, the revised location of the solar panels is set further to the east and on lower ground which will aid in limiting the overall visual impact of the panels on the open views towards Churston Village when viewed from the field gate on Bridge Road (View Point 6). This is evidenced in Appendix 4 of the revised LVIA which provides cross sections through the site.

Conclusions from the updated LVIA (July 2022) state the predicted visual impact of the proposed development in the revised location to the users of the public highway along Bridge Road would only be slightly susceptible to the changes and sensitivity is low with some minor visual impacts arising as a result of the introduction track at the site entrance running along the southern side of the field. Views of the proposed development within the south eastern field will be fully screened by the central hedgerow and further by the land raising. The overall predicted visual effect of the proposed development to the pedestrian and cyclist receptors using the public highway is Slight (Adverse)/Negligible.

The impact on the landscape character of the site from other external views, are concluded as either Negligible or Slight (Adverse) reducing to Negligible as the proposed hedgerow planting matures.

The LVIA states that the AONB is of low susceptibility to the proposed development within the site given its distance, topography, relative small size, the low lying nature of the solar arrays and small plant building and its well enclosed nature. This limits the extent of the potential effects of the development to the AONB. The innate special qualities of the AONB would not be altered detrimentally to cause undue harm as a whole.

The revised location of the solar panels and measures to provide landscaping mitigation are deemed to be accord with Policy E6 of the BPNP.

Fire Safety

The proposed development would be monitored externally and would not require permanent staff to operate it. The Fire Brigades Fire Safety Officer has advised that from a statutory Fire Safety perspective and if the proposal will be subject to Building Regulations, then the Regulatory Reform (Fire Safety) Order 2005 will likely apply, as such, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority at that time. Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building Regulations. Building control have advised that the ancillary buildings may require building regulation approval, as the solar panels do not have foundations, they will not require building regulation approval.

The Fire Brigades Fire Safety Officer advised in their consultation response that the proposal had been forwarded onto the Operational Risk Team and that they would respond accordingly if they have any comments to make about fire risks. No further comments have been received and therefore it is considered that there are no risk concerns with regards to fire safety.

As stated in the original report, the energy storage system used is designed for grid energy storage and comes with multiple safety precautions to avoid thermal runaway which is the main fire risk of using batteries in grid storage. These include a control system that monitors the input of energy into and the output of energy from the batteries to ensure the rating of the batteries is never exceeded. Groups of battery units will be fused to limit the current flow in those sections and fuses will blow before the batteries are subjected to excessive current that could cause batteries to heat up excessively. The charge monitoring unit will ensure the batteries are not over charged, and usually hold the maximum state of charge at least 5% under the rated capacity of the battery units but this will be specific to the battery technology used and the manufacturers recommended charging requirements. The battery units will also have a built-in cooling system designed to keep the cells at the desired operating temperature.

The battery storage units are also designed to identify excessively hot battery units before a fire starts. In this event the system would shut down and start a venting system to extract the warm hot air.

Impact on Residential Amenity

An addendum to the originally submitted Glint and Glare Assessment has been submitted and, in combination with the analysis of the original, it concludes that the new siting of the solar panels would have no impacts on road safety, residential amenity or railway operations and so subsequently no mitigation measures are required.

The construction phase will naturally result in some temporary impacts. A Construction Method Statement has been included with the revised application, the Environmental Health Officer has confirmed that the submitted details are acceptable and a condition requiring accordance with this, as well as a restriction on hours of construction, has been added.

As previously stated, it should be noted that there is no clear evidence to suggest that electro-magnetic radiation or fire risk present a significant risk to health and safety and are not reasons which could reasonably be used to refuse the grant of planning permission.

In summary the proposal is deemed to provide a satisfactory form of development in terms of protecting the amenities of neighbouring occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

Ecology

The revised siting of the solar panels does not require the previous HRA to be amended and this has been confirmed by Natural England.

A net gain in biodiversity of over 10% will be achieved within the Site. This is based on the inclusion of the following key habitat enhancements:

- The widening and enhancement of the field margins to create species-rich grassland including up to 10m margins along within the south-eastern field, and to provide improved opportunities for a range of species, including Greater Horseshoe

bats and Cirl Bunting, and compliment existing hedgerow and bordering woodland habitats.

- A new species-rich native hedgerow along the north-eastern and south-eastern perimeter fences surrounding the solar park. This will create a double parallel hedgerow along these sections of the north-eastern boundary between the hedgerows and Churston Railway CWS and central field boundary between the two fields. Gapping up planting of retained hedgerows/banks should also be undertaken where appropriate. This will include additional scrub and tree planting along the north-eastern boundary of the south-eastern field.

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

Archaeology

The archaeological evaluation submitted with the states that there was no evidence of Iron Age activity identified within the excavated trenches, suggesting that the activity recorded to the north during the preceding phase of evaluation does not extend into the current site area. As such the revised location of the solar panels is not considered to have an impact on any aspects of archaeological interest in areas proposed for solar panels within the site.

However, the County Archaeologist and Historic Environment Manager has advised that there will still be groundworks, for the proposed entrance and access track, in the field containing the known Iron Age settlement enclosure and where Bronze Age artefacts have been found. The proposed groundworks for the access works have the potential to expose and destroy archaeological evidence. Albeit on a much reduced scale compared to the original proposal. The impact of development upon this should be mitigated by a programme of archaeological work that should record any archaeological evidence that will otherwise be exposed and destroyed by groundworks. Consequently, the archaeological program of works condition proposed in the original report of 10.01.2022 is retained.

Conclusion

At the Planning Committee meeting of 10.01.2022. Members of the Planning Committee determined to defer the application in order to enable the applicant to consider if the panels could be located in the adjacent field to improve the visual impact and so that consultation to be carried out with Devon and Somerset Fire and Rescue Service in respect of the concerns raised about fire issues and to engage with the community on an acceptable scheme.

Officers consider that the revised location of the solar panels addresses the concerns of Members in terms of the visual impact of the proposal which now has minimal impact when viewed from the field gate on Bridge Road (View Point 6 of Policy E6). The revised siting of the panels is deemed to accord with the requirements of Policy E6 of the BPNP.

The fire safety officer has been consulted on the application and the fire aspect of the proposal falls outside of the considerations of this planning application.

The revised proposal is considered acceptable in principle and would not result in unacceptable harm to the character of the area, local amenity, heritage assets, biodiversity or highway impacts and will have positive environmental benefits.

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

Previous Officer report to Planning Committee on 10.01.2022

Site Details

The site is located to the south of Bascombe Road and to east of Bridge Road. The application site area is 6.7 ha and comprises of two arable agricultural fields with no existing structures on site. There are residential dwellings to the north, north-east and north-west of the site.

The northern boundary is adjacent to a disused railway, the Churston Railway County Wildlife Site. To the east and south is a small pitch and putt golf course,

there is a farm shop to the south. South West Water treatment works is located to the south west.

The site is bound on all sides by established hedgerows and trees which screen views to the site from the residential environment to the west off Bridge Road, and north off Bascombe Road.

The site does not contain any designated heritage assets and lies approximately 100m to the west of the Churston Ferrers Conservation Area. There is however some evidence of Bronze Age works within the site. The Devon County Archaeologist advises that finds such as this are rare in Devon and that part of the site should be considered as a non-designated heritage asset.

The site is within the Greater Horseshoe Bat sustenance zone. Bascombe Road (including hedgerows) is recognised as a 'Locally Important Site for Wildlife and Geology' and the South West Water Treatment Works, Brokenbury Quarry site, is designated as a Regionally Important Geological Site (RIGS) (Policy NC1 from within the adopted Local Plan).

The application site is located approximately 300m to the east of the AONB boundary. The site is within Flood Zone 1, an area at very low risk of surface water flooding.

There are no Public Rights of Way within the site. A National Trail route runs along Bridge Road and Bascombe Road.

In terms of Local Plan designations, the site is within the Countryside Zone and an area of search for a sport facility. However, the allocation in the Brixham Peninsula Neighbourhood Plan is as a Settlement Gap.

Description of Development

The application proposes the formation of an array of photovoltaic panels which, along with the associated access track, hardstanding and built development would cover approximately 1.4 ha of the western field. The array would be within a wider

fenced area extending to 3.5ha. The photovoltaic solar panels are low profile and appear as black cells. The panels are mounted and have a maximum height of 2.89m from ground level.

The development would consist of rows of PV solar panels from west to east across the site which would be orientated to face south towards the sun. The proposed development is divided into two banks of panels divided by a 5m wide maintenance gravel access track. The panels do not need to be fixed onto a concrete base and therefore limited excavation is required, this also means that they can be removed with relative ease and the land returned to its previous state if necessary.

The proposal also includes some ancillary buildings which include a transformer kiosk and switch gear kiosk, and two battery storage container units to be located in the south-west corner of the site. The height of the two proposed kiosks is to be 3.5m and the façade of the kiosk will be brick. The proposed battery storage unit container will be housed within a storage container measuring 2.6m in height and 12m in length. The solar array will be enclosed with dark green perimeter fencing with a maximum pole height of 2.1m and fence height of 2m for health, safety and security reasons and CCTV poles will be sited around the perimeter to monitor the site.

The proposed development includes comprehensive landscaping proposals around the perimeter of the western field, and the south-east field. Approximately 2ha will remain in agricultural use and provide ecological mitigation at the margins.

Access to the site is currently achieved via a gated entrance on Bridge Road along the western boundary of the site utilised by agricultural vehicles.

It is proposed that the adjacent SWW facility will use the electricity generated onsite, with any surpluses fed to the National Grid increasing the amount of clean renewable energy generated and consumed locally.

Pre-Application Enquiry

Pre-Application Advice was provided by Torbay Council in September 2020. The advice indicated that the application would require a Habitat Regulation Assessment Appropriate Assessment, because mitigation will be required in relation to greater horseshoe bats and that a Landscape Impact Assessment would be required to assess landscape impact. The pre-application response acknowledges that Torbay Council declared a Climate Emergency in June 2019 and that the provision of renewable energy must be given substantial weight. Early engagement with the Brixham Peninsula Neighbourhood Plan Group was recommended.

Overall, the without prejudice view, at the pre-application stage, was that the proposed development would gain officer support subject to consultations and the outcome of survey work.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

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

Summary of Representations

Seventeen objections have been received from fourteen households .

The key issues raised by objectors are as follows:

- Proximity to residential area and school – loss of amenity
- Health and safety, electro-magnetic radiation and fire risk
- Highways danger
- Impact on AONB and Countryside Zone
- Impact on ecology
- Contrary to Local Plan and Brixham Peninsula Neighbourhood Plan
- Impact on significance of prehistoric features

Summary of Consultation Responses

Historic England - No objection

Torbay Council Senior Tree and Landscape Officer –

Having reviewed the submitted arboricultural information the project is sustainable from an arboricultural perspective. We will require a compliance condition for the submitted Tree Protection Plans and a pre-commencement AMS for the sequence of operations and site inspection frequency.

Sport England – No comment received

Environment Agency - No comment received

Torbay Council Drainage Engineer – no objection

Brixham Town Council – Object on the grounds of the proposal having a detrimental impact on the amenity of neighbours and “negatively impact nearby developments.”

RSPB – No objection

DCC Archaeology – No objection subject to a pre-commencement condition regarding the submission of an archaeological written scheme of investigation and the implementation of a programme of archaeological works in order to ensure the retention of the Iron Age enclosure.

DCC Ecology – No objection. An HRA/AA has been undertaken which confirms that subject to the mitigation measures being secured, the proposal will have no adverse effect on the integrity of the South Hams SAC alone or in combination with other proposals or projects.

Natural England –No objection, subject to appropriate mitigation being secured through condition.

SWW – no objection, advice on asset protection provided.

Climate Emergency Officer -

“There is a clear and compelling rationale to mitigate and adapt to a changing climate, which is why Torbay Council declared a climate emergency in June 2019 and committed, to becoming a Carbon Neutral (CN) council and working with others to create a carbon neutral community by 2030 (Torbay Community and Corporate Plan (2019-2023)).

Nationally the UK is committed to achieving net zero by 2050, and to a 78% reduction in greenhouse gases by 2035. A raft of policies and strategies highlight the importance of generating clean low/zero carbon energy in meeting these targets. Locally this is also reflected in the adopted Torbay Energy and Climate Change Strategy (2014-19).

In order to achieve national and local net zero and carbon neutral targets, one of the key things we will need to do is to change the way we power our homes and businesses. This will mean rapidly increasing the amount of low carbon and renewable energy generated across the UK, including, where appropriate, in Torbay. This will be from a range of sources including solar energy.

Currently renewable energy production in Torbay is limited, and mainly from small roof mounted solar photovoltaic panels which provide just 1.6% of Torbay's current electricity consumption. This proposed solar scheme on land at Brokenbury Farm is predicted to generate 2.7 megawatts of clean electricity through a ground mounted solar array. It is proposed that SW Water will use this electricity onsite, with any surpluses fed to the National Grid. Such a scheme will increase the amount of clean renewable energy generated and consumed locally.

At present our national energy system is decarbonising but is not yet fully powered by renewable energy sources. This results in carbon dioxide being emitted at the point of electricity generation. By generating a predicted 2.7 megawatts of clean electricity, this proposed scheme will therefore help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

Police Liaison Officer – no objection

Torbay Council Highways Consultant - *Based upon the information submitted by the applicant at the time of writing, the Highway Authority offers no objection to the proposed development on the condition that: the extent of hedge identified in red on drawing (ref. 3495.ENG.12) is removed to achieve the required visibility splays prior to commencement of construction.*

As noted in paragraph 4.6.3 of the submitted CTMP the applicant will also be required to submit, prior to commencement of construction, a Traffic Management Plan for agreement with the Local Highway Authority. This should include the relevant traffic management controls requested as part of this document and will be applicable to all employees and sub-contractors involved with construction.

.

Key Issues/Material Considerations

Planning Officer Assessment

1. Principle of Development
2. Visual Impact and Landscaping
3. Impact on Residential Amenity.
4. Impact on Highway Safety.

5. Ecology and Biodiversity
6. Low Carbon Development and Climate Change
7. Archaeology

1. Principle of Development

A key issue in considering the principle of this development is the Local Plan and Neighbourhood Plan designations for the site.

The site is designated as Countryside Area in the Local Plan to which Policy C1 applies. This policy restricts development that would result in the loss of open countryside or create urban sprawl. However, Policy C1.8 states that “appropriate renewable energy development” can be suitable in the Countryside, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected, and necessary mitigation measures are carried out.

The Local Plan also refers to the site as an area for ‘Proposed Sports Facilities - Area of Search’ (Policy SC2.6). The Brixham Peninsula Neighbourhood Plan (BPNP) did not reiterate the Local Plan’s allocation as an area of search for sports facilities and designates the site as a ‘Settlement Gap’ between Galmpton and Churston Ferrers (Policy E3).

Policy E3 advises that within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan and that no development that visually and or actually closes the gaps between these urban areas will be supported. The Policy justification goes on to state that these separating countryside strips, or “settlement gaps” provide:

- an open characteristic to the area which draws in views of distant landscapes;
- separation which prevents coalescence and the merging of settlements; or
- corridors which physically connect to and interact with the wider countryside

Although these issues will be considered in more detail later in this report the introduction of a solar farm will have some impact on the open character of the site, albeit less than housing or other development. It would therefore appear that there

would be conflict with Policy E3 of the BPNP in landscape terms. This would however need to be weighed against other development plan policies and material considerations, including Policies SS14 and ES2 of the Local Plan and BH7 of the BPNP.

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources. Policy BH7 of the Brixham Peninsula Neighbourhood Plan advises that new development is encouraged to incorporate, adaptive technologies, eco-innovation and other measures to combat climate change and enable sustainable lifestyles.

Local Plan Policy ES2 states that the Council will support, in principle, proposals for new renewable and low-carbon energy generating systems at all scales, including district heat and power and community projects. The wider environmental, community and economic benefits of proposals of these systems will be given great weight. Proposals for renewable and low-carbon infrastructure will be considered against other Policies in the Local Plan. It goes on to advise that development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme. In particular, provision of new renewable energy infrastructure will only be approved where the Council has ascertained that it would not have an adverse effect on the integrity of any site protected under European legislation

Chapter 14 of the NPPF relates to meeting the change of climate change, para 152 states that the planning system should support renewable and low carbon energy and associated infrastructure. Torbay Council declared a climate emergency in June 2019 and committed, to becoming a Carbon Neutral council and working with others to create a carbon neutral community by 2030 (Torbay Community and Corporate Plan (2019-2023)).

The Councils Climate Emergency Officer has advised that renewable energy production in Torbay is currently limited and mainly from small roof mounted solar photovoltaic panels which provide just 1.6% of Torbay's current electricity consumption. The proposed solar scheme is predicted to generate 2.7 megawatts of

clean electricity through a ground mounted solar array. The generation of clean electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

As previously noted there is likely to be some conflict with Policy E3 of the BPNP (although this will be considered in more depth later in the report) however in principle the proposal accords with the development plan taken as a whole and even if there is some conflict with Policy E3, the Climate Emergency and related policies in the Local Plan as well as Chapter 14 of the NPPF represents material consideration which tip the balance in favour of the proposal in principle. This broad position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the forthcoming sections of this assessment.

2. Visual Impact and Landscaping

Policy SS8 (TLP) states that development proposals outside of the AONB designation (the site is not within the AONB) will be supported where they conserve or enhance the distinctive character of Torbay, or where the impact is commensurate with the landscape importance. As previously noted, Policy E3 advises that within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan and that no development that visually and or actually closes the gaps between these urban areas will be supported. The Policy justification goes on to state that these separating countryside strips, or "settlement gaps" provide:

- an open characteristic to the area which draws in views of distant landscapes;
- separation which prevents coalescence and the merging of settlements; or
- corridors which physically connect to and interact with the wider countryside

Policy E6 of the BPNP states that proposals for developments which affect these views and vistas should demonstrate that landscapes are safeguarded with their importance and be accompanied by a visual impact assessment appropriate to the size and scale of the proposal. The site is recognised for its role in providing views towards Churston Village (E6.6). As per the requirements of Policy E6, a Landscape and Visual Impact Assessment (LVIA) has been carried out to

understand the potential effects of the proposals on the landscape character and the visual context.

The site is located outside the South Devon AONB which is some 300m to the east of the site. The Site is located within the Devon Landscape Character Area LCT 3B: Lower rolling farmed and settled valley slopes. Within the more local Torbay Landscape Character Assessment the Site is located within landscape character areas LCT 1 Rolling Farmland and, at more detailed level, Area of Local Character: 1P South Galmpton and Lupton.

The majority of the field area to the north-west will be subject to development, but the existing site boundary hedgerows and trees will not be affected or altered, and the surface of the field will change to permanent grassland from the changing crops associated with arable farming. The field within the south-east of the site will not be subject to any additional built form.

The submitted LVIA describes the local and wider landscape context to the site as strongly defined as a contained area due to its low lying topography and strongly vegetated boundaries on all but its western side where it abuts an urban area.

Further strengthening is proposed to a length of the boundary hedgerow to the west with new native species hedgerows, tree planting and shrub planting is proposed to increase the height and thickness of the existing hedgerow and to provide greater screening in views gained from Bridge Road towards the north-west of the proposed development on site. The proposed planting measures will provide strengthened visual screening of the development on site over time as they establish and mature.

A new hedgerow is proposed alongside the northern side of the proposed security fence and groups of trees alongside the northern site boundary are proposed. These will aid in strengthening the existing screening provided by the woodland belt running adjacent to the north boundary of the site to glimpsed views gained by drivers, cyclists and pedestrians using Bascombe Road. Views above the woodland into the site in this location from the first floors of residents of two houses along the northern side of the road will also be further screened.

Glimpsed views gained by pedestrians using the publicly accessible path within Churston Golf Club course to north of Bascombe Road will similarly be further screened by the above measures. Over time and as the landscaping measures mature, the views will be fully screened and the predicted visual effect reducing.

The LVIA advises that the predicted level of visual effect of the proposed development and landscape mitigation, is negligible to the South Devon AONB, landscape character areas LCT 1 Rolling Farmland and Area of Local Character: 1P South Galmpton and Lupton, Site Local Context Landscape Character, Site Wider Context Landscape Character.

The submitted LVIA lists the landscape mitigation measures set to strengthen the visual screening from the local area viewpoints (in particular View Point E6.6 of the BPNP). Whilst the ground mounted solar panels are relatively low-lying, the development includes landscape strengthening to the hedgerows to screen the site from cyclists, walkers and road users along Bridge and Bascombe Road. The landscape proposals will provide additional hedgerow and tree landscape features which will mature and grow over time and be in keeping with the existing landscape on site and the local landscape context. The LVIA advises that current site has an almost wholly enclosed character separating it from the local landscape and will only materially affect the existing site landscape character, and not alter the existing local or wider context landscape character.

The LVIA advises that the proposed scheme will result in a moderate change to the landscape character of the site, but that this would only be a barely perceptible, negligible change to the characteristics of the landscape local and wider context character areas, and as the proposed landscape planting measures mature, the effects will lessen further.

There is a requirement to pay special attention to the desirability of preserving or enhancing the setting of listed buildings, and in terms of this development there is a Grade II Registered Park and Garden, Lupton Park and its Listed Building are some 85m to the south-west of the site. Additional information was provided with regards

to the potential impacts on Lupton Park Registered Park and Gardens which are some 400m to the south-east of the site. The conclusion of this was that the proposals would result in no harm to the significance of the Grade II* Registered Park and Garden Lupton Park and its Listed Buildings, in accordance with the NPPF. Historic England have confirmed that they agree there would be no resulting harm to the Registered Park and Gardens from the proposed development.

The key landscape issue, and a key issue to this application, is whether the solar farm would visually or actually close the settlement gap. The LVIA concludes that there would be some local impacts resulting from the addition of the solar panels and ancillary development, particularly from the viewpoint E6.6 of the BPNP which looks from a field gate on Bridge Road across to Churston Village. However, subject to the landscaping mitigation, wider visual impacts and those from the AONB appear to be minimal. When considering the relatively low height of the solar panels and the additional landscaping it would be reasonable to conclude that the physical closing of the settlement gap would not translate to a broad visual closing of the gap from wider views of the landscape. Nonetheless, the view from the field gate on Bridge Road would be altered and the impact of this needs to be considered against the clear benefits of clean energy production. It is considered that, despite there being some conflict with Policy E3 (and E6 to an extent) of the BPNP, the proposal accords with the development plan taken as a whole. Notwithstanding conflict with Policy E3 the accordance with other policies in the Local Plan and BPNH, plus the Climate Emergency and Chapter 14 of the NPPF tip the balance in favour of the proposal.

It is considered that the proposed appearance, landscaping, layout and scale of the development would not result in unacceptable harm to the character of the area. Based on the information provided, the proposed development is, for the reasons above, considered to provide a satisfactory form of development in accordance with Policies SS8 and C1 of the Torbay Local Plan, Policy E3 of the BPNP and the NPPF.

3. Impact on Residential and Local Infrastructure Amenity

Policy DE3 of the Torbay Local Plan states that development should not unduly impact upon the amenity of neighbouring occupiers and surrounding users, the closest of which are to the north of the application site.

A Glint and Glare Assessment has been submitted with the application which assesses the possible effects of glint and glare from the proposed solar panels on surrounding road users, dwellings, the school and associated railway infrastructure. This concluded that there would be no significant impacts and so subsequently no mitigation measures were required.

In terms of roads, the assessment advises that the glint and glare modelling has shown that solar reflections are geometrically possible towards five receptors, totalling approximately 500 metres along the A3022, and no receptors along the A379. However, no effects are predicted to be experienced by a road user along this section of the A3022 in practice due to intervening screening in the form of existing vegetation, commercial buildings, and/or surrounding dwellings.

The glint and glare modelling has shown that solar reflections are geometrically possible towards 43 out of the 64 assessed dwelling receptors. However, the assessment predicts that no effects will be experienced by an observer in any of the dwellings in practice due to intervening screening in the form of existing vegetation, commercial buildings, and/or other surrounding dwellings.

Based on the distance of the railway line from the proposed development, the glint and glare assessment concludes that there would not be a significant impact upon the safety of railway operations.

In terms of safety and particularly in relation to fire, the energy storage system used is designed for grid energy storage and comes with multiple safety precautions to avoid thermal runaway which is the main fire risk of using batteries in grid storage. These include a control system that monitors the input of energy into and the output of energy from the batteries to ensure the rating of the batteries is never exceeded. Groups of battery units will be fused to limit the current flow in those sections and fuses will blow before the batteries are subjected to excessive current that could cause batteries to heat up excessively. The charge monitoring unit will ensure the batteries are not over charged, and usually hold the maximum state of charge at least 5% under the rated capacity of the battery units but this will be specific to the

battery technology used and the manufacturers recommended charging requirements. The battery units will also have a built-in cooling system designed to keep the cells at the desired operating temperature.

The battery storage units are also designed to identify excessively hot battery units before a fire starts. In this event the system would shut down and start a venting system to extract the warm hot air.

The construction phase will naturally result in some temporary impacts however this can be reduced by a condition requiring the submission of a Construction Method Statement which includes a restriction on the hours of construction and requires details of delivery and construction movement and parking to be submitted and approved by the Local Planning Authority prior to development.

In summary the proposal is deemed to provide a satisfactory form of development in terms of protecting the amenities of neighbouring occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

4. Impact on Highway Safety

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

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development.

Access for the development will be achieved via an existing gated access off Bridge Road, which is currently used for agricultural vehicles. It is proposed to widen the existing access to 6.1m to accommodate construction vehicle movements. Post-construction phase, the applicant has stated that the access will be infrequently used for maintenance purposes.

The applicant has submitted traffic speed data which has identified an 85th percentile speed of 24.98mph and 26.57mph westbound and eastbound respectively. Based upon these recorded speeds the applicant has provided visibility splays to show a 'Y' distance of 33m and 37m respectively. The applicant has submitted a visibility splay drawing which identifies an 'X' distance of 2.4m. The Councils Highways consultant has confirmed that this is acceptable subject to a condition to ensure an extent of hedge is removed to achieve the required visibility. Highways have confirmed that they have no objection to the development subject to the submission, of a Traffic Management Plan for agreement with the Local Highway Authority prior to commencement of development.

The proposal is considered acceptable on highway and movements grounds, and in accordance with the Policy TA2 of the Torbay Local Plan, Policy BH8 of the Brixham Peninsula Neighbourhood Plan and the NPPF.

5. Ecology & Biodiversity

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

The site is within the Greater Horseshoe Bat Sustenance Zone for the South Hams SAC associated with the Berry Head SSSI designated roost. Greater Horseshoe bats were recorded in low numbers, mainly around the boundaries of the southern field, including the southern end of the central hedgebank and north-eastern boundary of this field, with very infrequent use of the north-western boundary. The grassland habitat in the centre of the field does not offer GHB foraging habitat.

The northern boundary will be enhanced as a “green lane” in order to protect it as a sheltered, dark commuting corridor for bats. There will be a minimum of a 5m buffer of semi-natural habitats proposed between the solar park perimeter security fencing and the northern boundary to protect this as a commuting corridor. A new native species-rich hedgerow will be created along the north-eastern and south-eastern boundaries of the solar park, creating a double parallel hedgerow along the top part of the central boundary between the two fields and between the hedgerow and woodland edge. Native species-rich grassland will be created within field margins which will provide enhanced foraging opportunities.

An HRA/AA has been undertaken which confirms that provided the mitigation measures (as set out in Section 14 of the HRA/AA) are secured by condition, there will be no adverse effect on the integrity of the South Hams SAC alone or in combination with other proposals or projects.

The site is within a Cirl Bunting consultation zone, one Cirl Bunting territory was recorded onsite during summer 2020 Cirl Bunting surveys. The proposal will cause a small loss of potential Cirl Bunting habitat (6m hedgerow habitat). The grassland within the site is deemed to offer negligible foraging habitat for Cirl Bunting. All other suitable vegetation for Cirl Bunting's will be retained and enhanced. In terms of mitigation a new native species-rich hedgerow will be created along the north-eastern and south-eastern boundaries of the solar park, creating a double parallel hedgerow along the top part of the central boundary between the two fields and between the hedgerow and woodland edge. Native species-rich grassland will be created within field margins which will provide enhanced foraging opportunities for Cirl Buntings. The mitigation measures will be secured via conditions.

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

6. Low Carbon Development and Climate Change

Policy SS14 of the Local Plan relates to ‘Low carbon development and adaptation to climate change’ and seeks major development to minimise carbon emissions and the use of natural resources.

As noted earlier in this report, Local Plan Policy ES2 states that the Council will support, in principle, proposals for new renewable and low-carbon energy generating systems at all scales, including district heat and power and community projects. The wider environmental, community and economic benefits of proposals of these systems will be given great weight. Proposals for renewable and low-carbon infrastructure will be considered against other Policies in the Local Plan. It goes on to advise that development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme. In particular, provision of new renewable energy infrastructure will only be approved where the Council has ascertained that it would not have an adverse effect on the integrity of any site protected under European legislation.

The proposal is predicted to generate 2.7 megawatts of clean electricity which will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

The development is in accordance with Policy SS14 and ES2 of the Torbay Local Plan Policy BH7 of the BPNP and advice contained within the NPPF.

7. Archaeology

Policy SS10 of the Local Plan states that development will be required to sustain and enhance those monuments, buildings, areas, walls and other features which make an important contribution to Torbay's built and natural setting and heritage, for their own merits and their wider role in the character and setting of the Bay. This includes all designated and undesignated heritage assets, including scheduled monuments, historic buildings (both nationally listed and of local importance), registered historic parks and gardens, conservation areas, and archaeological remains. All heritage assets will be conserved, proportionate to their importance. Policy BE1 of the BPNP advises that proposals which affect non-designated heritage assets must comply with the relevant Local Plan policies and the NPPF.

The archaeological evaluation of the site confirms the presence of an enclosure, of early Iron Age date, in the north-west part of the proposed development area. Sites

of this type and date are very rare in Torbay and also rare in wider Devon. This and the preservation of pottery and bone, as well as some internal cut features as well as the main ditch, suggest that it should be considered as a significant non-designated heritage asset. The evaluation suggests that the remainder of the site does not contain any significant archaeological constraints. Historic England have advised that they do not consider the site is worthy of Ancient Scheduled Monument status.

Consideration was given to altering the siting of the solar panels in the north-west section of the site however the additional increase in installation costs in terms of additional cabling and security fencing would mean that the scheme may not go ahead. As the solar panels are 'temporary' structures on the site in terms of their installation, an alternative solution which involves a 'no dig' engineered means of installation which would not impact on the area of archaeological importance beneath. The no dig engineered method is deemed to be an acceptable one and will be subject to a pre-commencement condition requiring the details of such a scheme to be submitted to the LPA for approval. Once this scheme is received the Devon County Council Archaeologist will be consulted for his approval. A pre-commencement condition regarding the submission of an archaeological written scheme of investigation and the implementation of a programme of archaeological works is deemed necessary in order to ensure the retention of the Iron Age enclosure.

Subject to the addition of suitably worded conditions, the proposal would have an acceptable impact on archaeology on the site and would accord with Policy SS10 of the Local Plan, Policy BE1 of the BPNP and guidance within the NPPF.

Other matters

Objections have been raised on the grounds of health and safety, in particular electro-magnetic radiation and fire risk. There is no clear evidence to suggest that either of these matters present a significant risk to health and safety and are not reasons which could reasonably be used to refuse the grant of planning permission.

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

Any surplus energy produced by the solar farm will be fed back into the grid to provide clean energy for consumers.

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 neutral.

The Social Role

The generation of clean electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

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

The Environmental role

With respect to the environmental role, the proposal would provide clean electricity to aid in fighting climate change. The proposal also includes ecological and landscape improvements. The generation of clean electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

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

Sustainability Conclusion

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

HRA

HRA: The application site is within a strategic flyway/sustenance zone associated with the South Hams SAC. An HRA has been undertaken and the competent authority is satisfied that the development, as proposed, with all the avoidance and mitigation measures secured by condition, being implemented in full, will not adversely affect the integrity of South Hams SAC either alone or in-combination with any other plans or projects. The competent authority is satisfied there is no requirement to progress to Stages 3 and 4 of the HRA process.

EIA

As the site is over 5ha in area an Environment Impact Assessment screening was undertaken, the result of this was that the proposal did not require an EIA.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme would address the Development Plan aspiration towards sustainable development and the Councils Climate Emergency status and, notwithstanding some conflict with Policy E3 of the BPNP, would produce a positive impact overall and help with the supply clean energy and thus reducing Torbay's carbon emissions.

Statement on Human Rights and Equalities Issues

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

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good

relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Updated Conclusions and Reasons for Decision

The proposal is considered acceptable in principle and would not result in unacceptable harm to the character of the area, local amenity, heritage assets, biodiversity or highway impacts. It will have positive environmental benefits and aid in Torbay becoming a Carbon Neutral Council and working with others to create a carbon neutral community by 2030.

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

Updated Officer Recommendation

Approval: Subject to;

The conditions as outlined below 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

Siting, form and materials

Solar Panels and the associated infrastructure shall only be located in the area of the site as indicated on the approved drawings and the details of the solar panels including height and materials shall accord with the approved details at all times.

Reason: In the interests of amenity and biodiversity in accordance with Policies DE1, DE3 and NC1 of the Torbay Local Plan.

CMS

The development shall be carried out in strict accordance with the details in the approved Construction Management Plan at all times. Construction hours shall be limited to:

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

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development and in accordance with Policy DE3 of the Local Plan.

Removal of Equipment

After the 30 year project period the solar panel apparatus, the temporary construction compound, internal road and associated structures hereby approved shall be permanently removed from the site and the land shall be reinstated to its former condition or in accordance with details to be previously agreed with the Council.

Reason: To comply with Policy C1 of the Torbay Local Plan 2012-2030

Archaeological Programme of Work

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

Reason: To ensure that the development is undertaken in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 205 of the National Planning Policy Framework (2021). This information is required prior to commencement in order to ensure that an appropriate record is made of archaeological evidence that may be affected by the development.

Visibility Splays

Prior to commencement of construction all vegetation shall be removed from the area highlighted red on drawing (ref. 3495.ENG.12). The area shall remain clear thereafter.

Reason: In the interests of highway safety, in accordance with Policy TA2 of the Torbay Local Plan 2012-2030. The removal of vegetation is required prior to any construction on site in order to achieve the required visibility splays.

TMP

Prior to commencement of construction a Traffic Management Plan shall be submitted to the Local Planning Authority for approval. This should include the relevant traffic management controls and will be applicable to all employees and sub-contractors involved with construction. Development shall take place in accordance with the Traffic Management Plan.

Reason: In the interests of highway safety, in accordance with Policy TA2 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure that traffic is properly managed from the onset of development.

Landscaping

All planting, seeding and turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the installation of the solar panels or at such other time as agreed by the Local Planning Authority in writing. Any trees or plants which die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

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

Ecology - Nesting season

The removal of vegetation, other than that necessary to provide the visibility splays, shall be undertaken outside of the bird nesting season (March-September inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds. If nests are found no works shall be undertaken until the birds have fledged and a buffer zone of at least 5 metres must be established around the nest and an effective barrier put in place to ensure this remains undisturbed

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

Tree Protection Measures

Prior to the commencement of development, the tree protection measures outlined in approved tree protection plan shall be implemented in full. The approved protection measures shall be maintained in full throughout the construction phase of the development.

Reason: In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policies DE1 and C4 of the Torbay Local Plan 2012-2030. These details are required to be implemented prior to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

Arboricultural Method Statement

Prior to the commencement of development an Arboricultural Method Statement (AMS) pertaining to but not exclusively excavation works in the RPA, the sequence of operations and site inspection frequency, timings of site visits, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved AMS.

Reason: In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policy C4 of the Torbay Local Plan 2012-2030. These details are required to be implemented prior

to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

LEMP

No development shall take place, including ground works and vegetation clearance until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall be prepared in accordance with the specifications in BS42020; clause 11.1 and shall include the following

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

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

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

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure appropriate mitigation at all stages of development.

CEcoMP

Prior to the commencement of development (including ground works, vegetation clearance) a Construction Ecological Management Plan (CECoMP) shall be submitted to and approved in writing by the local planning authority. The CECoMP shall be prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following.

- a) Details of a 'controlled light zone' will be implemented on all site boundaries. This zone will be kept dark during peak bat activity periods (0.5 hours before sunset and 0.5 hours after sunrise during bat activity period of March to October) and spillage (where lighting is necessary) will not exceed 0.5lux.
- b) Risk assessment of potentially damaging construction activities.
- c) Identification of 'biodiversity protection zones'.
- d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- e) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- f) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CECoMP, and the actions that will be undertaken.
- g) Responsible persons and lines of communication.
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CECoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To secure a satisfactory form of development in accordance with Policies SS2, SS8 and NC1 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure appropriate mitigation at all stages of development.

Ecology

The development hereby approved shall be carried out in strict accordance with the recommendations and mitigation measures set out in Section 5 of the Ecological Impact Assessment (Burton Reid Associates, August 2022) and the Shadow Habitats Regulations Assessment (Burton Reid Associates, August 2022). Prior to the first use of the development hereby approved, the applicant shall submit written confirmation from a suitably qualified ecologist that confirms the recommendations and mitigation have been implemented.

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

Badgers

Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures if required, shall be submitted to and approved in writing by the local planning authority.

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

Lighting Strategy

Prior to the commencement of development, the applicant shall submit a detailed Lighting Strategy to the Local Planning Authority for approval. The strategy will minimise indirect impacts from lighting associated with the preconstruction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. The approved lighting strategy shall be retained as such for the life of the development unless otherwise agreed in writing with the Local Planning Authority. Should any of the lighting become damaged and need replacement, it shall be replaced with external lighting of the same type and specification. No other external lighting shall be provided.

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

commencement condition to ensure appropriate mitigation at all stages of development.

Drainage

In accordance with the submitted flood risk assessment received 28.05.2021, surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 30% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to the commencement of development.

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

Relevant Policies

SS3 - Presumption in favour of sustainable development

SS9 - Green Infrastructure

SS10 - Conservation and Historic Environment

SS14 - Low Carbon Development and Adaptation to Climate Change

TA1 - Transport and accessibility

TA2 - Development access

DE3 - Development Amenity

ES1 - Energy

ES2 – Renewable and low-carbon infrastructure

C1 - Countryside and the rural economy

C4 - Trees, hedgerows and natural landscape features

NC1 - Biodiversity and Geodiversity

DE3 - Development Amenity

SC1 - Healthy Bay

SC2 - Sport, Leisure and Recreation

HE1 – Listed Buildings

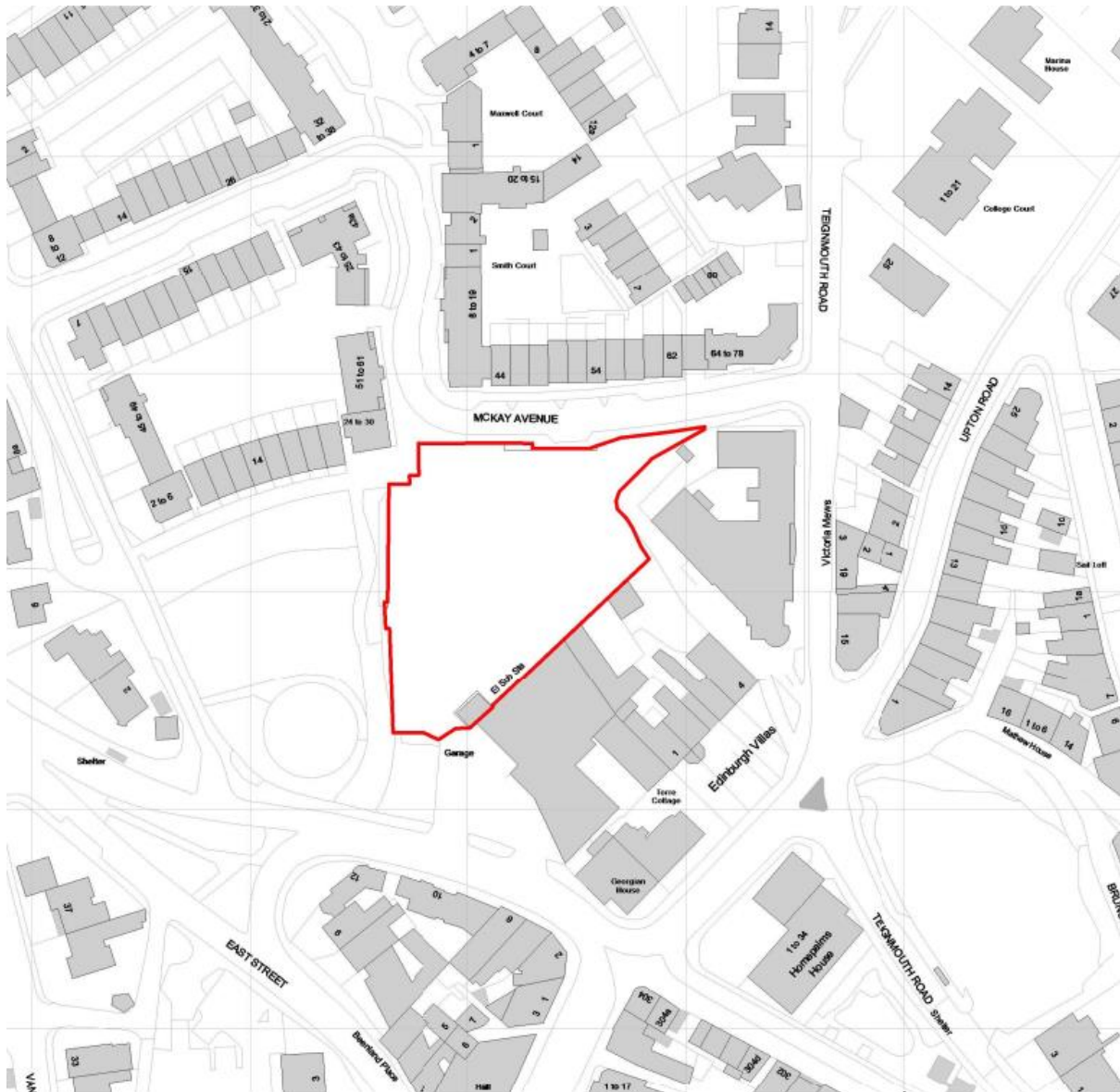
E3 – Settlement Gaps

E6 – Views and Vistas

TORBAY COUNCIL

Application Site Address	Land at McKay Avenue, Torre
Proposal	Erection of 72 extra care apartments (use class C3) with parking, communal lounges, courtyard garden and cafe on ground floor.
Application Number	P/2022/0722
Applicant	TorVista Homes
Agent	ADG
Date Application Valid	28.07.2022
Decision Due date	27.10.2022
Extension of Time Date	14.11.2022
Recommendation	<p>Delegate authority to the Divisional Director - Planning, Housing & Climate Emergency to grant conditional approval subject to the conditions detailed below and satisfaction of the Engineering Service Manager with the updated hydraulic information.</p> <p>Final drafting of conditions, negotiation/completion of the legal agreement, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director - Planning, Housing & Climate Emergency.</p>
Reason for Referral to Planning Committee	Major Application and land owned by The Council.
Planning Case Officer	Jim Blackwell

Location Plan



Site Details

The site has remained vacant for over 15 years and originally formed part of wider South Devon College before it was redeveloped for housing.

In terms of site ownership, Torbay Council have approved the disposal of the site to TorVista Homes (TVH) and conditional contracts have been exchanged between both parties to enable the land to be transferred when appropriate. TVH is a subsidiary of TDA and was formed to target the delivery of new investment in Torbay to support the Council by stimulating the market and assist in the delivery of the objectives and outcomes identified within their Housing Strategy specifically in relation to affordable housing.

TVH obtained 'Registered Provider' (RP) status from the Regulator for Social Housing in 2021 which is a key component to ensure the organisation has strong governance structures in place and is financially viable.

To support the investment in new affordable housing supply, TVH will require public subsidy to deliver new projects and whilst some financial support may be provided by Torbay Council, the main funding source for RP's comes from Homes England. TVH has been granted Investment Partner status with Homes England which will enable bids to be submitted and approved in the 2021-2026 Affordable Homes Programme. Following discussions with Homes England this site will be subject to a formal bid for grant.

The site lies to the north of the Newton Road and to the south of the completed residential streets of Torre Marine, where there is an established access point from McKay Avenue. The listed terrace of Edinburgh Villas and the Kwik Fit building sit to the south east. An electricity substation lies south east of the site between the proposed building and Kwik Fit. A children's play area has been recently completed to the south west. Directly east is the building used by LiveWest, an affordable housing agency.

Torre local shopping area lies to the east with close access to sustainable transport including local bus routes and Torre Railway Station to the west. The site acts as a gateway to Torre and Torquay town centre in terms of its connectivity, prominence, and location. It is enclosed on three sides, but the southern side is highly visible from Newton Road and beyond.

This site was included in the original masterplan for Torre Marine and was to provide 61 sheltered units in a seven storey building with office floor-space and 42 car parking spaces. The site subsequently went through a range of planning applications in 2010, 2012 and 2016 which included various design evolutions, changes in scale, materials and type of residential use.

A previous owner commenced construction on site, however the development stalled due to difficulties in the market and as such, the site has remained vacant for several years. As the permission for the wider development has been implemented, the permission to construct the 61 sheltered units and office floor-space remains live in perpetuity and can be built out at any time.

The site is located within:

- Flood Zone 1.
- CIL Zone 2.
- Adjacent listed buildings grade II.
- Adjacent Tormohun and Torre Conservation Areas.

Description of Development

The application proposes the erection of 72 extra care apartments (Use Class C3) with parking, communal lounges, courtyard garden and cafe on ground floor. The full proposals include:

- A broadly L-shaped building orientated with the open area facing south east towards Torre.

- Due to the gently sloping topography, the building will vary in height from four storeys at the north facing on to McKay Avenue to seven storeys to the south facing Newton Road.
- The lower ground floor will include vehicular access from McKay Avenue with 20 parking spaces.
- The L-shape will be centred around a communal garden facing south east.
- The main pedestrian entrance will be from the west and fully accessible.
- A public café will occupy the southern ground floor corner.
- The ground floor will also include communal lounges, treatment rooms and core facilities such as waste storage, scooter spaces, staff office and a laundry.
- The building will be fully accessible with lifts and staircases.
- The elevational treatment utilises a range of facing materials including a range of brick styles and finishes, terracotta tiling, zinc and metal cladding with metal and glazed balconies.
- The upper floors will be 61, 1 bedroom apartments and 11, 2 bed apartments. The flats will be a mixture of wheelchair adaptable and accessible with 2 suitable for bariatric wheelchairs.

The table below sets out the full schedule of accommodation:

	1 bed, 2 people	2 beds, 3 people
Ground Floor	11	3
1st Floor	13	2
2nd Floor	13	2
3rd Floor	10	2
4th Floor	8	1
5th Floor	6	1
Totals	61	11

For clarity, extra care housing is self-contained and for residents with care and support needs. It is available to all age ranges and residents benefit from the facility being staffed 24/7. This extra care facility would have no age restriction, but all occupants will have a care and support need whether this is mental health or physical disability. The applicants expect a high proportion of residents to have some kind of mobility issue.

A range of additional and amended information has been provided:

- Secured by Design measures following comments from Devon and Cornwall Police.
- Reduced seventh floor facing Newton Road.
- Updated hydraulic information.

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 (TNP)

Material Considerations:

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

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in considering this application, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Statement of Community Involvement

The Design and Access Statement (ADG) includes a section on public participation. Engagement has taken place with boards being displayed at Torquay and Paignton libraries, press releases and on-line information. 34 sets of responses were received, 27 people supported the scheme, 9 of which had reservations based on parking need in the area and the mass of the building.

Relevant Planning History

P/2005/0138: Redevelopment of South Devon College to provide 258 residential units, 61 Sheltered units and 1500 m² office floorspace. Approved: 30.09.05.

P/2007/0968: Amendments to the approved scheme comprising changes to balconies, fenestration and roof detail. Approved: 9.08.07.

P/2010/1389: Redevelopment to form 75 assisted living extra care units with associated communal and care facilities, car parking, landscaping and servicing. Approved: 29.09.2011.

P/2012/1264: Development of site comprising 25 Retirement Living Apartments and 50 Assisted Living Extra Care Apartments with associated parking, landscaping and servicing and communal and care facilities. Approved: 20.02.2013.

P/2016/1047: Major outline application for construction of new building to provide up to 75 one and two bedroom apartments. Approved: 17.11.2017.

Summary of Representations

There have been one letter of support and 10 objections to the scheme had been received at the time this report was drafted.

Support:

- Positive use of the current empty site.
- Provision of jobs in the future.
- Proposed parking.

The concerns (of planning merit) raised are summarised as follows:

- Limitations to the community engagement process.
- Design, height and materials proposed.
- Not in keeping with the local area.
- Privacy / overlooking.
- Under provision of car parking and impact on local streets.
- Sustainability credentials.

Summary of Consultation Responses

Torquay Neighbourhood Forum

No objection. However, Torquay Neighbourhood Forum (TNF) raised three concerns around the height of the building, parking provision given demand in the local area and echoed comments from Devon and Cornwall Police.

County Archaeologist and Historic Environment Manager

No objection. The Archaeologist agrees with the conclusions of the submitted desk-based assessment and Heritage Statement (Oakford Archaeology, March 2022), that there is low potential for archaeological evidence to be found at this site. No further archaeological work is therefore required.

Torbay Council's Engineering Service Manager

No objection subject to additional information on hydraulic calculations, a drawing showing the proposed surface water drainage and further information on green roofs.

Environment Agency

No response received – standing advice applies.

Police Designing Out Crime Officer

No objection subject to the use of condition to require details covering access controls, a roller shutter door at the site entrance and CCTV.

Food and Safety Team

No objection subject to resolving issues regarding WC provision, sizing, waste storage and emissions.

Environmental Health

No objection subject to the recommendations of the stage 1 acoustic review undertaken by SB Consulting being implemented prior to commencement of works.

Torbay Council's Highways Engineer

No objection. The applicant will be required to pay a contribution of £3,000 towards the installation of bollards to prevent footway parking along McKay Avenue.

Torbay Council Community Safety Team

No objection. The proposal of using a 'bin holding area' enabling vehicles to pull up outside to complete collections without driving on to unadopted highway is satisfactory, providing that there is adequate space for other vehicles to pass while we are collecting.

Senior Tree and Landscape Officer

No comments received.

Devon and Somerset Fire and Rescue Service

No objection subject to compliance with requirements for fire service vehicles.

South West Water

No objection.

Planning Officer Assessment

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 key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of Development.
2. Economic Benefits.
3. Design and Visual Impact.
4. Impact on Heritage Assets.
5. Impact on Residential Amenity.
6. Impact on Highway Safety.
7. Designing out Crime
8. Ecology and Biodiversity.
9. Drainage and Flood Risk.
10. Low Carbon Development.
11. Other Considerations.

1. Principle of Development

The site is a long-vacant, brownfield parcel of land located in an established urban area of Torquay relatively close to Torre, the town centre and various shops, services and transport options. It sits in an area where there is a strong character of both residential and commercial uses.

Policy H1 (Applications for new homes) of the Torbay Local Plan cites that proposals for new homes within the built up area will be supported subject to accordance with the other policies contained within the Local Plan. The site sits in the built up area.

Policy H2 (Affordable housing) of the Local Plan requires a development of this scale and on brownfield land to provide 20% affordable housing. The applicant has stated that the scheme

will be delivered as a 100% social, affordable scheme which is welcomed and is a significant public benefit.

Policy TS4 (Support for Brownfield and Greenfield development) of the Torquay Neighbourhood Plan cites that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in the plan. Other material considerations will be discussed in turn within the Officer Assessment, however the proposal is supported in principle.

Torquay Neighbourhood Plan includes the site within the Community Aspiration for Torre and Upton Community Partnership. The Plan supports delivery of housing on site providing a solution is found for any flooding issues.

In addition to the above, the Council cannot currently demonstrate a 3 or 5 year housing land supply, which is a relevant material consideration to the principle. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision making process. The 'tilted balance' in favour of sustainable housing development therefore applies subject to the detail wording of the NPPF Para 11 and the associated footnotes. This principally means that for permission to be withheld either (a) the application of policies in the NPPF that protect areas or assets of particular importance (in this case heritage assets) provides a strong reason for restricting the overall scale, type or distribution of development or (b) harm would significantly and demonstrably outweigh benefits. This current context therefore increases the prospect of planning permission being granted because it 'tilts' the balance in favour of approving an application for housing.

Drawing together the policy landscape there is support for the provision of a residential use on the site. The policy support is clear within Policies TH1 and TS4 of the Torquay Neighbourhood Plan and the current shortfall in housing land supply strengthens this support. This position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the Officer Assessment below.

2. Economic Benefits

Policy SS1 (Growth strategy for a prosperous Torbay) of the Local Plan states that development should reinforce Torbay's role as a main urban centre and premier resort.

Policy SS4 (The economy and employment) supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses; it encourages new businesses and investment into the area in order to create new jobs; and it promotes the expansion and diversification of the economy of the Bay.

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

The proposal will create jobs during the construction period. The proposed staff within the building and cafe will also support jobs. This would also generate a range of third party jobs and revenue such as food and drink suppliers, materials, care providers etc.

As discussed previously, Torbay cannot demonstrate a 3 or 5 year housing land supply, and therefore significant weight is given to the provision of additional housing. The application proposes 72 extra care apartments and would exceed Policy H2 of the Local Plan through the provision of 100% affordable units. The demonstrated economic benefits of new housing and the commercial use are a material factor in this respect.

Given that the proposal would create new jobs and is expected to generate additional spend within the local economy, it is considered that it complies with the aspirations of Policies SS1, SS4 and SS11 of the Local Plan, and would bring economic benefits to the Bay.

3. Design and Visual Impact

The National Planning Policy Framework (2021) states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition, it states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. New development should be sympathetic to local character and quality. Nationally achieving good design is a central thread within government guidance and Part 12 of the NPPF (Achieving well-designed places) offers key guidance. Paras 126, 127, 130, and 134 are particularly relevant and cumulatively guide that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 134 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Policy DE1 (Design) of the Torbay 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 DE4 states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. New development should be constructed to the prevailing height within the character area in which it is located unless there are sound urban design or socio-economic benefits to justify a deviation from this approach.

The policy goes on to state that new buildings above the prevailing height will be supported where they:

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

The acceptability of the proposed quantum and scale have been established through previous permissions which range between five to seven storeys. The architectural styles, massing and materials vary greatly in the previous permissions, but have the quantum of development appears to be set around 75 units. One clear feature of the previously approved schemes has been the stepping down of the buildings gradually towards Newton Road. This current proposal has been amended to include a cut away section, stepping back from Newton Road in order to reduce the massing and terminate the top floor effectively.

The proposed building would be approximately two storeys higher than the taller corner buildings opposite to the north on McKay Avenue. In the context of the immediate neighbouring properties and the wider area, it is clear that the prevailing building height is varied and is characterised by differing building heights located at a range of different ground levels, the proposal is not considered to be contrary to Policy DE4, or harmful to the local character. In any case, it is considered that the proposed building would meet the criteria listed above in terms of enhancing the vitality of the area, providing socio-economic benefits and contributing to the regeneration of Torbay.

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

Having considered both local and national policy guidance the design is considered to provide an acceptable form of development within the context. The key components of the assessment that inform this judgment are outlined below.

The site has a clear physical, functional and visual relationship with the existing residential development around Torre Marine. The proposed development would resolve the longstanding issue of how the site is currently presented. The gently sloping site towards Newton Road has been surrounded by security hoarding, concealing the hardstanding and scrub for many years. In terms of the detailed layout, the proposal presents a broadly L-shaped building which accommodates six storeys of residential apartments over parking, storage areas, operational facilities and a commercial unit on the ground floor. The sloping site means that the building plane continues with the final floor height reaching seven storeys. The southern tip of the building is chamfered at 45° due to the location of an electricity substation between it and Kwik Fit.

The open area of the L-shape faces south east and would include a landscaped, communal garden. The rationale for this approach to the built form is that a large scale, single institutional building is required, rather than traditional housing. The surrounding built form ranges between two to four storeys in height with five storeys in the local area towards Torre. The proposal would represent a new architectural type in the form of a standalone, self-contained structure. The full mass of the proposal is most visible from the west elevation facing the play area, with the termination of the building on to Newton Road.

In terms of visual impact, the plot is considered capable of holding a large building in the location and to the scale proposed, and the use of distinct built elements, a stepped approach responding to surrounding buildings and topography, setbacks and balconies are considered a positive response to simplify the overall mass. In terms of the basic layout

there is sufficient space around the buildings to provide adequate landscaping, softening and present and acceptable setting for the development, that would hence not cramp or over-develop site.

The detailed design and materials aim to offer longevity and low maintenance and as such brick is proposed rather than render. Although render is a local material typical to Torbay, it suffers from degradation and discolouration particularly at higher levels. The lower levels of the building will therefore use textured terracotta and brick with the entrances having ceramic or porcelain tiles. There are a range of materials for the main facades including brick or glass reinforced concrete cladding. Vertical standing seam zinc is proposed for the upper storeys. The glazing will be uPVC with glazed, non-climb balconies. The lower levels will include full height glazing at street level and for the commercial units. Overall, the composition of the scheme using interconnected elements, differentiated by a range of materials is supported.

It is noted that the Neighbourhood Forum consider the proposal to be a better design quality than the previously approved plans and note the row of terraced house are in an appropriate scale to compliment Penny's Cottage and the row of Victorian houses opposite. Heritage matters are dealt with later on in this report.

Legibility of the space around the buildings has been a critical consideration. The buildings use several key points to reference points of arrival. The architectural form provides key corner features facing on to Newton Road and on to McKay Avenue and several internally within the site. There are also three key spaces with the semi-private courtyard available for social activity and is bounded by accessible walkways and shared facilities. Distinct, legible pedestrian access will be provided with hard and soft landscaping around the site.

There have been a number of objections around the design of the proposal which have been described as 'not in keeping with the local area'. Objections about the proposals impact, height and overdevelopment. However, the proposal has been through a rigorous design process and evolved in response to comments from the community and Officers. The form and layout of both are considered to make effective use of brownfield land and respond well to the topography of the site. The development would result in a major enhancement of the site given its current condition.

In terms of design and visual impact for these reasons above the development is considered acceptable as there would be no adverse impact upon the character or visual amenities of the locality. The proposal is deemed in broad accordance with Policies DE1, DE4, SS10 and H1 of the Torbay Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and guidance contained within the NPPF in terms of good design.

It is considered that the form and layout of the scheme makes effective use of the land and responds well to the topography of the site. The design enables the creation of strong building frontages which enable active surveillance to increase safety and security. The overall layout and form appear to respond effectively to the topography of the site. 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.

Subject to the use of conditions to secure the use of high quality materials; landscaping, boundary treatment and balcony details it is considered that the proposal is in accordance with Policies DE1, DE4, and SS11 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

4. Impact on Heritage Assets

The titled balance requires an assessment of the NPPF policies that protect heritage assets. NPPF (2021) provides guidance as to 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 (Para 199). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 200). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 202).

In terms of the Local Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policies SS10 and HE1 of the Local Plan). This is aligned with the duties for decisions as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, where decisions shall have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

A Heritage Statement (Oakford Archaeology, dated 22.03.2022) has been submitted with the application. The proposed site is located immediately to the north and northwest of three Grade II Listed 19th century buildings, Brunswick Court and Edinburgh Villas, and therefore due consideration has been given to the impact of the proposed development on the setting of these assets.

The earliest local properties are the adjacent rows of Grade II Listed 1840's terraced houses known as Brunswick Court and Edinburgh Villas. The setting of these is mainly from Upton Road. The views from Brunswick Court towards the proposed development site are interrupted by the modern industrial unit, while the rear of Edinburgh Villas is directly visible from the current site entrance. The setting of the property to the rear therefore forms a small part of the building's significance.

The site lies within a parcel of land on the edge of two Conservation Areas with Torre to the south with its boundary running east west along Newton Road. Tormohun Conservation Area envelopes Edinburgh Villas to the east and continues around to Newton Road and into East Street. The boundary also runs east of the site past McKay Avenue towards Teignmouth Road.

The buildings will utilise flat roofs retaining a relatively low profile to allow the development to blend into the existing modern townscape to the north. The location of the buildings against the western and northern edge of the proposal area allows for the introduction of green

space and landscaping along the southern edge. This will help to filter views of the proposed site from the south and south east. Although the upper storeys of the proposed development will be visible from the rear of Edinburgh Villas to the south, and while it is acknowledged that the proposed development will provide an additional intrusive element to the setting of heritage asset, given the combination of existing mixed architectural streetscape, distance, set-back nature of the proposal and tree filtering, the impact of the proposed development upon the former Edinburgh Villas is considered to be low to moderate. The limited harm is less than substantial and is outweighed by the public benefits of the proposal which include bringing the vacant site back into use and providing much needed affordable housing.

The site is outside, but adjacent to two conservation areas and so regard has been had to the desirability of preserving or enhancing the conservation areas and the effect of the development on the setting or views. The new development will contribute to the local character and distinctiveness of the area, particularly through a high quality of design, use of appropriate materials, and occupation of the vacant site. The limited harm is less than substantial and is outweighed by the public benefits of the proposal discussed previously.

In principle, the regeneration and redevelopment of this site is supported. Conditions are suggested to ensure that materials and design details are agreed in advance of the commencement of works.

The Devon Archaeologist agrees with the conclusions of the submitted Desk-based assessment and Heritage Statement (Oakford Archaeology, dated 22.03.2022), that there is low potential for archaeological evidence to be found at this site. No further archaeological work is therefore required.

It is considered that the proposal causes less than substantial harm to the setting of listed buildings in the vicinity and the setting of two Conservation Areas. This is outweighed by the public benefits of the proposal. As such the development is in accordance with Local Plan Policies SS10, HE1 and Policy TH10 of the Torquay Neighbourhood Plan.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

5. Impact on Residential Amenity

The NPPF guides (Para 130) that decisions should ensure that developments create places that are safe, inclusive, and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.

Quality of living accommodation for future occupiers

Policy DE3 of the Local Plan requires that new residential provides a good level of amenity and that units provide adequate floor space to achieve a pleasant and healthy environment.

The Neighbourhood Plan is largely silent on the matter of amenity but does cite expectations for outdoor amenity space. Policy DE3 sets out guidelines for minimum floor space standards for new dwellings and apartments, which reflect the Government's National Space Standards.

Two bed apartments with two double bedrooms should have an internal area of at least 70sqm with 2sqm of additional storage and one bed (two person) apartments should be at least 50sqm with 1.5m of storage. The proposal seeks to provide 11x 2-bed apartments generally sized between 74-77sqm, and 61x 1-bed apartments at 54-68sqm. All apartments are considered to provide an acceptable scale of living accommodation with floor areas exceeding the prescribed standards. In addition to the size of the space the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. In this regard all apartments provide a good level of both light and outlook with adequately sized windows to all key spaces and suitable open outlooks.

Amenity Space

Policy DE3 also seeks secure the provision of usable outdoor amenity space where apartments should deliver 10sqm per unit either individually or communally. The Torquay Neighbourhood Plan is in alignment with this guidance as advised within Policy THW4, either as balconies or communal space. The majority of accommodation is arranged around shared garden space and balconies. There is also communal lounge with the ability to open out into this outdoor space. A roof top garden has been included on level 4 which would be fully accessible from each floor. The proposal accumulatively exceeds the policy-guided minimum of 480sqm, which provides an acceptable level of outdoor space for future occupants of the apartments.

HAPPI recommendations submitted as part of the application demonstrate the proposal meet the established criteria. The HAPPI principles are based on ten key design criteria. Many are recognisable from good design generally - good light, ventilation, room to move around and good storage - but they have particular relevance to the spectrum of older persons' housing which needs to both offer an attractive alternative to the family home and be able to adapt over time to meet changing needs.

Waste

In terms of key ancillary elements Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. Communal bin storage areas have been provided within the building with access from McKay Avenue. The proposed bin storage facilities are considered acceptable and compliant with Policy W1.

Noise

In order to ascertain the noise levels the proposed development would be exposed to, external ambient noise monitoring was undertaken at accessible locations on the development site. Based upon the findings of this Stage 1 Acoustic Review (by SB Consulting and ANC dated 12.05.2022), the proposed development is very likely to achieve comfortable living conditions providing the dwellings overlooking McKay Avenue and Newton Road are subject to good acoustic design.

Considering the various aspects that influence a good living environment development is considered to provide a good standard of living accommodation for future occupiers, in accordance with policy guidance, notably Policy DE3 of the Torbay Local Plan and Policy THW4 of the Torquay Neighbourhood Plan, and advice contained within the NPPF.

Adjacent neighbouring amenity

Policy DE3 also states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction Method Statement. Compliance can be secured through a suggested planning condition.

In terms of the finished development the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance. The creation of a small commercial use is likely to be positive.

Concerns have been expressed by residents about the impact that a building of this size will have on their amenity, principally through the loss of light and views. Whilst the addition of a large building will present some loss of general outlook and light in terms of the properties to the north, there is an extant permission to a similar scale which can be built out at any time, which is a material consideration. The properties to the north are shown to be round 16.5m away (15m to the edge of the balconies), which is similar to the established street pattern in the area where properties face each other, often with balconies. To the west, the termination of Richardson Walk is in close proximity to the proposal and this is considered acceptable for the reason above. Again, the presence of the extant scheme is a material consideration in terms of the impact upon these properties. To the east and south the relationships are less sensitive and amenity impacts from loss of light, outlook and privacy do not appear demonstrable.

In terms of scale and height there is unlikely to be any loss of outlook or light to the north as adjacent residential properties are set away across the public road. The sensitivity is further reduced by the setting back of upper floors.

Café

The Food and Safety Team have no objection subject to appropriate detailing of WC provision, sizing, waste storage and emissions. A condition has been suggested to ensure details are provided.

Lighting

The external Lighting Impact Assessment (Hulley and Kirkwood Consulting Engineers Ltd March 2022) has been carried out to ensure that there is limited light spill arising from the proposed development to confirm that there is no adverse effect on the adjacent properties and ecology. The assessment compares the illumination emitted from the new car park, perimeter, green space lighting and roof terrace areas. low light levels have been achieved by ensuring the areas are not over lit, and utilising quality luminaires with controlled light throw.

All bollards and columns have been orientated so as to minimise light spill on the adjacent and nearby boundaries.

The construction phase will have some temporary impacts however, such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts through the use of a planning condition. The retention of adequate access during construction phase to the various uses in and around the site should be duly protected through consideration of the Construction Management Plan.

In terms of amenity for the reasons above the proposal is considered to comply with Policy DE3 of the Torbay Local Plan and advice contained within the NPPF, as it would present good quality living environments and would not unduly impact the amenities afforded neighbouring occupiers.

6. Movement, Highways and Parking

The NPPF guides that in assessing specific applications for development it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree (Para 110). It also furthers (Para 111) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA1 of the Torbay Local Plan and advice contained within the NPPF principally seeks to develop a sustainable model of travel. This baseline aspiration is there to try and meet the travel needs of everyone, whilst also reducing the need for travel and thus the environment impact of movement from development.

The site is centrally located just north of Torquay Town Centre and sits in an established urban environment characterised by residential properties and commercial activities. As a centrally located brownfield site it is considered a good location for residential development, and one that could meet the travel needs for occupiers equally, not just car owners, whilst also presenting options for sustainable modes of local travel for all. The development of the site for housing presents a basis for development that accords with the broad policy direction for sustainable travel patterns.

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided. The Torquay Neighbourhood Plan is largely silent on access and highway matters beyond guiding that, to encourage use of sustainable forms of transport, new development proposals will be supported where they are located on or near to public transport routes wherever possible and appropriate (Policy THW5).

Richardson Walk and the associated amenity area on the western boundary of the application site does not form part of adopted highway and is not owned by the Council. The route is an established public right of way, through usage and site boundary is consistent with the previous applications. The applicant and Strategic Transport Team are aware that this needs to be secured for the lifetime of the development.

Vehicular access to the site will be retained via the existing access from McKay Avenue which is as the previously approved and is therefore considered acceptable.

Car parking has long been a contentious issue in the area, which has been exhibited by the level of concern noted in the public representations on this point. It is therefore one of the key issues to consider. The site is in a relatively central location with good access to facilities and sustainable transport infrastructure (bus routes, Upton Coach Park and Torre Train Station all being in close proximity to the site). This would normally provide a context where the level of parking provision could be considered more flexibly if necessary.

In order to prevent footway parking, and subsequent blocking of pedestrian accesses, the applicant will be required to fund the use of bollards at a cost of £3,000. This is to ensure that safe and suitable pedestrian access to/from the site can be achieved by all users particularly those on mobility scooters.

The Car and Cycle Parking standards in Appendix F of the Torbay Local Plan identifies that for sheltered flats, a requirement of one space per five units should be provided, which equates to a requirement of 15 spaces. The standards also state that provision should be made for mobility scooters with electric charging points in a covered and secure area.

The proposal includes 20 undercroft car parking spaces located along the northern edge of the site. This includes four wheelchair accessible spaces and four electric vehicle charging points. Three spaces will be reserved for staff with visitor parking being available in the Brunswick Car Park located 150m away to the east on Teignmouth Road. The car park entrance will also be utilised as an ambulance drop off and collection area. There are also 25 mobility scooter spaces with charging points located integrally within the western edge of the building. These spaces will be accessed through a door adjacent to the main pedestrian entrance.

Refuse collection will occur via McKay Avenue which is considered acceptable. The applicant has submitted a swept path analysis to illustrate a large car and a fire engine accessing the site which is also considered acceptable.

The applicant has undertaken a trip generation exercise which demonstrates that the small quantum of trips generated, and the extant use of the site, it is considered that the proposed development will result in a negligible impact upon the operation and capacity of the local highway network.

The applicant has prepared a Travel Plan (structureHaus 20.07.2022) for the proposed development to reduce reliance on single occupancy car trips and to promote a modal shift towards walking, cycling and public transport. The applicant has noted that, whilst the

impacts of the Travel Plan may be limited for residents, it will have benefits for staff, visitors and the wider community.

Subject to securing the necessary bollards on the footway of McKay Avenue the proposal presents an acceptable access and movement linkages with the public highway network. A condition has been suggested to ensure the submitted Travel Plan is delivered and to ensure that other forms of transport are duly promoted.

Considering the broad accordance with the Development Plan and advice contained within the NPPF the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1, TA2 and TA3 of The Local Plan, Policy TH9 of The Neighbourhood Plan, and guidance contained within the NPPF.

7. Designing out Crime

No objections were raised although Devon and Cornwall Police were concerned about the lack of submitted Secured by Design information. This was rectified during the life of the application. A condition has been suggested to deliver these recommendations and subject to its use, the proposal is in accordance with Policy SS11 of the Local Plan.

8. Ecology and Biodiversity

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.

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

Guidance within the NPPF provides similar guidance to the above and notably Para 180 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity. Policy C4 of the Torbay Local Plan seek the retention of trees and other natural features.

The site comprises a former commercial site with concrete hardstanding, vegetation in places, rainwater pools and an earth bank. The site is positioned in a highly urban location surrounded by roads and streetlighting. Therefore, in terms of ecology the site has limited value in terms of flora and fauna.

The site lies approximately 1.2km from the Lyme Bay and Torbay Special Area of Conservation (SAC) and the Torbay Marine Conservation Zone (MCZ). No mitigation is required with regards to statutory nature conservation sites given the distance, lack of recreational pressures and subject to suggested conditions requiring a CEMP and LEMP.

In terms of biodiversity, in-line with Local Plan Policy NC1 and guidance contained in the NPPF, measures to enhance biodiversity have been duly considered. However, the submitted ecology report is absent on biodiversity enhancement measures. Considering this a planning condition has therefore been suggested requiring bat roost features, full soft

landscaping details and long term management to be submitted to and approved in writing to ensure that biodiversity interests are promoted through the development.

Policy C4 of the Torbay Local Plan cites that development will not be supported when it would seriously harm either directly or indirectly, protected or veteran trees, subject to offsetting measures etc. There are no formally protected trees on or adjacent to the site. However, the ecology report does include details of invasive species which will be removed as part of the scheme.

In light of the conclusions above the development is considered aligned with the aims and objectives of Policies NC1 and C4 of the Torbay Local Plan, Policy TE5 of The Torquay Neighbourhood Plan, and guidance contained within the NPPF.

9. Drainage and Flood Risk

The NPPF's key guidance (Para 167) is when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and where appropriate applications should be supported by a site-specific flood-risk assessment. It further states that development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

The site has been allocated for housing within the Torquay Neighbourhood Plan which has undertaken the process of public scrutiny and is an adopted document that forms part of the Development Plan. As such, the sequential test does not need to be satisfied as part of the application process and the key tests are the developments flood resilience and safety and whether it would increase the risk of flooding elsewhere. The site lies within Flood Zone 1 which also negates the need for a sequential test.

The application site lies within the wider Torbay Critical Drainage Area (CDA) as designated by the Environment Agency and hence a rigorous surface water disposal strategy is required in order to ensure that this brownfield site achieves reduced rates of surface water run-off.

In terms of flood risk and resilience the position and heights of the residential units have been set to respond to the potential risk of flooding. The residential units are on the upper floors over parking, storage areas, operational facilities and a commercial unit and will not be impacted by flooding. There are also mitigation measures regarding the build fabric proposed including attenuation crates in the proposed communal garden and green roofs.

The Environment Agency has not commented and standard advice applies. South West Water raise no objection to the proposed scheme and its drainage solution.

The Engineering Service Manager has reviewed the Flood Risk Assessment and Drainage Strategy (structureHaus May 2022) and raised concern that the proposal requires further hydraulic information to be submitted. An addendum to the Flood Risk Assessment was submitted on 31.10.2022 and the Councils Drainage Engineer has been consulted. The outcome of this response will be reported verbally at the meeting.

Subject to confirmation from the Engineering Service Manager, the proposal is deemed acceptable on flood risk and surface water drainage grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained within the NPPF.

10. Low Carbon Development

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

The submitted Energy Statement includes three options set out below:

Passive Options

- Increased thermal insulation
- Low air infiltration losses
- Maximise the use of natural ventilation

Good Practice Energy Saving Technologies

- Inverter driven motors, for variable power output matched to actual usage (not on/off)
- Water flowrate regulation
- Lighting controls incorporating presence linking
- Low energy LED lamp technology
- Comprehensive sub-metering facilities

Low Zero Carbon/ Renewable Technologies

- Air Source Heat Pump(s) for heating and hot water
- Photovoltaic Panels (PVs) with size to be confirmed at detailed design stages
- Future provision for district heating connection

Extensive green roof coverings have also been introduced this will help reduce thermal radiation penetrating the built form. This also has a positive effect on the surrounding town scape and provide a surface that is not a thermal store helping cool the surrounding environment. A condition is suggested to require detail to evolve and provide certainty on design elements for low carbon development.

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

11. Other Considerations

The Council is unable to demonstrate a 3 or 5 year supply of deliverable housing land. The 5 year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

Considering the current housing supply position, it is advised that in determining the application, the tilted balance is in favour of sustainable development as set out in Paragraph 11 of the NPPF must be applied. Paragraph 11 of the NPPF states 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 be in conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused the application of policies in the NPPF that protect areas or assets of particular importance (in this case heritage assets) provides a strong reason for restricting the overall scale, type or distribution of development or 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.

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

There would also be an economic benefit through the generation and long term need for care jobs to support the residential use.

The proposal provides an active frontage with the café. 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, which are intended to be 100% affordable housing for older people and people with specialist housing needs. Given the NPPF priority to significantly boost the supply of housing, in particular affordable housing, the additional dwellings to be provided must carry significant weight in this balance.

Impacts on neighbour amenity have been discussed above where it is concluded that the proposal does not cause significant harm to residential amenity.

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

The Environmental role

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

The proposed development is in a sustainable location with a range of public transportation links. It is considered a high quality redevelopment of a brownfield site, minimising the impact on the setting of the conservation areas and street scene and introducing sustainable building methods. In respect of the environmental element of sustainability, the balance is considered to be in favour of the development.

Sustainability Conclusion

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

Local Finance Considerations

Community Infrastructure Levy

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

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

In view of the nature of the application there is not likely to be a Significant Effect on the Annex I habitats - alone or in-combination with other proposals or projects.

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 and regeneration of a long standing empty site. Applying the tilted balance, the heritage policies in the NPPF do not provide a strong reason for refusing development and the benefits of the development outweigh any harm.

Statement on Human Rights and Equalities Issues

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

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

Proactive Working

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant. The Council works with applicants/agents in a positive and proactive manner by:

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

Conclusions and Reasons for Decision

The proposal would result in the enhancement of the current vacant parcel of land and creation of additional housing on an underutilised brownfield site within a Core Tourism Investment Area. It is considered that the proposal would deliver visual, economic, and regeneration benefits and none of the harm identified is considered sufficient to outweigh these benefits.

The proposal is acceptable in principle as a major enhancement to the site, with a minimal impact on the setting of Torre Conservation Area Tormohun Conservation Area. It is also considered that while there would be limited harm to the setting of listed buildings this is strongly outweighed by the public benefit of the provision of much needed additional housing on brownfield land and overall enhancements of the site.

It would provide acceptable arrangement in relation to residential amenity, highways and flood risk. The proposals are in accordance with the provisions of the Development Plan. The Officer recommendation is therefore one of conditional approval.

Officer Recommendation

Delegate authority to the Divisional Director - Planning, Housing & Climate Emergency to grant conditional approval subject to the conditions detailed below and satisfaction of the Engineering Service Manager with the updated hydraulic information.

Final drafting of conditions, negotiation/completion of the legal agreement, and addressing any further material considerations that may come to light following Planning Committee, to also be delegated to the Divisional Director - Planning, Housing & Climate Emergency.

Conditions

1. Construction Management Plan

Prior to the commencement of development a Construction Management Plan shall be submitted to approved in writing by the Local Planning Authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of construction traffic, noise and dust. The plan should include, but not be limited to:

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

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

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

Development shall take place in strict accordance with the approved plan.

Reason

To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users, having regard to Policies NC1 and TA1 of the Torbay Local Plan 2012-2030.

This condition needs to be a pre-commencement condition to ensure the impacts of the development are mitigated from the beginning of the development.

2. Landscape and Ecological Management Plan

The development hereby approved shall be carried out and managed in strict accordance with a Landscape and Ecological Management Plan which shall be submitted and approved in writing by the Local Planning Authority prior to the commencement of development. It will include details of relating to habitat protection and creation, species specification and management and be adhered to and implemented throughout the construction period strictly

in accordance with the approved details and the development managed in accordance with the approved LEMP for its lifetime.

Reason

In order to protect ecology and to secure necessary mitigation to accord with the aims for biodiversity enhancements, in accordance with Policies NC1 and SS8 of the Torbay Local Plan 2012-2030 and guidance contained in the NPPF.

This needs to be a pre-commencement condition to ensure biodiversity is safeguarded from the onset of construction activity.

3. FRA / Drainage

The development shall be carried out in accordance with the submitted Flood Risk Assessment ref. no. 05200E - FRAA by structureHaus (submitted 31.10.2022) and the flood resistance resilience and mitigation measures it details.

The flood resistance resilience and mitigation measures shall be fully implemented prior to occupation of the building and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

The approved surface water drainage scheme shall be implemented in full prior to the first occupation of the development.

Reason

To ensure that there will be no significant increase in the quantity or change in the quality of water leaving the Site. To reduce the risk of flooding to the proposed development and future occupants and to ensure safe access and egress from the development during an extreme flood event, in the interests of adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 and ER2 of the Torbay Local Plan 2012-2030 and guidance contained in the NPPF.

4. Ecology - Nesting season

The removal of vegetation shall be undertaken outside of the bird nesting season (March-September inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds. If nests are found no works shall be undertaken until the birds have fledged and a buffer zone of at least 5 metres must be established around the nest and an effective barrier put in place to ensure this remains undisturbed

Reason

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

5. Ecology – Biodiversity Enhancement

Prior to the first use of the development measures to maximise opportunities for biodiversity enhancement in and around development, in order to deliver a 44% net gain for biodiversity as set out in the Biodiversity Net Gain Plan ref. no. WOR-2779. BNG (dated April 2022), shall be submitted to and approved in writing by the Local Planning Authority. The submitted detail

will recognise ecological features lost and include a measurable guide to demonstrate a net gain for biodiversity.

The approved measures shall be incorporated within the development prior to the developments first use unless an alternative phasing is agreed pursuant to this condition and maintained thereafter.

Reason

To ensure the development positively incorporates biodiversity features proportionate to its scale, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

6. Landscaping Plan

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

Reason

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

7. Communal Garden

Prior to the first use of the residential units hereby approved, full details of the communal garden shall be submitted to and approved in writing by the Local Planning Authority. These details shall include dimensions and materials of the external surfaces, seating, planters and lighting. The areas shall be installed as approved prior to the use of the residential units. The areas shall thereafter be retained and maintained as an accessible area for the residents and shall not be used for any other purpose.

Reason

In the interests of design and in order to accord with Policy DE1 and DE3 of the Torbay Local Plan 2012-2030, TH8 of Torquay Neighbourhood Plan and the NPPF.

8. Detailed design

Prior to installation details of all external materials shall be submitted to and approved in writing by the Local Planning Authority including, but not limited to:

1. A sample of the proposed tile, brickwork and cladding.
2. Window and door materials, colours and profiles showing 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; and sill sections, drawn to a scale of 1:1-1:10.
3. Details of all fencing and other mains of enclosures including balconies.

4. Rainwater goods.
5. Details of eaves and fascia.

The development shall proceed in full accordance with the approved detail and shall be retained as such for the lifetime of the development.

Reason

In order to protect visual character and heritage assets in accordance with Policies C2, DE1, SS10 and DE1 of the Torbay Local Plan 2012-2030, Policies TH8 and TH10 of Torquay Neighbourhood Plan and advice contained within the NPPF.

9. Travel Plan

The development shall be carried out in accordance with the submitted Travel Plan by structureHaus ref. no. 05200E B – TP (received 26.07.2022) and the mitigation measures it details. It shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason

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

10. Energy

The development shall proceed in accordance with the energy saving measures outlined within the submitted and approved Energy Statement by Hulley & Kirkwood Consulting Engineers Ltd (submitted 20 June 2022). The approved measures shall be fully incorporated within the scheme prior to its first use and shall be retained and maintained for the lifetime of the development.

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

11. Designing Out Crime

A scheme detailing security measures and how designing out crime, fear of crime and anti-social behaviour have been considered and where implemented for the proposed development shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of a monitored CCTV system and that a clear passport to compliance document will be put in place prior to installation to ensure that the system is fit for purpose. The scheme shall also include details of an external lighting plan relating to the public realm and associated areas. Development shall take place in accordance with the approved details and shall be fully implemented prior to the occupation of the building(s) to which it relates. The scheme shall be retained and maintained for the lifetime of the development.

Reason

To ensure the safety and security of persons and property and to minimise opportunity for crime, fear of crime and antisocial behaviour. In accordance with Policies SS11, DE1 and DE3 of the Torbay Local Plan 2012-2030.

12. Waste Management Plan

A Waste Management Plan shall be submitted and approved in writing by the Local Planning Authority in writing prior to the occupation of any proposed building. The development shall thereafter be operated in accordance with the approved details.

Reason

In interests of visual amenity and in accordance with Policy DE1 and DE3 of the Torbay Local Plan 2012-2030.

13. Implementation of bicycle, scooter and refuse storage

Prior to the first occupation of any unit(s) hereby approved, the bicycle, scooter and refuse storage facilities shown on the approved plans that relate to that unit shall be provided and made available for use for those units. Once provided, storage arrangements shall be retained and maintained for the life of the development.

Reason

In the interests of sustainable transport and in accordance with Policies TA1, TA2, and TA3 of the Torbay Local Plan 2012-2030.

14. Car Parking Management Plan

Prior to the occupation of the development hereby approved, a Car Parking Management Plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details of car parking allocation including details of staff and visitor parking. The approved car parking management plan shall be adhered to for the lifetime of the development.

Reason

In the interests of road safety and sustainability to encourage walking, cycling and public transport use by staff and visitors in accordance with Policies TA1 and TA2 of the Torbay Local Plan 2012-2030.

15. Electric Charging Points

Prior to the first occupation of the residential development hereby permitted details of electric vehicle charging points (EVCPs) shall be submitted and agreed in writing by the Local Planning Authority. The EVCPs shall be provided in accordance with the approved details prior to first occupation and retained thereafter.

Reason

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

16. No plant on roof

No equipment, signage or plant shall be located on the roof, walls or in the grounds of the development hereby permitted (other than those indicated on the approved plans) unless otherwise approved in writing by the Local Planning Authority, including air conditioning units, extraction equipment, aerials, tanks, satellite dishes and external lighting.

Reason

In the interests of the visual amenities of the area, in accordance with policies DE1, DE3 and SS10 of the Torbay Local Plan 2012-2030.

17. Class E consent

The commercial unit hereby approved shall be used only for purposes falling within Use Class E (a) and (b) of The Town and Country Planning (Use Classes) Order, 1987 (as amended) or in any provisions equivalent to those Classes in any Statutory Instrument revoking and re-enacting that Order and for no other purpose without the prior grant of planning permission.

Reason: To ensure that the development is compatible with surrounding uses. In order to accord with Policies TC2, TC3 and TC4 of the Torbay Local Plan 2012-2030.

18. PD removal

Notwithstanding the provisions of Article 3, Schedule 2, Part 7, Class A, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order amending or revoking that Order, no extensions or alterations shall be made to the commercial unit hereby approved.

Reason

To maintain an acceptable form of development in accordance with Policies DE1, TA2, TA3, C4, NC1 and ER1 of the Torbay Local Plan 2012-2030 and the Torquay Neighbourhood Plan.

19. Affordable housing

At all times not less than 20% of the residential units hereby approved shall be occupied (or where vacant) available for occupation as affordable housing for rent as defined in the Glossary to the NPPF (July 2021). Thereafter the affordable units shall remain as such in perpetuity. The affordable units shall be provided in accordance with details submitted to and agreed by the Council's Affordable Housing Manager and shall be constructed at least in accordance with the minimum quality and design standards set by Homes England.

Reason

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

20. Extraction equipment

Prior to the installation of the following in the development hereby permitted, details (including manufacturer's specifications, colour, materials and appearance, measures for odour and noise control) shall be submitted to and agreed in writing by the Local Planning Authority:

- a) any external flues or vents to the kitchen ventilation and
- b) odour control equipment
- c) external plant/machinery/extraction equipment

These features shall be installed in accordance with the approved details and maintained retained thereafter.

Reason

To ensure a satisfactory form of development in the Torquay Harbour Conservation Area and in the interest of residential amenity, in accordance with Policies DE1, DE3 and SS10 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

21. Amplified Sound

No amplified sound shall be generated at any time from the commercial unit hereby approved.

Reason

To safeguard the residential amenities of occupiers of nearby properties in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

22. Acoustic Review

The development shall be carried out in accordance with the submitted Stage 1 Acoustic Review by (by SB Consulting and ANC dated 12.05.2022) and the mitigation measures it details. It shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason

To safeguard the residential amenities of occupiers of nearby properties in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

23. Hours of opening

The use of the ground floor café hereby approved shall take place only between the hours of 7:00 a.m. and 10:00 p.m. on weekdays and Saturdays, and between the hours of 9:00am and 5:00pm on Sundays or Bank Holidays. No customers shall be on the premises outside of these hours.

Reason

In the interests of the amenities of the neighbouring occupiers and the locality in accordance with Policies TC5 and DE3 of the Torbay Local Plan 2012-2030.

Informative(s)

1. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority. The applicant will be required to pay a contribution of £3,000 towards the installation of bollards to prevent footway parking along McKay Avenue.

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

3. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which

are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

Relevant Policies

Local Plan

Policy TO1 Tourism, Events and Culture
Policy TO2 Change of Use of Tourism Accommodation and Facilities
Policy TO3 Marine Economy
Policy SS1 Growth Strategy for a prosperous Torbay
Policy SS2 Future Growth Areas
Policy SS3 Presumption in Favour of Sustainable Development
Policy SS4 The Economy and Employment
Policy SS8 Natural Environment
Policy SS9 Green Infrastructure
Policy SS10 Conservation and the Historic Environment
Policy SS11 Sustainable Communities
Policy SS12 Housing
Policy TC5 Evening Economy
Policy TA1 Transport and Accessibility
Policy TA2 Development Accessibility
Policy TA3 Parking Requirements
Policy C2 The Coastal Landscape
Policy C3 Coastal Change Management
Policy C4 Trees, Hedgerows and Natural Landscape Features
Policy NC1 Biodiversity
Policy H1 New Homes
Policy DE1 Design
Policy DE3 Development Amenity
Policy DE4 Building Heights
Policy ER1 Flood Risk
Policy ER2 Water Management
Policy SDT1 Torquay
Policy SDT2 Torquay Town Centre and Harbour

Torquay Neighbourhood Plan 2019

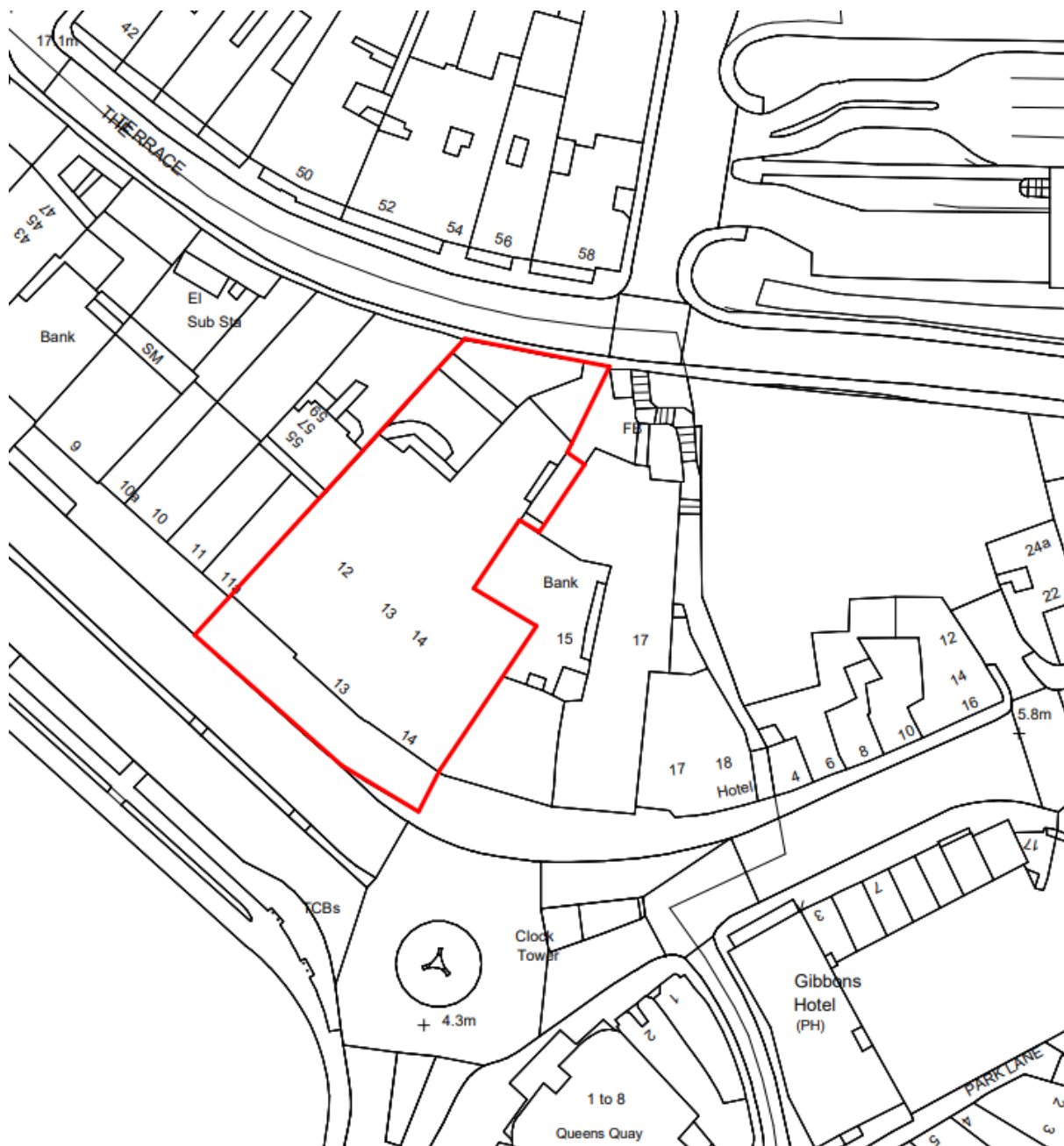
TS1 Sustainable Development
TS3 Community led planning
TS4 Brownfield Development
TH2 Designing Out Crime
TH5 Sustainable Later Life Homes

TH8 Established Architecture
TH9 Parking Facilities
TH10 Protection of the Built Environment
TT1 Change of Use within a CTIA
TT2 Change of Use in Conservation Areas
TE1 Tourism Accommodation on Brownfield Sites
TE5 Protected Species Habitats and Biodiversity
TE7 Marine Management Planning
THW1 Travel Plans
THW4 Outside Space Provision
THW5 Access to Sustainable Transport
THW6 Cycle Storage and Changing Facilities

TORBAY COUNCIL

Application Site Address	Former Debenhams Department Store, 12 - 14 The Strand, Torquay
Proposal	Redevelopment of the former Debenhams department store for a mixed-use, including 5 commercial, business and service units (Use Class E), 16 two bedroom residential apartments (Use Class C3), residents parking court and public square.
Application Number	P/2022/0806
Applicant	AR Land & Planning Ltd (on behalf of TDA)
Agent	AR Land & Planning Ltd
Date Application Valid	22.07.2022
Decision Due date	21.10.2022
Extension of Time Date	14.11.2022
Recommendation	<p>Delegate authority to the Divisional Director - Planning, Housing & Climate Emergency to grant conditional approval subject to the conditions detailed below and subject to the Council commitment to the off-site affordable housing contribution being confirmed to the satisfaction of the Divisional Director - Planning, Housing & Climate Emergency.</p> <p>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 - Planning, Housing & Climate Emergency.</p>
Reason for Referral to Planning Committee	Major Application
Planning Case Officer	Jim Blackwell

Location Plan



Site Details

The TDA acquired the Debenhams Department Store site in May 2020 with the aim of rejuvenating The Strand through the redevelopment of the site linked to the proposed major public realm enhancements. This project is at an advanced stage and the intention is to create a pedestrian focused space, reduce the highway widths, increase footways, improve crossing facilities and relocate the buses from outside the Debenhams store. The wider, south facing footway will be able to offer an opportunity for outdoor eating and drinking.

The Debenhams site comprises a range of buildings situated to the north of The Strand, a wide street with a range of retail units, public houses and restaurants. It is attached to a two

storey retail unit and three storey apartment building (55-59 The Terrace) set back from the street frontage to the west. Yates, a three storey public house, adjoins to the east. The site is separated from harbourside from The Strand which currently acts as one of the main bus stops for the town centre and harbour area. The Strand includes a range of highway landscaping with seating facing the water's edge. The site steps up approximately 15m to the north towards The Terrace, a street with a mix of professional, commercial and residential properties.

The existing range of buildings comprises of three distinct facades with no.12 and 13 dating from 1960's and no. 14 from the late 19th century. Each block reflects the original 19th century plot widths. The elevations and main retail frontage facing The Strand are between two to three storeys high with the building stepping up to six storeys (relative to The Strand) along The Terrace. All three buildings are clad in a limestone material with glazed shopfronts and entrances below.

The layout is mostly open plan retail floor space with the main public entrance at The Strand level with a secondary public and service access at The Terrace level.

The canopy to the front of the site dates (in its current form) from around the 1920s – 30s with mid and later 20th century alterations. It replaced an earlier fabric canopy which was supported on free standing columns. Alterations have included the removal of decorative arched signage, its extension at the front of 12 The Strand and the modernisation of the roof covering.

The site is located within:

- Torquay Harbour Conservation Area (THCA).
- Coastal Change Management Area.
- Community Investment Area.
- Core Tourism Investment Area.
- The designated 'Town Centre' under the Torbay Local Plan.
- Primary Shopping Frontage.
- Edge of Flood Zones 3 and 2 associated with flood risk from the various sources including the sea and fluvial/surface water.
- CIL Zone 1.
- In close proximity to a wide range of grade II, II* listed buildings and a grade I listed church.

Description of Development

The application proposes the complete demolition of the former Debenhams department store and its replacement with:

- A broadly L-shaped, five storey building set around a public square. The change of level mean that the ground floor access is from The Strand, with access to the upper floor from The Terrace.
- Five commercial, business and service units (Use Class E) on the ground floor, at The Strand level. One of which will be a kiosk to on the western boundary.
- A public square accessed by steps and a pedestrian ramp and includes a range of hard and soft landscaping.

- The upper four storeys will be formed of 16, 2 bedroom residential units.
- The building at The Terrace level will include the site entrance, 16 covered parking spaces on a deck.
- Due to the topography the building will appear at a single storey at this level.

A range of additional information has been provided:

- Noise and vibration report.
- Amended Design and Access Statement to include further detail on the canopy posts and proposed public art.
- Clarity on transport data and confirmation of fire vehicle manoeuvrability.
- Secured by design checklist.
- Amended access ramp gradient.
- Amended landscape plan to show additional cycle parking for the commercial units.
- Further clarity on drainage details.
- Secure by Design updated information.

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 (TNP)

Material Considerations:

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

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in considering this application, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

Statement of Community Involvement

The application is supported by a Statement of Community Involvement by AR Land & Planning Ltd (submitted 08.07.2022) which sets out the sequence of engagement with the community, Historic England and Torbay Design Review Panel. Further engagement

included the Torquay Town Centre Partnership, Torquay Neighbourhood Plan Forum, Members, officers, consultation letters to adjacent residents, display boards in Torquay library, a public exhibition on 28.04.2022, social media and the local press were all utilised to gain feedback. The on-line exhibition was held on 26.04.2022 and held for 10 days. The results of the responses were received with 92% supporting town centre regeneration and 72% liking what was proposed.

Relevant Planning History

P/2022/0637 - Request for Screening Opinion for redevelopment of former Debenhams store to five ground floor commercial units and sixteen residential apartments. EIA not required.

Summary of Representations

There have been approximately 4 objections to the scheme had been received at the time this report was drafted. The concerns (of planning merit) raised are summarised as follows:

- Impact on local area including impact on existing late night uses.
- Not in keeping with local area.
- Architectural treatment and use of materials.
- Over development.
- Overall height.
- Loss of the canopy.
- Impact on heritage assets.
- Potential use of the public square for antisocial behaviour.
- Potential impact on the residential units from noise and vibration.

Torbay Heritage Trust has also submitted approximately 13 comments and objections broadly covering the themes as follows:

- Impact on heritage assets.
- The proposals not recognising the height, materials or local characteristics.
- Impact on roofscapes and rooflines.
- Loss of the canopy.
- Not using a scheme model to identify impacts.
- Modern architectural approach.
- Challenge to the findings of the supporting information including the Planning Statement, Heritage Statement and Design and Access Statement.
- Future demand for the proposed retail units.
- Challenge to comments provided by Historic England.

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No objection. Torquay Neighbourhood Forum noted the heritage considerations linked to the canopy and building height impact, but were satisfied with the Historic England comments. Commented on links between the future public realm scheme, quality and potential for Anti-Social Behaviour (ASB). Potential impact of flood risk, but noted the proposed levels on site. They also raised issues around the potential loss of retail and lack of on-site affordable housing.

County Archaeologist and Historic Environment Manager:

No objection subject to a pre-commencement condition requiring a Written Scheme of Investigation.

Natural England:

No comments received.

Torbay Council's Engineering Service Manager:

No objection subject to additional information confirming materials and pipe length.

South West Water:

No objection providing the applicant can demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable.

Environment Agency:

No objection to the application as submitted provided that conditions are included within any permission granted to secure the inclusion of flood resistance and resilience measures within the development and a Construction Environment Management Plan (CEMP).

Marine Management Organisation:

No comment.

Police Designing Out Crime Officer:

No objection. The application lacked detail around the crime prevention and security measures. A number of detailed measures were suggested and updated information provided by the applicant.

Torbay Council's Highways Engineer:

No objection subject to the provision of a plan showing a visibility splay to The Terrace and further highway data. The cycle parking for the residential element of the scheme is acceptable however there needs to be provision for employee parking for the commercial uses at one space per two employees.

Torbay Council Community Safety Team:

No objection subject to alteration to the ramp gradient to 1:14. Challenging to understand demands for waste without the final operators being determined.

Green Infrastructure Manager:

No comments received.

Devon and Somerset Fire and Rescue Service:

No objection subject to compliance with requirements for fire vehicle access and manoeuvrability.

Food and Safety Team:

No objection subject to resolving issues regarding waste storage and emissions. A condition is suggested requiring further details of extract equipment.

Waste Client Officer:

No objection subject to revision of the gradient to 1:14 to enable waste collection.

Historic England:

No objection. Historic England considers that plans to redevelop the Debenhams site indicate a positive and proactive approach by Torbay Council in bringing forward regeneration in Torquay's historic core. Whilst the introduction of a courtyard / set back varies the historic pattern of development along the Strand, and the height of the buildings is greater than those currently in situ, they consider that the resulting low level of harm should be balanced against the regenerative benefits of the development.

Torbay Design Review Panel:

The TDRP was held on 22.03.2022. Comments are set out in brief below:

- Generally, recognising the importance of building lines, building heights, façade treatment, ornamentation and expression, colour.
- Impact of the proposal on The Terrace. Views into the site from this upper level.
- The challenge of the raised floor level and accessibility via the ramp.
- Support the residential access from The Strand and The Terrace.
- Challenge the need for car parking at this number and level.
- Unconvinced by the mansard roof design.
- The future quality of the public realm, it's composition, planting and link to adjoining buildings.
- The need to respond to the climate emergency.

Planning Officer Assessment

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 key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of Development
2. Economic Benefits and Impact on the Night-Time Economy
3. Design and Visual Impact
4. Impact on Heritage Assets
5. Impact on Residential Amenity
6. Highways, Parking and Movement
7. Designing out Crime
8. Ecology and Biodiversity
9. Drainage and Flood Risk
10. Low Carbon Development
11. Other Considerations

1. Principle of Development

The vacant Debenhams department store is a brownfield site located in an established urban area, centrally located in the town centre alongside various shops, services and associated transport options. It also sits in a corridor where there is a strong character of

both commercial and residential uses.

Policy H1 (Applications for new homes) of the Torbay Local Plan states that proposals for new homes within the built up area will be supported subject to accordance with the other policies contained within the Local Plan. The site sits in the built up area.

Policy TS4 (Support for Brownfield and Greenfield development) 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. Other material considerations will be discussed in turn within the Officer Assessment, however in terms of principle, there is support for the development.

Torquay Neighbourhood Plan includes an aspiration for 'improvement of this key stretch of Torquay Harbour which could include redevelopment of The Strand buildings, including Debenhams and the Amusement Arcade. Combination of luxury apartments, improved retail, hotel, small restaurants would be welcomed whilst protecting outlook from the Terrace.' It is considered that this proposal achieves this aspiration.

In addition to the above, the Council cannot currently demonstrate a 3 or 5 year housing land supply, which is a relevant material consideration to the principle. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision making process. The 'tilted balance' in favour of sustainable housing development therefore applies subject to the detail wording of the NPPF Para 11 and the associated footnotes. This principally means that for permission to be withheld either (a) the application of policies in the NPPF that protect areas or assets of particular importance (in this case heritage assets) provides a strong reason for restricting the overall scale, type or distribution of development or (b) harm would significantly and demonstrably outweigh benefits. This current context therefore increases the prospect of planning permission being granted because it 'tilts' the balance in favour of approving an application for housing.

Policy TH4 of the Torquay Neighbourhood Plan allows for affordable housing to be achieved in sequentially preferable order for:

- on site provision,
- a mix of on-site and off-site provision,
- via commuted payments.

The Planning Contributions and Affordable Housing SPD also allows for the provision of 'alternative sites or land'. The Local Plan states that commuted sums can be a fall back where on-site provision is not practicable.

The application proposes 16 open market apartments and does not provide any on-site affordable housing. Policy H2 of the Local Plan seeks 15% affordable housing provided on site unless the scheme brings regeneration benefits in which case commuted payments towards off-site provision may be acceptable. The demonstrated economic benefits of removing the existing building, creation of five high quality commercial units, combined with

the positive impact to the conservation area are a material factor. It has therefore been accepted the site and proposed units are not suitable for on-site affordable housing.

Finding a mechanism that delivers successful regeneration of this key site is considered a high priority. The circumstances above make on-site provision of affordable housing impractical. A commuted payment is considered the optimum way of securing off-site provision. The policy framework clearly allows for off-site provision in lieu of on-site and a total requirement for contributions is set at £259,200.

Normally this would be secured by a Section 106 or planning condition, however legal advice is that (a) as the council own the land the council cannot have a Section 106 agreement with itself and (b) guidance states that a planning condition should not be used to require a financial payment to be made. However, the development is to be delivered by the TDA on behalf of Torbay Council and Officers are advised by the Council's legal team that we can rely on the Council's commitment to provide the Affordable Housing contribution prior to occupation of the ninth apartment as the basis for issuing consent.

If the Council decides to sell the land for development, it will be necessary to secure the contribution through the sale contract (with potentially a Section 106 being entered into with the new owners immediately following the sale). The legal advice is that this arrangement is not unusual when a council sells land with the benefit of planning permission. However, it is emphasised that this is not envisaged and that the Council's commitment to providing the contribution in connection with a development it is carrying out, is sufficient at this stage.

Torquay Neighbourhood Forum have commented that it is regrettable that there is no on-site affordable housing, however it is clear that provision is not appropriate and can be achieved through off-site contributions.

Finally, the proposal involves continuation of the Use Class E which includes a range of potential uses. The description of development includes commercial, business and service units which would seem to offer flexibility at ground floor level with the aim of improving the vitality in the town centre. It is clear that not all uses would be appropriate in this location. The supported Class E purposes have been specified by a suggested condition to ensure complete control over the final occupation.

Drawing together the range of policies, there is support for the provision of a residential and commercial use on the site. The policy support is clear within Policies TH1 and TS4 of the Torquay Neighbourhood Plan and the current shortfall in housing land supply strengthens this support. This position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the forthcoming sections of the Officer Assessment.

2. Economic Benefits and Impact on the Night-Time Economy

Policy SS1 (Growth strategy for a prosperous Torbay) of the Local Plan states that development should reinforce Torbay's role as a main urban centre and premier resort.

Policy SS4 (The economy and employment) supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in

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

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

The application is supported by an Economic Impact Assessment. The proposal will create around 92 jobs during the expected 18 month construction period. It expects to contribute around £19.9m towards the local and regional economy during the construction phase. The commercial uses will support around 30 FTE jobs and contribute around £16.3m towards the local economy over a 25 year period. This would also generate a range of third party jobs and revenue such as food and drink suppliers, materials and furnishing suppliers which will all take advantage of new facilities.

In a further aspect related to economic impact, the operators of the Yates public house (15-16 The Strand) have made a representation to the application. The venue shares a common side boundary and has a customer terrace on the footway on The Strand which was granted approval in 2019. It has no planning restriction on the hours of operation but is likely to be controlled through licencing. The key economic issue relates to the noise and disturbance to future residents from the existing, authorised entertainment venue. Potential, future complaints could lead to licensing restrictions on Yates and other local late night venues which could harm profitability and viability. As a result, a noise and vibration report has been produced to support the application. The findings of the report conclude that the noise from Yates is likely to have a 'negligible' impact on living conditions to the rear bedrooms and a 'medium' risk to the bedrooms to the front of the building adjoining The Strand. On this basis, should the application be approved a condition is recommended to require the submission of a Stage 2 Acoustic Report and details showing an appropriate level of acoustic measures. In conclusion, subject to the proposed condition it is not considered that the proposed residential use will undermine the economic viability of existing local businesses (see further consideration in Section 5 Impact on Residential Amenity below).

As discussed previously, Torbay cannot demonstrate a 3 or 5 year housing land supply, and therefore significant weight is given to the provision of additional housing. The application proposes 16 open market homes and does not provide any on-site affordable housing. Policy H2 of the Local Plan seeks 15% affordable housing provided on site unless the scheme brings regeneration benefits. The economic benefits of the new commercial uses, public square, combined with the positive impact to the conservation area are a material factor. In any respect, it has been accepted the site and development type are not suitable for on-site affordable housing. An off-site affordable housing contribution in accordance with the Planning Contributions and Affordable Housing SPD is being provided.

Given that the proposal would modernise and enhance the commercial facilities available at the site; create new jobs; and is expected to generate significant additional spend within the local economy, it is considered that it complies with the aspirations of Policies SS1, SS4 and

SS11 of the Local Plan, and would bring economic benefits to the Bay.

3. Design and Visual Impact

Nationally achieving good design is a central thread within government guidance and Part 12 of the NPPF (Achieving well-designed places) offers key guidance. Paras 126, 127, 130, and 134 are particularly relevant and accumulatively guide that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 134 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Policy DE1 (Design) of the Torbay 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 DE4 states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. New development should be constructed to the prevailing height within the character area in which it is located unless there are sound urban design or socio-economic benefits to justify a deviation from this approach.

The policy goes on to state that new buildings above the prevailing height will be supported where they:

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

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

The topography, urban and historical contexts are complex, each has individual constraints and especially when taken as a whole. Having considered both local and national policy guidance the design is considered to provide an acceptable form of development within the context. The key components of the assessment that inform this judgment are outlined below.

The development has been informed by early pre-application engagement with the Torbay Design Review Panel and Historic England. Both provided a range of comments which led to design revisions including:

- Reducing the overall height by one storey.
- Lighter weight top storey and providing an alternative to a previously proposed mansard roof.
- Improved biodiversity by using a green roof, rather than a proposed penthouse level.

- Further visual landscape impact analysis.
- Improved landscaping.
- Simplification of the arrival and circulation of the apartments.
- Refined elevations and recessed elements.
- Reduction in the number of brick colours.
- Inclusion of increased opportunity for shelter and retractable awnings.

The proposed layout is created by four distinct built elements. Firstly, a five storey building on the boundary of The Strand with commercial on the ground floor and residential above. A secondary five storey building is then set back from The Strand with commercial on the ground floor with residential above. This creates an 'L' shape block which is centred around the third element of the scheme, an area of landscaped public space. Further along the edge of the site at The Strand, a 'kiosk' is proposed as an extension to the existing two storey cottages. The final built element is the parking court which is accessed from The Terrace at the top end of the site.

In terms of visual impact, the plot is considered capable of holding a range of buildings in the location and to the scale proposed, and the provision of the lower scale kiosk extending the existing cottages is deemed a positive response to the greater local prominence of this end. In terms of the basic layout there is sufficient space around the buildings and within the development site to provide adequate landscaping and present an acceptable setting for the development, that would not cramp or overdevelop the site.

The scale of the proposed buildings has been drawn through a range of early options and have been revised following consultation comments. The element facing The Strand now respects the character of the harbourside, recognises the various heights and narrow plot widths. The public realm space offers an area of transition down in scale to the proposed kiosk and existing cottages. The Terrace level will be separated from the street and buildings by the covered car park with a stone boundary wall and planting. The proposed buildings will appear as a single storey, which is a reduction from two following the previous heritage and design comments.

The proposed front facing building aims to provide a distinct level of grandeur and links to the neighbouring Yates public house. It follows the architectural hierarchy and form of many other harbourside buildings. The proposal includes a plinth storey at street level with cantilevered wrap around terrace above to create a defined band and provide weather protection to the unit below. A middle storey utilises double height vertical windows with projecting balcony details. A recessed top floor is proposed to create depth and concealed balcony. The roof is set back with change of materials to offer a sense that the building diminishes in scale at the upper level and to reduce the massing.

The internal Strand elevation focuses on narrow plot widths and reflects harbourside proportions with a range of architectural treatments. The kiosk will extend the existing 19th century cottages, including a traditional built form, but provide some more modern detailing such as large windows.

There are a clear range of proposed detailing and materials which again attempt to reinforce the traditional harbourside rhythms and robustness given the location. A mixture of brick (inspired by Victorian retaining walls on the site) and aluminium cladding (inspired by archways from the original Art Nouveau bookshop) are proposed. The kiosk will draw along the existing render and slate pitched roof. This simple palette, which has been refined during the application process, is supported.

There have been a number of objections around the design of the proposal which have been described as not in keeping with the local area. Objections about the proposals impact and overdevelopment. However, the proposal has been through a rigorous design process and evolved in response to comments from the community, Historic England, Torbay Design Review Panel and Officers. The form and layout of both are considered to make effective use of brownfield land and respond well to the challenging topography of the site. The development would result in a major enhancement of a site which includes many dated and tired structures.

In terms of design and visual impact for these reasons above the development is considered acceptable as there would be no adverse impact upon the character or visual amenities of the locality. The proposal is deemed in broad accordance with Policies DE1, DE4, SS10 and H1 of the Torbay Local Plan, Policy TH8 of the Torquay Neighbourhood Plan, and guidance contained within the NPPF in terms of good design.

4. Impact on Heritage Assets

The titled balance requires an assessment of the NPPF policies that protect heritage assets. NPPF (2021) provides guidance as to 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 (Para 199). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 200). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 202).

In terms of the Local Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policies SS10 and HE1 of the Local Plan). This is aligned with the duties for decisions as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, where decisions shall have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

There are a number of Grade II listed buildings within close proximity of the site. The closest includes Maples, 16 The Strand with a brick and terracotta shopfront façade. Maples is separated from the site by Yates public house, the former Nat West Bank, 15 The Strand. Although unlisted, it is within the Torquay Harbour Conservation Area Appraisal and indicated as 'Other key buildings and building groups of architectural importance or which

make a significant contribution to the townscape'. The building is therefore considered a non-designated heritage asset. The Clock Tower is positioned within the highway and Royal Bank of Scotland. Higher Terrace and attached front railings are above the site to the north. A terrace of listed buildings lies approximately 100m, at right angles to the site to the west on Vaughn Parade. Grade I Listed Building Parish Church of St. John the Evangelist lies 300m north east of the site.

The site lies within Torquay Harbour Conservation Area. This covers the land adjacent to Torquay Harbour which is surrounded on all sides with the Belgravia and Abbey Road Conservation Areas to the west and the Warberries and Lincombes Conservation Areas to the east.

The application is supported by an Archaeological Assessment and Statement of Heritage Significance (Avalon) which has identified limited potential for archaeological evidence from the prehistoric to early modern eras to be exposed by groundworks. The impact of development upon this should be mitigated by a programme of archaeological work that should record any archaeological evidence that will otherwise be exposed and destroyed by groundworks. As such, a pre-commencement condition requiring a Written Scheme of Investigation has been suggested by the County Archaeologist.

The submitted Townscape and Visual Impact Assessment (Liz Lake Associates) and Statement of Heritage Significance provide multiple photographs and analysis which demonstrate an understanding of the site, its surroundings and impact. The Debenhams Department Store is not a designated heritage asset and it is considered to have very limited architectural or heritage value. That said, the varying building heights and form broadly reflect other buildings in the area. The existing building heights along The Strand and harbourside create a comfortable character which is recognised as an important feature of the Conservation Area. There are a range of heights including low cottages to the taller and more grand buildings and this variety reflects the incremental changes to Torquay harbourside and surroundings over time.

The Terrace behind the site to the north dominates many views across the harbour given its scale, architectural style and rendered white façade. The Terrace and other buildings built around the harbour respond to the topography of Torquay, creating terraces of buildings that step up the slope, creating tiered views within the harbour area. These views have high value within the Conservation Area. These buildings have been designed to follow the topography and harbourside position, offering views out towards the sea. These views and openness will be maintained. The increased height of the front block of the development will result in a localised effect on the view from Victoria Parade looking north towards the site. In this view the proposed building obscures part of the east end of Higher Terrace and therefore interrupts the effect of its façade. However, the stepped back façade will increase visibility of the central portion of Higher Terrace. This localised view is considered to be at the very low end of less than substantial harm and is balanced against the much wider improvements to the site through the proposed development.

The integration of the proposed scheme into the existing townscape and key buildings has been carefully considered. In particular, the junction between the proposed front building and Yates public house has gone through a number of design evolutions in order to retain the

continuous horizontal emphasis, echo the choice of robust materials, follow similar proportions and diminish in height. Given its siting, scale, and design, it is considered that the scheme would have an acceptable impact upon the character and appearance of the adjoining building and would adequately preserve the historic character and setting of the non-designated heritage assets.

The Strand has very strong, linear character with shops fronting the footway which is replicated above along The Terrace. The proposed set-back square would enable a greater number of apartments to have views to the harbour and gain good level of natural light. It also provides opportunities to soften the impact of the increased ground floor height (as required by the Environment Agency) by using steps and slopes into the site. Historic England consider that this set-back will generate some minor levels of harm to the character and development pattern of the conservation area along The Strand. However, this harm is weighed against the regeneration and quality of the replacement buildings that the redevelopment of the site brings forward, alongside the associated public benefits.

The proposed public square has been designed to integrate with the proposed public realm on The Strand. It would also create a south facing piece of bespoke open space surrounded by new cafes and restaurants. It is expected to make a positive contribution to vibrant cafe culture, reflecting the character of the harbourside. It would also provide a sensitive transition from the domestic scale cottages to the larger surrounding buildings and proposed building. Overall, it is considered to be a public benefit.

The canopy to the front of the Debenhams building is considered in the Torquay Harbour Conservation Area appraisal to make a positive contribution to the townscape. It has long been part of the debate and discussion throughout the design and consultation process. The current canopy clearly holds value within the community and continues to provide shelter for those waiting for buses on The Strand. The proposed public realm works aim to relocate buses and this use will no longer continue. The canopy has been altered and adapted over many years and is not listed, but certainly has some local interest. As discussed, it does not relate well to the existing Debenhams building and it would be very difficult to reincorporate it within the new scheme without it appearing as a distinct and separate 'add on'. Historic England has no objection to the removal of the canopy and welcome the designed canopy that will form a part of the new building and new square.

In summary, the proposed development has incorporated mitigation measures to reduce the effects on both townscape character and visual amenity, and to help integrate the development into the surrounding townscape. These include sympathetic materials for the cladding and architectural treatment, the proportions of each element have been fully considered and assimilate into the neighbouring properties to ensure the proposed built form is in keeping with the surroundings.

Torbay Heritage Trust have provided a range of comments covering the impact and architectural approach of the development. The comments have been fully considered above. Historic England has no objection on heritage grounds subject to conditions ensuring a high level of detail and materials.

Overall, the proposal is considered to preserve and enhance the Harbour Conservation Area and setting of listed buildings although it is recognised that some elements cause a low level of harm. This limited harm is 'less than substantial' and is outweighed by the public benefits of the proposal which are the regeneration of the site, vastly improving the quality of buildings, improving the commercial offer, provision of housing and an integrated public square. As such the development is in accordance with Local Plan Policies SS10, HE1 and Policy TH10 of the Torquay Neighbourhood Plan.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

5. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.

Quality of living accommodation for future occupiers

Policy DE3 of the Local Plan requires that new residential provides a good level of amenity and that units provide adequate floor space to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity, but does cite expectations for outdoor amenity space. Policy DE3 sets out guidelines for minimum floor space standards for new dwellings and apartments, which reflect the Government's National Space Standards.

The proposal seeks to provide 16, 2 bedroom apartments generally sized between 80.4sqm to 114.9sqm, with 2sqm of additional storage. All apartments are considered to provide an acceptable scale of living accommodation with floor areas exceeding the prescribed standards. In addition to the size of the space the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. In this regard all apartments provide a good level of both light and outlook with adequately sized windows to all key spaces and suitable open outlooks. Policy DE3 also seeks the provision of usable outdoor amenity space where apartments should deliver 10sqm per unit either individually or communally. The Torquay Neighbourhood Plan is in alignment with this guidance as advised within Policy THW4, either as balconies or communal space. The scheme provides balconies which provides an acceptable level of outdoor space for future occupants of the apartments.

Considering the various aspects that influence a good living environment development is considered to provide a good standard of living accommodation for future occupiers, in accordance with policy guidance, notably Policy DE3 of the Torbay Local Plan and Policy THW4 of the Torquay Neighbourhood Plan, and advice contained within the NPPF.

Noise and vibration investigations

The NPPF (Para 130) 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. Para 187 requires decisions to ensure that new development can be integrated effectively with existing businesses and community facilities (including pubs and music venues). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established.

It is considered that the proposed noise sensitive residential accommodation would need to be constructed to meet the highest levels of amenity protection. As above, the policy context seeks to ensure appropriate living amenity is secured for future occupants of the proposed residential accommodation.

As discussed previously in Section 2 (Economic Benefits and Impact on the Night-Time Economy) representations have been received from the adjoining Yates public house. To provide further clarity, the venue operates between 09:00-23:00 on Sundays, 09:00-24:00 (midnight) on Mondays and Tuesdays, 09:00-03:00 on Wednesdays, Fridays and Saturdays, and 09:00-01:00 on Thursdays. The building has a capacity of 750 with space for around 25 customers to the terrace.

A Stage 1 Acoustic Review has been submitted to consider the residential use alongside the existing late night leisure use immediately adjoining the application site, and whether this will give rise to unacceptable conditions for future residents. The outcome of the report is that dwellings proposed on the north of the site facing The Strand are within the 'medium risk' category. Those to the rear are within the 'negligible risk' category. The data shows that there is a high number of disturbance events throughout the night, particularly on Friday and Saturdays.

The report recommends that bedrooms should either not overlook the front of the building or additional noise mitigation measures are provided. It goes on to say, the acoustic performance of the separating wall between the Yates Bar and the new development should be carefully considered and exceed the minimum levels prescribed in Part E of the Building Regulations. It is clear that particular attention must be paid to any bedrooms overlooking the front elevation to ensure comfortable internal night time environments can be achieved, guarding against potential sleep disturbance from the frequent occurrence of night time noise events. There is some mitigation to this potential disturbance given the proposed layout which includes one double bedroom set between living accommodation on each floor. The bedroom layouts are relatively narrow and orientated away from the front elevation. There would be eight residential units in total to the front of the building and four bedrooms potentially subject to the 'medium' risk as described above. There needs to be a balance struck between encouraging town centre living and the continued economic viability of late night venues. The use of a suggested condition requiring additional noise measures and the proposed layout would minimise the potential for complaints and a negative impact on local businesses.

The data also shows that vibration levels at the development site are highly unlikely to be the cause of any adverse impact.

The Community Safety Team has no objection subject to submission of a detailed Stage 2 Acoustic Report and scheme of noise insulation measures to protect the internal environment of the residential development.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction Management Plan and compliance can be secured through a suggested planning condition.

The application is supported by a Daylight and Sunlight report. The aim of the assessment is to consider the impact of the development on the light receivable by the neighbouring properties at 11, 11a, 15 to 16 and 17 Strand and 55 to 59 The Terrace. 17 The Strand is a non-domestic building which does not have a requirement for daylight or sunlight. The analysis demonstrates that the proposed development will have a low impact on the light receivable by its neighbouring properties. A single bedroom window at the rear of 55 to 59 The Terrace would be impacted, but would still retain vertical light. This residential building is set down below street level and on balance the impact is considered minimal. The sensitivity is further reduced by the formation of an 'L' shaped building, nestled into the topography which in some cases will improve adjacent outlooks, particularly 55-59 The Terrace. In terms of privacy, inter-looking and overlooking nearby properties to the north are well-distanced and would be unaffected by the development.

Waste

In terms of key ancillary elements Policy W1 of the Torbay Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. The design of the proposed development includes separate bin stores for the commercial and residential components of the scheme. The bin storage for the commercial element is proposed to be located on the ground floor whilst the residential bin store is on the fourth floor within the residential car park. Servicing of the commercial units is proposed to be undertaken by a newly formed loading bay, which is proposed as part of the public realm works currently underway on The Strand which are being funded via Town Deal Funding. The Waste Client Manager has no objection subject to revision of the gradient of the access route to 1:14 to enable waste collection. An amended plan has been provided to resolve this issue. Food and Safety Team have no objection subject to resolving issues regarding waste storage and emissions.

In terms of amenity for the reasons above the proposal is considered to comply with Policy DE3 of the Torbay Local Plan and advice contained within the NPPF, as it would present good quality living environments and would not unduly impact the amenities afforded neighbouring occupiers.

6. Highways, Parking and Movement

The NPPF guides that in assessing specific applications for development it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree (Para 110). It also furthers (Para 111) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA1 of the Torbay Local Plan and advice contained within the NPPF principally seeks to develop a sustainable model of travel. This baseline aspiration is there to try and meet the travel needs of everyone, whilst also reducing the need for travel and thus the environment impact of movement from development.

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided. The Torquay Neighbourhood Plan is largely silent on access and highway matters beyond guiding that, to encourage use of sustainable forms of transport, new development proposals will be supported where they are located on or near to public transport routes wherever possible and appropriate (Policy THW5).

The site is centrally located within Torquay town centre and sits in an established urban environment characterised by a mix of residential properties and commercial activities. As a centrally located brownfield site it is considered a good location for residential development, and one that could meet the travel needs for occupiers equally, not just car owners, whilst also presenting options for sustainable modes of local travel for all. The development of the site for housing presents a basis for development that accords with the broad policy direction for sustainable travel patterns.

The public square proposed to front of The Strand is raised above street level and is accessible via both steps and a ramp. The square will provide pedestrian access to the proposed commercial and residential buildings on the site. The proposed vehicular access from The Terrace utilises the existing access position to provide adequate parking arrangement for residential use, including visibility splays. Following the receipt of further information on the visibility splay and manoeuvrability access is considered acceptable with no concerns raised by the Highway Authority. In terms of pedestrian movement there is a segregated narrow footpath fronting the site along The Terrace which will ensure there is no conflict with cars. Subject to the above, the proposal presents an acceptable access and movement linkages with the public highway network.

In terms of the provision of parking and cycling facilities Policy TA3 and Appendix F of the Torbay Local Plan provides the policy context, where it provides estimated requirements for parking that reflect a balance between ensuring that the levels of car parking generated by development are met on site, with the need to ensure that due consideration is also given to sustainable transport methods. 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.

Appendix F identifies an expected requirement of one car parking space per apartment. The guidance states that parking for visitors should also be provided for flatted development, however there is no guidance on what levels of visitor parking should be provided. The guidance notes also state that all dwellings should have electric charging points and in

flatted development 20% of available spaces should have electric charging points. Each parking space will provide an electric charging point. The parking is provided at one space per flat, with one disabled space and no visitor spaces provided. Given the constrained site envelope, topography and sustainable town centre location this is considered acceptable.

The Council's Highways Team has no objection subject to the provision of a plan showing a visibility splay to The Terrace and further highway data. This has been submitted and is acceptable.

In terms of cycle parking apartments are expected to deliver the capability of storing one cycle per flat. These are provided on a one-to one basis for residential apartments. All of the proposed cycle parking is indoor, secure and sheltered, as well as being equipped to facilitate charging of electric bikes. This is appropriate and in line with Torquay's adopted parking standards. Following comments from the Council's Highways Team the commercial units have also been provided with an appropriate level of cycle parking with one space per two employees.

Finally, to ensure that other forms of transport are promoted a Sustainable Travel Plan (TDA) has been submitted. A condition is suggested to ensure it includes ongoing management to review and improve if the modal shift targets are not being reached.

Considering the broad accordance with the Development Plan and advice contained within the NPPF the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1, TA2 and TA3 of The Local Plan, Policy TH9 of The Neighbourhood Plan, and guidance contained within the NPPF.

7. Designing out Crime

No objections are raised following the submission of additional information around Secured by Design. This is subject to the use of a condition to secure a scheme of crime prevention measures, such as CCTV. It is recommended that this condition be imposed should planning permission be granted.

The Torquay Neighbourhood Forum have raised the issue of the potential security of new square and rough sleepers. The introduction of new ground floor commercial uses and residential units above offer a much higher level of surveillance to the proposed area. There are pedestrian and cycle improvements being planned on The Strand in the immediate vicinity of the proposed development as part of a Town Deal funded project. As discussed previously, these public realm improvements include segregated cycle paths, new pedestrian crossings and widened footways and space for outdoor dining. The future management of this space and that proposed within the site will require a level of co-ordination and same level of future management.

Subject to the use of this condition, the proposal is in accordance with Policy SS11 of the Local Plan.

8. Ecology and Biodiversity

Policy TE5 of The Torquay Neighbourhood Plan states 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.

Policy NC1 of the Torbay Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Guidance within the NPPF provides similar guidance to the above and notably Para 180 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity. Policy C4 of the Torbay Local Plan seek the retention of trees and other natural features.

In terms of ecology, the site has limited value in terms of flora and fauna. It comprises primarily of building with dense scrub in central portion of the site comprising immature elm and sycamore with buddleia, bramble and ivy. Elsewhere there is some hardstanding, introduced shrub and a single cedar tree.

The development site lies approximately 440m from the Lyme Bay and Torbay Special Area of Conservation (SAC) and the Torbay Marine Conservation Zone (MCZ). There is a potential impact on both designations by water quality from surface water during and post-construction.

There could be potential for increased recreational pressure identified in the Natural England 'Site Improvement Plan' for the SAC1 as a threat to the local sea caves and sea grass. The small proportion of residents who would potentially participate in water sports and impact these features are considered to be 'negligible' and therefore imperceptible from existing variations in annual and seasonal visitor numbers. Without mitigation, the proposals will result in a Likely Significant Effect on the Lyme Bay and Torbay SAC and Appropriate Assessment is therefore required. This assessment has been undertaken and confirms that with mitigation secured through conditions to prevent pollution (through a Construction Environmental Management Plan (CEMP) and drainage conditions) there are not likely to be any significant impacts. The Devon County Council Ecologist is satisfied subject to a suggested planning condition requiring a CEMP.

In terms of biodiversity, in-line with Policy NC1 and guidance contained in the NPPF, measures to enhance biodiversity should be duly considered and it is noted that the submitted ecology report includes biodiversity enhancement measures. The buildings within the site were classed as presenting 'Low' bat roost suitability. The subsequent bat emergence surveys did not identify any bats roosting within the building. The existing scrub on site is considered sub optimal for protected species. The proposal aims to create habitats including biodiverse green roof seeded with wildflower mix, shrub planting to benefit pollinators and new native tree planting would provide enhanced foraging habitat for bats. Further conditions have been suggested to require a LEMP and long term management of these features.

In light of the conclusions above the development is considered comfortably aligned with the aims and objectives of Policies NC1 of the Torbay Local Plan, Policy TE5 of The Torquay Neighbourhood Plan, and guidance contained within the NPPF.

9. Drainage and Flood Risk

The NPPF's key guidance (Para 167) states that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and where appropriate applications should be supported by a site-specific flood-risk assessment. It furthers that development should only be allowed in areas at risk of

flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

The application site sits within the wider Torbay Critical Drainage Area as designated by the Environment Agency and there is also a linear flood risk area that partly straddles the site as it runs south following the valley floor and culverted River Fleet down Teignmouth and Lymington Road towards the coast to the south.

The application is supported by a detailed Flood Risk Assessment (Aquatech). When taking into account the future risk of coastal flooding, sea level rise, the ground floor levels of the proposed building has been identified as 4.650m. The FRA proposes discharging surface water drainage directly to Torquay Inner Harbour. This proposal complies with the requirements of the Torbay Critical Drainage Area. As the surface water drainage will be discharging into Torquay Inner Harbour the effects of high tides on the outfall have been included within the hydraulic modelling. Further details have been submitted clarifying the capacity of the pipework. The Council's Engineering Service Manager has no objection.

The Environment Agency has no objection to the application as submitted provided that conditions are included within any permission granted to secure the inclusion of flood resistance and resilience measures within the development and a Construction Environment Management Plan (CEMP). South West Water raise no objection to the proposed scheme and its drainage solution.

In light of the above the proposal is deemed acceptable on flood risk and surface water drainage grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained within the NPPF.

10. Low Carbon Development

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

The submitted Design and Access Statement (Kay Elliott) includes an Energy Statement section that states that the strategic approach to the development will be to reduce demand for energy consumption in the first instance (Be Lean) prior to the consideration of integrating low carbon / zero carbon energy sources (Be Clean and Be Green).

The Statement details that design measures include an efficient building form (stacked floor plates (apartments), low wall to floor ratio and terrace design), high levels of thermal insulation, low fabric air permeability, energy efficient LED light fittings and controls, and east

and west facing units allowing for passive solar gain. Regarding further aspirations the Energy Statement states that there will be a strategy to consider the use of clean energy source using heat pump technologies for space heating, and to maximise CO2 reduction the potential for renewable energy sources will be assessed. As these aspirations are not detailed it is considered appropriate to suggest a planning condition to capture due consideration and possible integration of these aspirations.

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

11. Other Considerations

The Council is unable to demonstrate a 3 or 5 year supply of deliverable housing land. 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 current housing supply position, it is advised that in determining the application, the tilted balance is in favour of sustainable development as set out in Para 11 of the NPPF must be applied. Para 11 of the NPPF states 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 be in conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where the application of policies in the NPPF that protect areas or assets of particular importance (in this case heritage assets) provides a strong reason for restricting the overall scale, type or distribution of development or 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 regeneration of the site finding a balance between commercial and residential uses. 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.

The proposed Class E units will create jobs and depending on the final use will secure wider economic benefits through their commercial use.

The integration of the proposed public realm into the wider Strand project will boost tourism through an enhanced harbourside.

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

The public square and creation of the publicly accessible amenity space will also have a social benefit.

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 heritage assets, ecology and biodiversity, contamination, drainage and carbon reduction. These matters have been considered in detail above.

The environmental benefits identified are marginal in the case of any biodiversity net gain, addressing contamination, and mitigating flood impacts. There is an environmental benefit to providing 16 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

Affordable Housing

A commuted payment is considered the optimum way of securing off-site provision. The policy framework clearly allows for off-site provision in lieu of on-site and a total requirement for contributions is set at £259,200.

CIL

The application is for residential development in Zone 1 where the Community Infrastructure Levy (CIL) is £30 per square metre of additional gross internal floor area created.

The CIL liability for this development is £30 per square metre.

The application form states new floorspace created is 1617sqm, assuming this is all liable floorspace this would present a CIL levy of £48,510.00.

S106

As CIL liable development the application is not subject to 'sustainable development' obligations as identified within the Council's Adopted Affordable Housing SPD and hence it is not appropriate to seek obligations to counter potential pressure upon schools or parks etc. It would however be necessary to secure site acceptability matters where it is needed to make the development acceptable in planning terms, but none are identified.

EIA/HRA

EIA

P/2022/0637 - Request for Screening Opinion for redevelopment of former Debenhams store to five ground floor commercial units and sixteen residential apartments. EIA not required.

HRA

An HRA was undertaken by the Devon County Council Ecologist. Due to the scale, nature and location and, subject to conditions to secure mitigation, this development is not considered to have a likely significant effect on European Sites.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing. The scheme aligns with the regeneration aims of the Council and would minimise impacts on heritage, ecology and highway matters set out

above. The public benefits of the proposed development weigh heavily in favour of the development.

Conclusions and Reasons for Decision

The proposal is considered a good use of a vacant brownfield site that would provide much needed housing to help meet local need. It would also provide accessible ground floor commercial uses designed around a new set piece square to be integrated into The Strand.

The proposals are in accordance with the provisions of the Development Plan when taken as a whole and the 'Tilted Balance' adds significant weight in favour of the development in the absence of significant harm being identified.

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 (Policy TS4 - Support for Brownfield and Greenfield development). There are deemed to be no significant adverse impacts, as outlined within this report.

Officer Recommendation

Approval subject to:

The Council commitment to make the off-site affordable housing contribution prior to occupation of the ninth residential unit being confirmed to the satisfaction of the Divisional Director - Planning, Housing & 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

1. Written scheme of investigation

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

Reason

To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and para 205 of the National Planning Policy Framework (2021), that an appropriate record is made of archaeological evidence that may be affected by the development.

This condition needs to be a pre-commencement condition to ensure the impacts of the development are mitigated from the beginning of the development.

2. Construction Management Plan

The development hereby approved shall take place in strict accordance with a Construction Management Plan which shall be submitted to and been approved in writing by the Local Planning Authority prior to the commencement of development. The plan must demonstrate

the adoption and use of the best practicable means to reduce the effects of noise, & and dust. The plan should include, but not be limited to:

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

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

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

Reason

To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users, having regard to Policies NC1 and TA1 of the Torbay Local Plan.

This condition needs to be a pre-commencement condition to ensure the impacts of the development are mitigated from the beginning of the development.

3. Construction Environment Management Plan (CEMP)

No development shall take place until a detailed Construction Environment Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. This Plan shall include details of all permits, contingency plans and mitigation measures that shall be put in place to control the risk of pollution to air, soil and controlled waters, protect biodiversity and avoid, minimise and manage the productions of wastes and which would include a detailed method statement for any high-risk activities, including potential discharge into the adjacent SAC, with particular attention being paid to the constraints and risks of the site. Thereafter the development shall be carried out in accordance with the approved details and any subsequent amendments shall be agreed in writing with the Local Planning Authority.

Reason

To ensure that adequate measures are put in place to avoid or manage the risk of pollution or waste production during the course of the development works.

This condition needs to be a pre-commencement condition to ensure the impacts of the development are mitigated from the beginning of the development.

4. Landscape and Ecological Management Plan (LEMP)

Prior to the first occupation of the development a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, shall be submitted to the Local Planning Authority and shall include, but not be limited to, the following:

- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of responsibility for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

All post-construction site management shall be undertaken in accordance with the LEMP for the lifetime of the development

Reason

To secure a satisfactory form of development in accordance with Policies DE3, SS8, C4 and NC1 of the Torbay Local Plan and THW4 of the Torquay Neighbourhood Plan.

5. FRA / Drainage

The development shall be carried out in accordance with the submitted Flood Risk Assessment ref. no. AT2497 by Aqua Tech (submitted 08.07.2022) and the flood resistance resilience and mitigation measures it details.

The flood resistance resilience and mitigation measures shall be fully implemented prior to occupation of the building and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

The approved surface water drainage scheme shall be implemented in full prior to the first occupation of the development and shall be retained and maintained thereafter throughout the lifetime of the development.

Reason

To ensure that there will be no significant increase in the quantity or change in the quality of water leaving the Site. To reduce the risk of flooding to the proposed development and future occupants and to ensure safe access and egress from the development during an extreme flood event, in the interests of adapting to climate change and managing flood risk, and in order to accord with saved Policy ER1 and ER2 of the Torbay Local Plan and guidance contained in the NPPF.

6. Hard and Soft Landscaping

Prior to the first occupation of the development a detailed hard and soft landscape plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall include details for maintenance of the landscaping. The approved hard surfacing shall be implemented prior to the first occupation or use of the development, and the approved soft landscaping shall be implemented in full within the first available planting season following the first occupation of the development unless an alternative timetable has been agreed in writing with the Local Planning Authority. The landscaping shall be maintained in accordance with the approved maintenance plan.

In the event of failure of any trees/plants, planted in accordance with any approved scheme, to become established and to prosper for a period of 5 years from the date of the completion

of implementation of that scheme, such trees/plants shall be replaced in the next planting season and maintained in accordance with the landscape plan.

Reason

In the interests of visual amenity and in accordance with Policies DE1, SS8 and C4 of the Torbay Local Plan and Policies THW4 and TH8 of the Torquay Neighbourhood Plan.

7. Ecology - Nesting season

The removal of vegetation shall only be undertaken outside of the bird nesting season (March-September inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds and a record of the inspection shall be made and made available to the Local Planning Authority upon request. If nests are found no works shall be undertaken until the birds have fledged and a buffer zone of at least 5 metres must be established around the nest and an effective barrier put in place to ensure this remains undisturbed

Reason

To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Torbay Local Plan and the NPPF.

8. Ecology – Biodiversity Enhancement

Prior to the first use of the development measures to maximise opportunities for biodiversity enhancement in and around development, in order to deliver a 104% net gain for biodiversity, shall be submitted to and approved in writing by the Local Planning Authority. The submitted detail will recognise ecological features lost and include a measurable guide to demonstrate a net gain for biodiversity.

The approved measures shall be incorporated within the development prior to the developments first use unless an alternative phasing is agreed pursuant to this condition and the approved measures shall be retained and maintained thereafter.

Reason

To ensure the development positively incorporates biodiversity features proportionate to its scale, in accordance with Policy NC1 of the Torbay Local Plan and advice contained within the NPPF.

9. External lighting

Prior to the first use of the development an external lighting plan, including security lighting, which seeks to ensure no undue impact upon adjacent occupiers or wildlife habitats, shall be submitted to and approved in writing by the Local Planning Authority.

The development shall proceed in full accordance with the approved lighting plan and no additional external lighting shall be incorporated within the development during its lifetime.

Reason

In order to protect visual amenity and the amenity of adjacent occupiers by maintaining a satisfactory form of development in accordance with Policies DE1, DE3 and NC1 of the Torbay Local Plan.

10. Public Realm

Prior to the first use of the commercial units hereby approved, full details of the public realm area (as shown on plan 0290-BDL-XX-XX-DR-L-0800-P08) shall be submitted to and approved in writing by the Local Planning Authority. These details shall include dimensions and materials of the external surfaces, seating, planters and lighting. The public realm shall

be installed in accordance with the approved details as approved prior to the use of the commercial units. The public realm shall thereafter be retained and maintained as a public area and shall not be used for any other purpose.

Reason

In the interests of design and public amenity in order to accord with Policy DE1 of the Torbay Local Plan, TH8 of Torquay Neighbourhood Plan and the NPPF.

11. Detailed Design

Prior to the installation of any external materials within the development details of the following shall be submitted to and approved in writing by the Local Planning Authority:

1. Samples, physical or digital of all proposed material finishes, including colour code where applicable and source/type of the facing and roofing materials,
2. Detailed drawings of all proposed windows, doors, balconies, fascia and eaves, and section / reveal detail to a scale of between 1:1 and 1:10 and means of opening where applicable,
3. Details of all balcony enclosures, including an assessment and proposed measures to afford due protection to the amenity of occupiers neighbouring buildings,
4. Details of all proposed fabric parasols and canopies within the public square,
5. Details showing the ironwork trellis on western boundary,
6. Full details of proposed public art.

The development shall proceed in full accordance with the approved detail and shall be retained as such for the lifetime of the development.

Reason

In order to protect visual amenity in accordance with Policies DE1 and DE3 of the Torbay Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

12. Column retention and design

No development shall take place above slab level until full details, including a timetable for the works, have been submitted to and approved in writing by the Local Planning Authority.

1. Repair and making good of canopy columns.
2. Proposed column positions.
3. Solar panels and lighting.

All the works shall take place in accordance with the approved specification, the approved timetable of works and shall be retained as such for the lifetime of the development.

Reason

In order to protect visual amenity in accordance with Policies SS10, DE1 and DE3 of the Torbay Local Plan 2012-2030, Policy TH8 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

13. Boundary Treatments and Means of Enclosure

Prior to their construction or installation, details of all boundary treatments, gates and retaining structures shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved detail and the boundary treatments shall be retained as approved at all times during the lifetime of the development. No additional or alternative means of enclosure shall be provided at any time.

Reason

In the interests of design and visual amenity, in accordance with Policy DE1 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

14. Parking Provision

Prior to the first occupation of any unit within the development hereby permitted, the parking facilities, manoeuvring areas, and electric charging points shown on the approved plans associated with that unit shall be provided and thereafter permanently retained for the use of vehicles associated with the development.

Reason

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

15. Electric Charging Facilities

Notwithstanding details submitted in support of the application, prior to the first occupation of any apartment hereby approved details for the provision of at least one vehicle electric charging facility to serve that apartment shall be submitted to and approved in writing by the Local Planning Authority.

The approved facilities shall be implemented in full prior to the first occupation of each apartment and retained and maintained thereafter.

Reason

To secure an appropriate form of development in accordance with Policies TA3 and SS14 of the Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan.

16. Cycle Provision

Prior to the first occupation of the apartment building the cycle storage facilities, as detailed within the approved plans, shall be completed and made available for the purpose of cycle storage to serve occupiers of the development, and prior to the occupation of each dwelling the cycle storage facilities for that dwelling shall be completed and made available for the purpose of cycle storage to serve the dwelling. Once provided, the storage arrangements shall be retained for the life of the development for such purposes.

Reason

In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan 2012-2030.

17. Waste Management Plan

The development shall be carried out in accordance with the submitted Waste Management Plan ref. no. 3436 by TDA (submitted 08.07.2022) and the mitigation measures it details. It shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason

To ensure that the private waste collection strategy for the apartment building and commercial units, which will not receive waste collection from the local authority due to the distance of the collection point from the adopted highway network, accords with locally established recycling rates, to accord with Policies W1 and W2 of the Torbay Local Plan.

18. Implementation of refuse facilities (dwellings)

Prior to the occupation of any dwelling hereby approved, the refuse and recycling facilities shown on the approved plans shall be provided for that dwelling. Once provided the storage arrangements shall be retained and maintained for the life of the development.

Reason

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

19. Implementation of refuse facilities (commercial units)

Prior to the occupation of the commercial units hereby approved, the refuse and recycling facilities shown on the approved plans shall be provided for those units. Once provided the storage arrangements shall be retained and maintained for the life of the development.

Reason

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

20. Travel Plan

Prior to the first occupation of the development a Sustainable Travel Plan that seeks to meet Policy requirements of a 30% modal shift to foot, cycle and public transport, with appropriate mitigation measures should these targets not be met, shall be submitted to and approved in writing by the Local Planning Authority. The approved travel plan shall be implemented for the lifetime of the development.

Reason

To ensure sustainable travel modes are duly promoted and healthy lifestyles promoted, in accordance with Policies TA1, TA2, DE1 and SC1 of the Torbay Local Plan 2012-2030.

21. Energy

The development shall proceed in accordance with the energy saving measures outlined within the submitted and approved Energy Statement by TDA (submitted 08.07.2022). The approved measures shall be fully incorporated within the scheme prior to its first use and shall be retained and maintained for the lifetime of the development.

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

22. Secured by Design

Prior to the first use of the development evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable and the measures shall be incorporated into the development prior to that part of the development to which they relate being brought into use.

Reason

In the interests of crime prevention in accordance with Policy DE1 of the Torbay Local Plan and Policy TH2 of the Torquay Neighbourhood Plan.

23. Noise

No development shall take place above slab level until a detailed Stage 2 acoustic report (as recommended in the Stage 1 Acoustic Review for the re-development of former Debenhams site, 12-14 The Strand Torquay, undertaken by S B CONSULTING Engineering & Acoustics Limited 28/10/22) has been submitted to, and been approved in writing by the Local Planning Authority. The Stage 2 report shall include a scheme of noise insulation measures for the proposed residential accommodation and shall include calculation of façade sound insulation levels, prediction of internal noise levels in habitable rooms, a review of the ventilation strategy to support the acoustic design, a review of external amenity areas, and details of the design of the separating wall with Yates public house (15-16 The Strand). The aim shall be to achieve acceptable living conditions as defined in ProPG and BS8233:2014.

The agreed measures shall be implemented prior to those units to which the measures relate are brought into use and shall be retained and maintained for the lifetime of the development.

Reason

In order to safeguard the amenities of future residential occupiers and protect the viability of local businesses. The details are needed prior to development above slab level so that measures can be incorporated into the build.

24. Class E consent

The commercial units hereby approved shall be used only for purposes falling within Use Class E (a) and (b) of The Town and Country Planning (Use Classes) Order, 1987 (as amended) or in any provisions equivalent to those Classes in any Statutory Instrument revoking and re-enacting that Order and for no other purpose without the prior grant of planning permission.

Reason: To ensure that the development is compatible with surrounding uses. In order to accord with Policies TC2, TC3 and TC4 of the Torbay Local Plan 2012-2030.

25. PD removal

Notwithstanding the provisions of Article 3, Schedule 2, Part 7, Class A, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any Order amending or revoking that Order, no extensions or alterations shall be made to the commercial units hereby approved.

Reason

To maintain an acceptable form of development in accordance with Policies DE1, TA2, TA3, C4, NC1 and ER1 of the Torbay Local Plan 2012-2030 and the Torquay Neighbourhood Plan.

26. Extraction equipment

Prior to the installation of the following in the development hereby permitted, details (including manufacturer's specifications, colour, materials and appearance) shall be submitted to and agreed in writing by the Local Planning Authority:

- a) any external flues or vents to the kitchen ventilation and
- b) odour control equipment

These features shall be installed in accordance with the approved details and retained thereafter.

Reason

To ensure a satisfactory form of development in the Torquay Harbour Conservation Area in accordance with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

Informative(s)

1. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.

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

3. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease, and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

Relevant Policies

Development Plan Relevant Policies

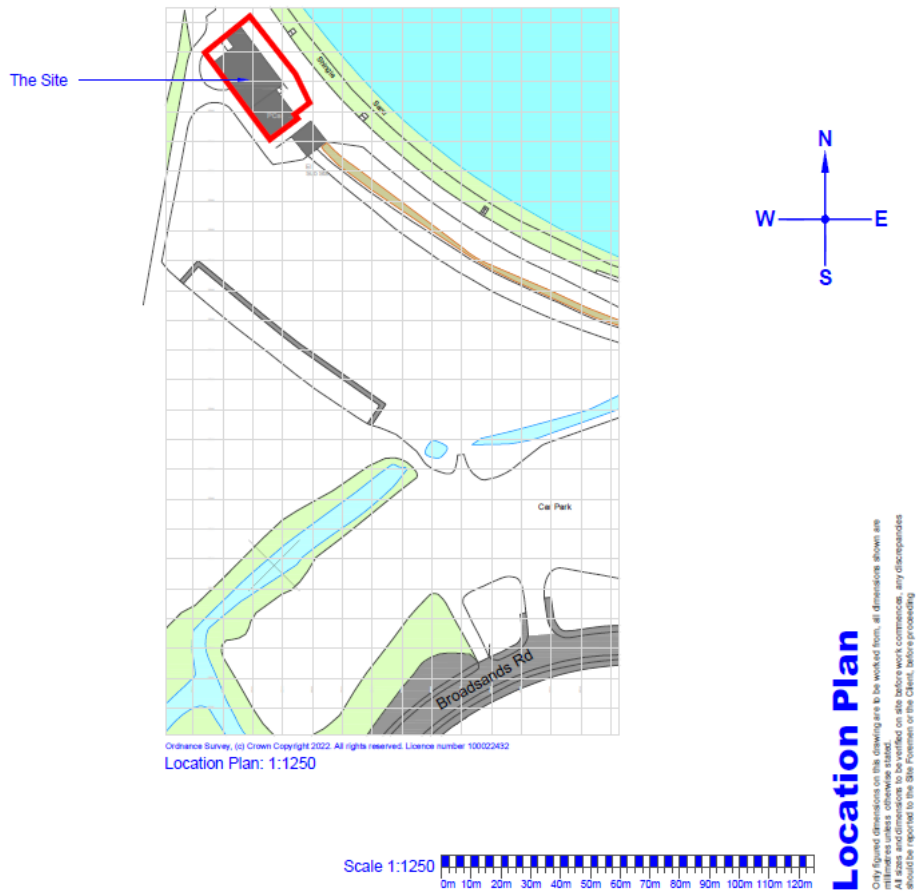
SS1 - Growth Strategy for a prosperous Torbay
SS3 - Presumption in favour of sustainable dev
SS8 - Natural Environment
SS9 - Green Infrastructure
SS10 - Conservation and the historic environment
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
SS14 – Low carbon development and adaption to climate change
SC1 – Healthy Bay
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements
C4 - Trees, hedgerows and natural landscape
H1 - Applications for new homes
HE1 - Listed buildings
DE1 - Design
DE3 - Development Amenity
DE4 – Building heights
ER1 - Flood Risk
ER2 - Water Management
ER3 – Contamination
ES1 – Energy
W1 - Waste management facilities
W2 – Waste Audit for major and significant waste generating development
NC1 - Biodiversity and geodiversity

Torquay Neighbourhood Plan

TS1 - Sustainable Development
TS4 - Support for Brownfield and Greenfield development
TH1 – Housing allocations
TH8 - Established architecture
TH9 - Parking facilities
TE5 - Protected species habitats and biodiversity
TH2 - Designing out crime

TTR2 - Sustainable Communities
THW3 – Community facilities
THW4 - Outside space provision
THW5 - Access to sustainable transport

Application Site Address	Beach Cafe Broadsands Road Paignton TQ4 6HL
Proposal	Formation of additional decking areas and ramps, alterations to existing decking, extensions and alterations to building, formation of sports equipment storage and changing area, refuse area, ground floor retail unit, internal alterations to increase internal seating, solar PV and associated works.
Application Number	P/2022/0811
Agent	Mr. Terry Dillon
Applicant	Mr. Michael Smith
Date Application Valid	20/07/2022
Decision Due date	14/09/2022
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below 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	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Verity Clark



Site Details

The application site comprises of a split level two storey building located on the promenade opposite Broadlands Beach. The site is currently in use as a restaurant/takeaway. Access to the building by the public is gained via steps or a ramp up from the promenade. The building features a flat roof with rendered walls and large areas of glazing on the promenade facing elevations and a large external terrace area on the south east of the building. The rear, facing towards the green is more utilitarian in nature featuring a brick lower ground floor level facing the public toilets.

The site is located in the Countryside Area, Undeveloped Coast and a Coastal Change Management Zone. The site is located within Flood Zone 3 and the promenade is part of the South West Coast Path. The site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe Bats associated with the South Hams SAC. The Brixham Peninsula Neighbourhood Plan identifies the site as a Settlement Gap E3-3. The site is also adjacent to a County Wildlife Site – Broadlands Marsh.

Description of Development

The application seeks permission for the formation of additional decking areas and ramps to the front promenade facing elevation, alongside alterations to the existing decking area. The proposal also seeks consent for an extension to the existing building alongside an entrance extension and overall alterations to the building including the use of cladding, new fenestration and solar PV. A sports equipment storage and changing area will be relocated to the lower ground floor level and a new refuse area formed. At ground floor level a Class E retail unit will be formed alongside internal alterations to increase the restaurants internal seating.

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:

Development Plan

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

Material Considerations

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

Summary Of Consultation Responses

Highways:

The Local Highway Authority generated a response to the withdrawn submission P/2022/0216 in which no objections were raised. The same would apply to this resubmission, Highway's would raise no objection. However, I would suggest that a review of the Pavement Cafe Licence is undertaken if necessary.

Police:

The overall security of the building is key to deterring and preventing unauthorised access as such any new external doors to the bin store, café, and storerooms should be sourced as tested and certificated products to a minimum standard of PAS 24 2016 or LPS 1175 Issue 8 A1 or equivalent.

The external furniture should be of a robust, vandal and graffiti resistant design and if the intention is to leave any furniture outside it should be fixed to the ground or decking to prevent them from being stolen or used to cause damage. Ideally the table and chairs should be a design that can be easily moved and stored inside the café or storage area when not in use.

Graffiti tends to attract further graffiti, it is advised that if it occurs it is removed as soon as possible. It is recommended that finishes that make this task easier to perform are considered. The surface of the elevations should be coated with an anti-graffiti coating or be designed for ease of maintenance.

It is welcomed that Venus operates an external CCTV system at all their locations, it is recommended that any new cameras are installed if required to cover new external entrance and exit points. A clear passport to compliance document should be in place prior to installation to ensure that the system and each camera have a clear purpose and needs of the user are being met.

I am not in a position to advise how to go about procuring or installing a monitored CCTV system, but an accredited NSI or SSAIB installers should be used. To search for a local accredited and approved CCTV installer please click on these links www.nsi.org or www.ssaib.org.

It is recommended that the premises is also fitted with a monitored intruder alarm. For police response, the system must comply with the requirements of the Security Systems policy, which can be found at Secured By Design under the 'Group Initiatives' tab.

It is also recommended that the cycle stands are secured with a steel ground anchor into a 300mm foundation.

I would respectfully request details on the lockers being provided to open swimmers, and how they will be secured in place.

Secured By Design is a free from charge police owned crime prevention initiative which aims to improve the security of buildings and their immediate surroundings in order to provide safer and more securer places

Drainage:

Response dated 12/08/2022:

1. The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this building lies within Flood Zone 3.
2. Where sites are identified within Flood Zone 3 the developer is expected to submit a site specific flood risk assessment. The flood risk assessment must demonstrate that the development will be safe from all sources of flooding without increasing flood risk elsewhere and where possible will reduce flood risk overall. Within the site specific flood risk assessment I would have expected to see the sources and predicted depth of flooding being identified, the proposed finished floor levels for the ground floor, details of safe access and egress routes, details about what to do in an emergency including safe refuges, details of flood mitigation measures such as watertight doors, flood barriers, etc. being proposed including an emergency flood plan. In addition, I would expect to see that the owner of the building would be signed up to the Environment Agency's coastal flood warning system.
3. The submitted flood risk assessment fails to address the majority of the issues identified in item 2 above.
4. It should be noted that the Torbay Council Level 2 Strategic Flood Risk Assessment, Broadsands Overtopping Hazard Maps clearly identifies this site as having an extreme flood hazard and the depths of flooding would be considered a danger to all. This document is available on Torbay Council's website.

As a result, until the flood risk assessment has been updated to take full account of the risk of flooding and identifies all the requirements highlighted above, I would recommend that this planning application be refused.

Response dated 11/10/2022 following the submission of further information:

1. The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this building lies within Flood Zone 3.
2. The submitted information addresses my concerns raised in my previous correspondence however I would like to highlight that the maps identified by the developer from the Level 2 Strategic Flood Risk assessment are for a breach failure

of the coastal defence at Broadsands and not the Broadsands Overtopping Hazard Maps.

3. The owner/manager of the restaurant must be signed up to the Environment Agency's coastal flood warning system for Torbay.

Providing the development is constructed in accordance with the latest documents, I have no objections on drainage grounds to planning permission being granted.

DCC Ecology:

Response dated 26/08/2022:

Given the application includes proposals extensions and alterations to an existing building, there is potential for protected species to be impacted by these proposals. Furthermore, the site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe bats associated with the South Hams SAC.

Currently there is insufficient detail provided by this application to confirm that these proposals will not have any impacts to protected and priority species and habitats. This is contrary to national and local planning policies, and as such the application cannot be determined until an ecology report from a suitably qualified ecological consultant has been submitted for comment. If this information is not submitted, then this application should be refused.

Please also advise the applicant that there is no such bird species as a 'Circling Bunting', as they have incorrectly referenced in paragraph 5.12 of the Design and Access Statement.

Response dated 25/10/2022 following the submission of further information:

Information provided sufficient. Conditions required.

Without mitigation, the proposals could result in a Likely Significant Effect on the Lyme Bay and Torbay SAC and Appropriate Assessment is therefore required.

Appropriate Assessment

Impacts

Construction activities have the potential to generate waterborne and airborne pollutants which could impact the SAC.

Mitigation

Construction would be undertaken following standard pollution prevention and dust control measures. These will be set out in a Construction Environmental Management Plan (CEMP) and implemented during the construction works.

Provided these mitigation measures are adhered to, there will be no Likely Significant Effect on the SAC.

Natural England:

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

Environmental Health:

Having had an opportunity to review the above application I do not believe that the increase in opening hours until 8:00pm or other proposals in relation to the Venus café will have a direct impact on nearby residents when considered on their own merits. Although I would empathise with residents comments regarding people driving cars at speed down Broadsands Road or around the car park this anti-social behaviour has no direct link to the Beach Café and should be dealt with either by the Police or Parking Services. I would have thought if anything the prolonged opening hours for the café would mean more of a presence in the area which would help discourage such behaviour. If the proposals included activities such as loud music/entertainment etc.... then I would have suggested perhaps obtaining a noise consultant's report, but as it is I would have no objections.

Broadsands Churston and Galmpton Neighbourhood Forum:

No response received.

Fire Brigade:

No response received.

Environment Agency:

No response received.

Natural Environment Services:

No response received to this application.

Comments received for P/2022/0216 on 06/04/2022 for similar scheme:

No arboricultural objections are raised. However should the construction process require pruning of the adjacent tree or ground works/improvement works within the crown spread of the tree then we would need to be involved.

Summary Of Representations

Publication type: Neighbour notification letters/site notice.

At the time of writing 5 letters of objection, 6 letters of support and 2 representations have been received (these are available to read in full online). Issues raised:

Objection:

- Overdevelopment
- Anti-social behaviour
- Safety concerns from late night swimming
- Height
- Width
- Drainage
- Plans do not detail all of lower ground floor use
- Landscaping and impact from weather
- Impact on parking in local roads
- Impact on views
- No additional substantial employment opportunity
- Permanent structure – impact on promenade
- Future development
- Potential for damage to building
- Emergency vehicle access
- Scale
- Impact on Water Sports Business
- Poor design
- Safety of pedestrians
- Location of bicycle parking
- Location of store/offices and changing rooms

Support:

- The proposal is fully in the spirit of community aspirations stated in the Brixham Peninsula Neighbourhood Plan
- Improvement to a thriving, quality business and visitor amenity
- Tourism

- Local Plan supported the development of a Water sports centre under policy TLP SC2
- Does not restrict promenade
- Improved facilities
- Encourage an increased use of the beach
- Traffic volumes seasonal
- Parking charge income
- Local employment
- Increased spend for local economy
- Aligns with adopted Destination Management Plan
- Does not increase height

Representations:

- Impacts from evening opening
- Safety
- No lighting along the promenade or car park
- Noise
- Increased congestion
- Height
- Future development
- Impact on area
- Impact on promenade

Relevant Planning History

P/2022/0216 Extension of existing raised balcony seating, formation of sports equipment storage, meeting rooms, ground floor retail unit. Internal alterations to increase internal seating. Withdrawn 14/04/2022

CN/2018/0043 Discharge of Condition 1 re: P/2017/1291 (Removal of front canopy and covering over external store area. Refurbishment of existing building, including access ramps, terrace with glazed screen and various external alterations) Condition 1 - Tree Protection. Approved 17/04/2018

P/2017/1291 Removal of front canopy and covering over external store area. Refurbishment of existing building, including access ramps, terrace with glazed screen and various external alterations. Approved 9/03/2018

Planning Officer Assessment

Key Issues/Material Considerations

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

Planning Officer Assessment

1. Principle of development
2. Impact on Visual Amenity and Landscape
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology & Biodiversity
6. Flood Risk and Drainage
7. Sustainability

1. Principle of development

The proposal is for extensions and works to the existing cafe/restaurant building including the formation of a ground floor retail unit. The site is designated as countryside under Policy C1 of the Torbay Local Plan. Policy C1 states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy C1 goes on to state that outside settlement boundaries, the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment:

- 1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;*
- 2. Development required for forestry, horticulture or agriculture;*
- 3. Touring caravans and tents;*
- 4. Tourist facilities appropriate to the rural area;*
- 5. Development associated with outdoor sport and recreation appropriate in a rural area;*

6. *Sensitive conversion, alteration and extension of existing buildings;*
7. *Essential improvements to the highway network; and*
8. *Appropriate renewable energy development.*

The site is also located in the undeveloped coast where Policy C2 seeks to conserve the character of the undeveloped coast and seek to enhance its distinctive landscape, seascape, biodiversity, geological, recreational and cultural value. Development will not be permitted in the undeveloped coastal area unless proposals satisfy the following requirements:

1. *Maintain the unspoilt character of the coastline, coastal landscape and seascape;*
2. *Maintain or improve public access for recreation; and*
3. *Provide sensitively designed development, including tourism uses, where there are clear economic or sustainability benefits that cannot be realised in alternative locations.*

Development outside the undeveloped coast which may harm the intrinsic character of the area will be assessed with regard to visual impact.

In the developed areas of coast, development will be permitted where it provides benefit to Torbay's economy and does not unacceptably harm the landscape character and appearance of natural, historic or geological assets.

Policy E3 Settlement Gaps of the Neighbourhood Plan states that within the settlement gaps development proposals must meet the criteria set out in Policy C1 of the Torbay Local Plan. No development that visually and or actually closes the gaps between these urban areas will be supported. The site is located in the Neighbourhood Plan settlement gaps E3-3.

The proposal seeks to extend an existing cafe building to improve the existing facilities. The proposal will also provide the formation of a ground floor retail unit. Policy C1 allows for sensitive extensions of existing buildings, tourist facilities appropriate to the rural area and development associated with outdoor sport and recreation. It is considered that the proposal would accord with these forms of development which are considered to be acceptable in principle within the countryside area. In respect of the undeveloped coast designation, given the proposal relates to an existing building it is considered reasonable to consider the criteria given under 'the developed coast'. It is considered that the expansion and improvement of the existing facilities on the site and the provision of additional tourism uses would benefit the economy. Consideration of the impact on the landscape character and appearance will be analysed in detail later in the report.

As the proposal is considered to comply with Policy C1 of the Local Plan, Policy E3 of the Neighbourhood Plan is considered to be adhered to. This is on the consideration of principle; other material planning considerations will be detailed later in the report.

The site is also located within a coastal change management area where Policy C3 of the Local Plan notes that the Council will support measures that are compatible with or actively support coastal change management. Given the proposal relates to an existing building and use which directly links to users of Broadsands beach, providing the proposal does not adversely affect the natural and historic environment of the area, including geodiversity, maritime archaeology, marine ecology and the integrity of sites protected under European legislation, the principle of this form of development within this designation is considered acceptable.

The site is located outside of the town centre and proposes a new retail unit (Class E) with a floor area of approximately 25.6m² although shown as a combined shop and takeaway on the proposed floor plan. As the proposal is for a retail use outside of the town centre in accordance with paragraph 87 of the NPPF a sequential test is required unless the proposal is in accordance with an up to date Local Plan. Policy TC3 of the Local Plan states that new out of centre retail development must meet the following criteria:

1. Proposals should not cause any unacceptable impacts either individually or cumulatively on the vitality and viability of existing and planned centres in the catchment area of the proposal, including site proposals in the Local Plan and/or neighbourhood plans. Proposals for Use Class A1 retail comparison or convenience goods over 500 square metres gross, and town centre uses over 500 square metres gross, must provide a retail impact assessment;
2. No other town centre or edge-of-centre site is suitable, available or viable; and
3. Development would improve the spatial distribution of accessible facilities throughout the Bay and help to achieve greater social inclusion.

Given the size and location of the proposed unit within the key tourist area of Broadsands beach and promenade, and the presence of the existing café use and adjacent business, the proposed retail unit would serve the users of the area, enhancing the existing tourist provisions of the area and would therefore not result in a detriment to the vitality and viability of the town centre. A sequential test is not

considered to be required in this instance and the proposal, with the addition of the recommended condition is considered to accord with Policy TC3 of the Local Plan.

A condition removing the permitted development rights of the Class E shop to other Class E uses, other than those related to food and the change of use from Class E to other use classes, is recommended given other uses would likely be inappropriate in this rural location.

The principle of the development is therefore considered to be acceptable and in accordance with Policies C1, C2, C3 and TC3 of the Local Plan and Policy E3 of the Neighbourhood Plan.

2. Impact on the character and appearance of the streetscene and surrounding area

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 Design of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area and Policy E3 of the Neighbourhood Plan states that no development that visually and or actually closes the gaps between urban areas identified as settlement gaps will be supported.

At ground floor level the existing building features an indoor restaurant seating area with associated kitchen, storage area and toilets. An existing service hatch operates as a takeaway and the restaurant is served by a raised outdoor seating terrace accessed externally via the existing ramp or internally through the restaurant. Benches are set up as outside seating associated with the restaurant on the promenade. The northern section of the building is also used for surf storage and as a changing area.

The application seeks permission for the formation of additional decking areas and ramps on the north east promenade facing elevation. A lower deck area which will sit 34cm above promenade level will provide an area of outside seating, area for open swimmers including lockers in addition to cleaning, chair and bin storage. Ramps and steps will lead to a higher area of decking 1.306m above promenade level which will sit in front of the building and will include a semi-circular area for raised seating

on the northern corner of the building. The existing raised decking area on the south east of the building will not be increased in footprint but will be split into two sections, the smaller remaining at the same height, the larger raised 30cm in height.

Alterations to the existing building are proposed including a new entrance porch, new fenestration across the whole building including bi-fold doors to the promenade elevation, installation of wooden cladding to areas of the building and terraces, a 'log finish' with post and glazing balustrading and rope handrails to the decking areas. An extension to the north west of the building is also proposed to facilitate a freezer and chiller room associated with the restaurant at ground floor level and a dedicated bin storage area at lower ground floor level. The proposed elevations show that the proposal will result in an increase in height of the existing building by approximately 20cm and will feature solar PV on the roof.

The internal reconfiguration will allow for a greater level of internal restaurant seating at ground floor level, whilst retaining the takeaway and adding a small retail unit and moving the surf storage and changing area to the lower ground floor, accessible from the rear of the building.

The application follows on from withdrawn application P/2022/0216 which sought to extend the existing raised terrace area significantly forward towards the promenade. Officers felt that the proposed raised balcony seating and extension would be highly prominent and would be forward of the building line. It was considered that the proposal would be incongruous and have a poor design that comprises an important vista and promenade.

The current application seeks to overcome these concerns with tiered levels of decking. The first and closest to the promenade is 34cm above promenade level and will formalise what is currently used as an outside seating area by the restaurant. The next tier, which does include a semi-circle section which extends directly next to the promenade, sits 1.306m above promenade level and a section of the existing terrace area will be raised to 1.606m above promenade level. It is considered that the proposal will not appear as an overly dominant feature or result in an overbearing impact on the users of the promenade given the tiered design of the proposed terrace areas, which will utilise lightweight materials such as glass balustrading to reduce their dominance and allow views in and through this section at the front of the site. Whilst a section of the promenade will be permanently used for the restaurant, it is considered that the important views and vistas of the area and promenade will be retained given the lightweight nature of the development at the front of the site and the proposal will not result in the closure of gaps between urban areas, nor the loss of the panoramic view of the gap identified on page 104 of the Neighbourhood Plan.

The extension and entrance porch to the existing building are considered to be of a suitable size, scale and visual appearance and the works to the existing building and terrace are considered to modernise the existing building, improving its overall visual appearance. It is considered reasonable to add a condition requiring details of the external materials to ensure a good quality finish is achieved.

It is therefore considered that the proposal will result in a positive enhancement to the area and will be in line with the aspirations of Appendix 2 A1.1.7 of the Neighbourhood Plan 'Priority projects to evolve from Neighbourhood Plan policies' which states:

Broadsands Beach facilities for visitors. Both the immediate community and those regular visitors to Broadsands from the rest of the Peninsula and beyond believe the dilapidated state, poor design and inadequate facilities of the existing beach-head buildings are long overdue major improvement or a complete rebuild.

With the addition of the recommended condition the proposal is considered to accord with Policy DE1 of the Local Plan and Policies BH5 and E3 of the Brixham Peninsula Neighbourhood Plan and the guidance contained within the NPPF.

3. Impact on residential amenity

Policy DE3 requires all development to provide a good level of amenity for users and the surrounding uses in terms of noise, nuisance, and air pollution.

Concern has been expressed by objectors to the potential for noise and disturbance from the hours of operation and the potential for increased levels of anti-social behaviour. The nearest sensitive uses are the houses on Broadsands Road/Sycamore Close – the nearest window is approximately 274m away from the restaurant and terrace area.

The hours of operation of the restaurant are not currently controlled by planning condition. The proposed hours of opening are listed on the application form as 9am - 5pm for the proposed shop and 9am – 8pm for the restaurant.

The Senior Environmental Health Officer has considered the proposal and the concerns of nearby residents and has noted that they do not believe that the increase in opening hours until 8:00pm or other proposals in relation to the Venus

café will have a direct impact on nearby residents when considered on their own merits. Although comments regarding people driving cars at speed down Broadsands Road or around the car park are noted, this anti-social behaviour has no direct link to the Beach Café and should be dealt with either by the Police or Parking Services. The officer has noted that they consider it likely that the prolonged opening hours for the café would mean more of a presence in the area which would help discourage such behaviour. As such there is no objection from an amenity standpoint.

Concerns have also been raised about the safety of users of the beach and the potential increase in night time swimming as a result of the proposal. There is not considered to be any direct link to night-time swimming and the increase in capacity of the existing restaurant. As the current restaurant does not have a restriction on their hours of operation they could currently operate into the evening without any planning restrictions. It would therefore not be reasonable to object to the current application on this basis.

As such the proposal is considered to be acceptable with regard to amenity in accordance with Policy DE3 of the Local Plan.

4. Transport issues

Policies TA1 and TA2 of the Local Plan promote sustainable locations for new developments and require adequate accessibility and safety to meet the needs of the development. Policy TA3 of the Local Plan seeks car and cycle parking standards to be met. Policy BH8 of the Brixham Peninsula Neighbourhood Plan states that all new development should comply with the relevant adopted standards.

The application site is located on the promenade of Broadsands beach. The site is served by a nearby public Pay and Display car park, with level footpath along the promenade which forms part of the South West Coast Path route. The application site is considered to be in a sustainable and accessible location and the existing nearby parking facilities are considered to be sufficient to cope with any proposed increase in visitor numbers as a result of the expansion.

Concerns have been raised about the narrowing of the promenade and the ability of emergency service vehicles to access the site. The Fire Brigade were consulted but no response was received however the Highways Department have confirmed they have no objection to the proposal. Whilst the terrace expansion will formalise a section of the promenade for restaurant use, the majority of the area to be used is currently occupied by benches in association with the restaurant, thereby resulting in little change for pedestrian users of the promenade. In respect of vehicles, and

emergency service vehicles, at its narrowest point a gap of approximately 5.95m will be retained which is considered to be sufficient for the access of emergency vehicles.

The provision of cycle parking facilities to serve the additional seating for the café is required by Appendix F of the Local Plan and cycle parking has been detailed on the proposed site plan on the eastern corner. A condition requiring full details of the proposed cycle storage is recommended to ensure provision of a suitable scheme.

With the addition of the recommended condition, the proposal is considered to comply with Policy TA1, TA2 and TA3 of the Local Plan and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

5. Ecology

Policies SS8 and NC1 of the Local Plan seek to conserve Torbay's biodiversity and geodiversity. Paragraphs 179 to 182 of the National Planning Policy Framework seek to protect and enhance biodiversity. Paragraph 182 sets out that the presumption in favour of sustainable development does not apply where the proposal could affect a protected habitat site unless an appropriate assessment has concluded that the plan or project will not affect the integrity of the habitat site.

Policy E.8 of the Brixham Peninsula Neighbourhood Plan reinforces these policies and cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats.

The site lies adjacent to the marine SAC and is within the sustenance zone for Greater Horseshoe bats associated with the South Hams SAC. Sugar Loaf Hill and Saltern Cove SSSI and Local Nature Reserve are located approximately 560m to the north of the site.

An ecological appraisal was submitted with the application (Moor to Sea Ecology, October 2022). No evidence of bats was reported and external crevices with suitability to support roosting bats are limited to a gap between the wall top and the metal edge on the southern aspect of the terrace. As no works will be undertaken on the southern elevation, the report confirms it is considered appropriate to retain the crevice in situ, however if this changes the ecologist should be contacted. No nesting birds were noted however it is recommended that works are undertaken outside of

bird nesting season. No other protected species will be impacted by the proposal and no further surveys will be required. It is noted that that indirect effects such as pollution or dust during construction could impact on the SAC and a standard pollution prevention and dust control measures should be set out in a construction environmental management plan (CEMP) and implemented during the construction works. Biodiversity net gain measures in the form of 5 bat boxes, 3 bird boxes, a hedgehog house and flowering native plants are recommended.

Devon County Ecologist had no objection subject to a CEMP condition, no external lighting and adherence to the conservation action statement within the ecology report.

The application has been subject to Habitat Regulations Assessment screening. It has been determined that without mitigation, the proposals could result in a Likely Significant Effect on South Hams SAC. The site lies within a Sustenance Zone which are zones defined as any area within 4km of a designated roost are therefore include critical foraging habitat and commuting routes. Hedges are classed as foraging habitat and potential commuting routes. The hedge immediately adjacent to the site may, therefore, be used by greater horseshoe bats. This habitat could be adversely impacted by additional illumination during both construction and operational phases, and illumination of the hedge must be avoided at all times and no external lighting shall be installed on the building. All construction activities must be carried out within daylight hours. Provided these mitigation measures are adhered to via a CEMP and no external lighting condition, there will be no Likely Significant Effect on the SAC.

Natural England confirmed that the proposal as submitted would not have significant adverse impacts on the designated sites.

Subject to the recommended conditions the application is in accordance with Policy NC1 of the Local Plan, Policy E.8 of the Neighbourhood Plan and guidance in the NPPF.

6. Flooding and drainage

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

The site is located within the Critical Drainage Area and Flood Zone 3 and Torbay Council Level 2 Strategic Flood Risk Assessment, Broadsands Overtopping Hazard

Maps clearly identifies this site as having an extreme flood hazard and the depths of flooding would be considered a danger to all.

The application is accompanied by a site specific flood risk assessment which demonstrates that the development will be safe from all sources of flooding without increasing flood risk elsewhere and where possible will reduce flood risk overall. The Drainage Engineer has confirmed that providing the development is constructed in accordance with this documents, there is no objections on drainage grounds to planning permission being granted.

The sequential test is not required in this instance, in line with footnote 56 of the NPPF which states that the sequential test is not required for small non-residential extensions (with a footprint of less than 250m²) and change of use; except for change of use to a caravan, camping or chalet site, or to a mobile home or park home site.

With the addition of this recommended condition, the proposal is considered to be in accordance with Policy ER1 and ER2 of the Local Plan.

7. Sustainability

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

The proposal is in a sustainable location where customers do not need to, but can, drive to access it. Alternative, low-carbon means of transport are available to the site. The proposal also seeks to add solar PV to the roof which is considered to positively address Policies SS14 and ES1 of the Local Plan.

Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106/CIL

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

EIA:

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

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development. As such it is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is considered acceptable, having regard to the Local Plan, the Brixham Neighbourhood Plan and all other material considerations.

Officer Recommendation

Approval: Subject to;

The conditions as outlined below 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

1. CEMP

Prior to the commencement of development, a Construction and Environmental Management Plan, which will include details of environmental protection throughout the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure the impacts of construction are mitigated from the outset.

2. External Materials

Prior to their installation details of colour, type and texture of all external materials, including hard-surfaced areas shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with those details as approved and retained thereafter.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1 of the Torbay Local Plan 2012 and Policy BH5 of Brixham Peninsula Neighbourhood Plan.

3. Bicycle Storage

Prior to the first use of the development hereby permitted, provision shall be made for the storage of bicycles in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

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

4. Ecology

Development shall take place in accordance with the recommendations and mitigation given in the 'Ecological Appraisal' dated October 2022, including precautions to prevent threat of harm during construction works, timings of works, no work to be undertaken to the gap between the wall top and the metal edge on the southern aspect of the terrace without confirmation from the ecologist and the installation of 5 bat boxes, 3 bird boxes, a hedgehog house. The bat and bird boxes and hedgehog house shall be installed prior to first use of the extensions hereby approved and shall be retained thereafter.

Reason: To safeguard protected and/or priority species, and to ensure biodiversity net gain in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

5. Bird Nesting Season

No vegetation removal shall be undertaken during the bird nesting season (March-September) unless a pre-works check is carried out by a suitably qualified ecologist confirming that nesting birds are absent. A record of such a check shall be made and made available to the Local Planning Authority upon request.

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

6. Flood Risk

The development shall proceed strictly in accordance with approved flood risk assessment reference 'P2022-0811-2' and prior to the first use of the terrace extensions hereby approved, the owner/manager of the restaurant must be signed up to the Environment Agency's coastal flood warning system for Torbay. These measures shall be adhered to for the lifetime of the development.

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

7. No External Lighting

No additional external lighting shall be installed on the building or terrace areas.

Reason: To safeguard legally protected species, including safeguarding foraging paths for legally protected bats, and in the interests of biodiversity in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

8. Class E Shop

The Class E shop hereby approved shall only be used as Class E(a) and Class E(b) or as an ancillary takeaway use to the restaurant of The Town and Country Planning (Use Classes) Order 1987 (as amended), or in any provisions equivalent to those Classes in any Statutory Instrument revoking and re-enacting that Order, and for no other purpose, including any use falling within Class E.

Reason: To prevent uses which might be inappropriate for this rural location in accordance with Policies C1, C2 and C3 of the Adopted Torbay Local Plan 2012-2030.