

Friday, 17 April 2026

PLANNING COMMITTEE

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

Monday, 27 April 2026

commencing at **5.30 pm**

The meeting will be held in the Banking Hall, Castle Circus entrance on the left corner of the Town Hall, Castle Circus, Torquay, TQ1 3DR

Members of the Committee

Councillor Brook (Chair)

Councillor Billings

Councillor Mandy Darling

Councillor Fox (Vice-Chair)

Councillor Pentney

Councillor Strang

Councillor Tolchard

Councillor Virdee

A Healthy, Happy and Prosperous Torbay

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Governance Support, 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 - 8)
To confirm as a correct record the Minutes of the meeting of this Committee held on 2 March 2026.
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 Chair/Vice-Chair decides are urgent.
5. **Unit 12 - 12A Torbay Trading Estate, New Road, Brixham (P/2025/0760)** (Pages 9 - 68)
Redevelopment of the former Jewson site consisting of demolition of existing commercial building and construction of four and five storey residential building comprising 23no. two-bedroom flats.
6. **Sherwell Valley Primary School, Hawkins Avenue, Torquay (P/2026/0016)** (Pages 69 - 78)
Installation of X 5 A/C condensers, associated cable trays and acoustic enclosure. Installation of insulation and associated works.
7. **3 Keysfield Road, Paignton (P/2025/0688)** (Pages 79 - 86)

Reserved Matters to application P/2024/0831 (Variation of P/2021/0808 (Demolition of existing building and formation of 14 apartments (Outline).

Reserved Matters to be discharged: (i) landscaping (to include biodiversity enhancement measures).

- 8. Access Track South of Limekiln Close, Paignton (P/2023/0143)** (Pages 87 - 112)
Change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track.

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 using 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, 22 April 2026. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Live Streaming

To encourage more people to engage in our public meetings the Council is trialling 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>.

We are also using hybrid meeting arrangements to enable registered speakers to either attend the meeting in person or to attend the meeting remotely via Zoom. **Anyone attending the meeting remotely must register their intention to do so by 11 am on the day of the meeting and provide a copy of their speech to governance.support@torbay.gov.uk by this deadline.** If anyone attending the meeting remotely loses connection the meeting will continue and their speech will be read out by the Clerk and they will have the option to follow the meeting via the YouTube live stream.

Minutes of the Planning Committee

2 March 2026

:- Present :-

Councillor Fox (Vice-Chair)

Councillors Billings, Mandy Darling, Pentney, Strang, Tolchard and Virdee

26. Apologies for absence

An apology for absence was received from Councillor Brook.

Councillor Fox, Vice-Chair of the Planning Committee chaired the meeting in the absence of the Chair, Councillor Brook

27. Minutes

The minutes of the meeting of the Committee held on 12 January 2026 were confirmed as a correct record and signed by the Vice-Chair.

28. Disclosure of Interests

No declarations of interest were made.

29. Urgent Items

The Committee considered the item in Minute 30, and not included on the agenda, the Vice-Chair being of the opinion that it was urgent by reason of special circumstances i.e. the matter having arisen since the agenda was prepared and it was unreasonable to delay a decision until the next meeting.

30. Within Highway Verge Forming Boundary to Brixham Road to SW of 3 Steed Close, Paignton (AT/2026/0037)

The Committee considered an application for targeted crown reduction to a protected Horse Chestnut tree growing within the adopted highway.

Resolved:

Approved, subject to:

- 1) the conditions as outlined in the submitted report with the final drafting of conditions delegated to the Divisional Director of Place Strategy; 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 Place Strategy, including the addition of any necessary further planning conditions.

31. Singleton Gardens, Meadfoot Sea Road, Torquay (P/2025/0612)

The Committee considered an application for the construction of 7 residential apartments, plus landscaping, parking, access and associated works.

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

At the meeting, the Planning Officer advised, that since the committee report and update report had been published, four additional letters of representation had been received but these raised no new material issues that had not already been covered in the submitted committee report and update report. A consultation response had been received from the Council's Waste Officer with no objection to the application due to the location of a bin storage being identified. The Waste Officer had requested waste management contributions however the Planning Officer advised that as the proposal is Community Infrastructure Levy (CIL) liable, waste management contributions could not be requested.

Following the Planning Officer's presentation, David Redman and Lorna Hosler-Barnes both addressed the Committee against the application. Dr Rodney Horder addressed the Committee on behalf of the Torquay Neighbourhood Forum against the application. In accordance with Standing Order B4.1 Councillor Foster addressed the Committee against the application. Daniel Metcalfe and Daniel Sharp both addressed the Committee in support of the application.

Resolved:

Minded to approve, subject to:

- 1) the conditions as outlined in the submitted report with the final drafting of conditions delegated to the Divisional Director of Place Strategy;
- 2) the resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations; and
- 3) confirmation from The Ministry of Housing, Communities & Local Government that the application can be approved by the Council, if the Council has not, in the interim, having considered the merits of the application, decided to refuse the application and that the application will not be called in for determination by the Secretary of State.

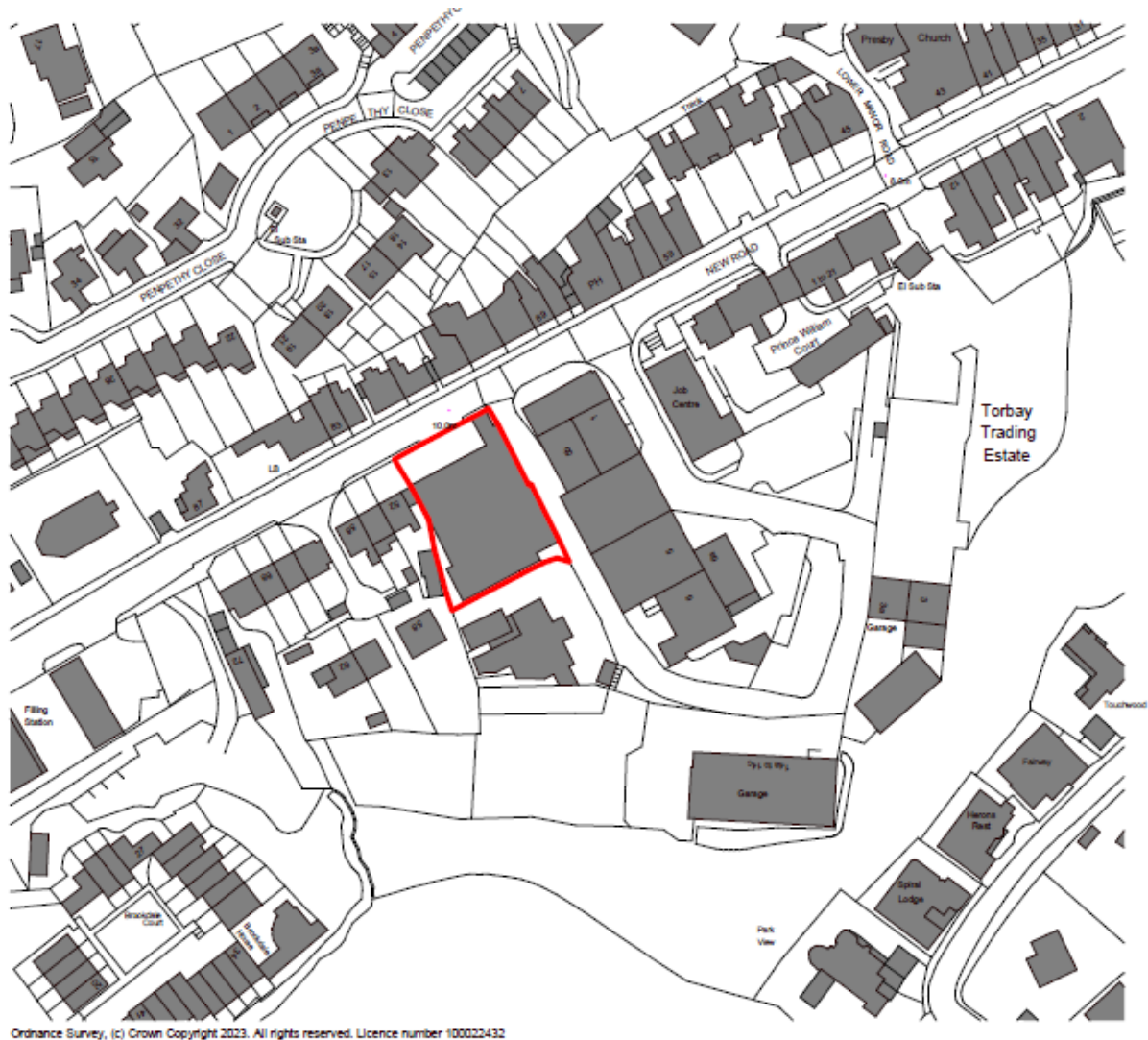
Chair

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TORBAY COUNCIL

Application Site Address	Unit 12 - 12A Torbay Trading Estate New Road Brixham TQ5 8NF
Proposal	Redevelopment of the former Jewson site consisting of demolition of existing commercial building and construction of four and five storey residential building comprising 23no. two-bedroom flats.
Application Number	P/2025/0760
Applicant	McCarthy Contracting & Development Ltd
Agent	Kay Elliott
Date Application Valid	15/01/2026
Decision Due date	16/04/2026
Extension of Time Date	01/05/2026
Recommendation	<p>Approval: Subject to;</p> <p>The planning conditions as outlined below with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy;</p> <p>The completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone.</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 Place Strategy, including the addition of any necessary further planning conditions or obligations.</p> <p>If Members of Planning Committee are minded to refuse the application against officer recommendation, final drafting of the reason(s) will be delegated to the Divisional Director of Place Strategy and in consultation with the chairperson.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to it being of a major nature.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site, Unit 12-12A, Torbay Trading Estate, New Road, Brixham, comprises of a parcel of land that contains a large industrial unit on the southern flank of New Road, Brixham. The site comprises a site area of 963 square metres.

The site is currently occupied by a tenant operating the existing buildings as a single unit as a car garage. The site forms part of a former large paint manufacturing facility. The existing building has been extended and adapted over the years which detracts from its original art deco style façade. The existing building is considered to be in a relatively poor condition. The western flank has a large dominating wall to separate the frontages of the application site from the adjacent residential use.

The site is allocated under Policy BH3 of the Brixham Peninsula Neighbourhood Plan as a housing site for 20no. affordable units (Former Jewson) not open market units.

The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshoe Bat colony at Berry Head). The site is partially designated as Flood Zone 3 and the remainder of the application site is designated as Flood Zone 1 and within a Critical Drainage Area. The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The application site is located approximately 300 metres to the west of the designated Brixham Town Centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site.

Description of Development

The proposal seeks permission for the redevelopment of the former Jewson site consisting of demolition of the existing commercial buildings and the erection of new four to five storey residential building to comprise 23no. two-bedroom flats, together with access, landscaping and associated works at Unit 12-12A Torbay Trading Estate, New Road, Brixham. The vehicular access would be from the southern side of New Road and 12no. unallocated parking spaces are proposed.

The proposed development is four to five storeys in height. The proposed building would have an approximate height at the highest point of 16.4 metres (excluding the lift overrun), an approximate width of 22 metres, and an approximate depth of 27.6 metres (excluding balconies). The proposed design incorporates a flat roof and the built form of the frontage (north elevation) is stepped back.

The proposed material palette includes a stone clad plinth to the ground floor and partially to the first floor, a white rendered finish to the first, second and third floors, and hung slate cladding to parts of the elevations. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

Relevant Planning History

P/2024/0311: Redevelopment of the former Jewson site consisting of demolition of existing commercial building and erection of new three and four storey residential building to comprise 17 two-bedroom flats. Permission with legal agreement 01/08/2025.

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"); and
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan").

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- Published Standing Advice; and
- 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

The application was publicised through a site notice, newspaper advert and neighbour notification letters. At the time of writing approximately 28 letters of objection and 3 letters of representation have been received. The following provides a summary of the main issues identified:

Objections include:

- Drainage
- Loss of light
- Overshadowing
- Noise
- Privacy/overlooking
- Sets precedent
- Residential amenity
- It removes an eyesore
- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Traffic and access
- Overbearing
- Utility infrastructure
- Highway safety
- Trees and wildlife

- Pollution/contamination
- Odour
- Party wall matters
- Density
- Agent of change
- Party wall agreement (not a material planning consideration)

Comments include:

- Pest control (not a material planning consideration)

Summary of Consultation Responses

Note: Full responses are available to view on the Council's public access system (<https://publicaccess.torbay.gov.uk/view/>).

Brixham Town Council:

Response dated 12/02/2026

The Council objects to the proposal on the grounds of over-massing, which is considered disproportionate to the size and context of the site.

It is considered that the scale, bulk and siting of the development would result in harm to neighbouring residential amenity through loss of privacy, loss of light and an overbearing impact. Furthermore, the proposed development would appear out of keeping with the prevailing character and appearance of the street scene.

Torbay Council's Principal Climate Emergency Officer:

Response dated 12/02/2026

I have the following comments to make:

- In May 2024, a Sustainability Checklist and Low Zero Carbon Study was submitted to support the previous application for this site (P/2024/0311). My previous comments do not appear to have been taken into full consideration. No updated documents have been submitted for this latest application.
- As previously outlined, upon review of the submitted Sustainability Checklist there is reference to a low carbon fabric approach to be taken to inform external materials and construction methods (3b of the checklist). However, The Low Zero Carbon Study submitted is only a review of low carbon options and recommendations to the applicant.

- The Low Zero Carbon Study submitted is also not a commitment from the applicant to adopt a low carbon approach and install low carbon measures. It is just a list of recommended measures. It recommends net zero solutions, but their installation is not confirmed by the applicant. A revised net zero and energy statement must include what final fabric first measures will be installed and confirm, with details, that PV and ASHP with heat network will be installed (as per the original recommendations from the report).
- A revised net zero and energy statement should also:
 - Clearly demonstrate how taking a low carbon approach has influenced the design strategy for the development proposed.
 - Be clear on how low-carbon design will be achieved, what will be installed/integrated and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following (in sequential order):
 1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
 2. Use energy efficiently within the fabric of the building.
 3. Incorporate the use of decentralised heat, cooling and power systems; and
 4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.
- Policy SS14 also states that buildings should be re-used where possible to save embodied carbon and energy otherwise lost through demolition. It is stated that it is not viable to reuse the existing building by the applicant, therefore, this further supports the need for this application to clearly demonstrate how a low carbon approach will be incorporated into the new development's design.

Reason: To meet policies ES1 and SS14 of the Torbay Local Plan, and Policy BH7 Sustainable Construction of the Brixham peninsula Neighbourhood Plan.

Torbay Council's Senior Environmental Health Officer:

Response dated 20/01/2026

Noise - This application includes a noise impact assessment which concludes that a good standard of acoustic amenity can be achieved for future residents in line with BS 8233 provided windows are acoustically insulated to achieve an Rw+Ctr noise reduction of 35dB. However, mechanical ventilation will be required in order to achieve this.

As such, should this application be approved, we would recommend the following condition is included in any consent:

Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.

Reason: To protect the amenity of the occupants of the development.

Ground Contamination - With respect to contaminated land a ground gas report is included with the new application which concludes that methane and CO2 ingress should not be an issue, and only protection against radon is required. However, there is no further detail provided concerning contaminated land, or information to demonstrate that the risk of pollution and/or harm is acceptable.

There are three potential strands to this objection. These are that:

1. The level of risk posed by this proposal is unacceptable due to the sites former use as a former Jewson's timber/builders merchant.
2. The application fails to provide assurance that the risks of pollution are understood, as a preliminary risk assessment (including an adequate] desk study, conceptual model and initial assessment of risk) has not been provided. Planning Policy Guidance takes a precautionary approach. It requires a proper assessment whenever there might be a risk, not only where the risk is known.
3. Under the NPPF and Planning Policy Guidance, the application should not be determined until information is provided to the satisfaction of the Local Planning Authority that the risk of pollution and/or harm has been fully understood and can be addressed through appropriate measures. This is not currently the case.

Reason: There is a potential for contamination to be present at the site as it is a former Jewsons timber/builders merchants, but no adequate preliminary risk assessment has been submitted with the application. The risk is considered unacceptable because there is no evidence to indicate otherwise. The potential for contamination may be suspected on the basis of past and/or current use or experience of contamination issues at similar types of sites.

Recommendation: As such, we would recommend that should this application be approved then the following condition be included:

No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a scheme which has previously been submitted to and approved in writing by the Local Planning Authority.

The results of the site investigation shall be submitted to and approved by the Local Planning Authority before any development begins. If contamination posing unacceptable risks is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved use shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

If, during the course of development, contamination posing unacceptable risks is found, which has not been identified in the site investigation, additional measures for the remediation of this shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

Torbay Council's Principal Policy and Project Planner:

Response dated 11/03/2026

I refer to the above application for 23 two bedroom flats at 12-12a Torbay Trading Estate aka the former Jewsons store. The site has permission for 17 units granted under P/2024/0311. The site is allocated for 20 affordable homes in Policy BH3 (H3 I8 and footnote 18) of the Brixham Peninsula Neighbourhood Plan. I set out the case for increasing the density of development in my comments of 6th June 2024 to the former application. The increase in 6 units will make a moderate but valuable contribution towards meeting Brixham's housing needs on a brownfield site within the settlement boundary.

Brixham has a very pressing need to boost housing numbers and no opportunity for urban expansion on land that is not AONB (National Landscape) and/or Greater Horseshoe Bat sustenance zone. Achieving the highest number of dwellings possible on brownfield sites should be given the highest priority in order to minimise the need to develop land subject to NPPF Footnote 7 constraints. I appreciate that the proposed 4 storey building will cause legitimate concern about bulk, massing and amenity issues, the prevailing character of the area and impact on the listed building opposite the site (no. 85 New Road). Brixham Town Council has quite reasonably raised such concerns, but is nevertheless the Neighbourhood Planning that prepared the BPNP. Supporting a lower density of development in this location will mean greater loss of land within the AONB – and I note that such proposals are also very contentious.

As such the application raises a wider strategic issue for Torbay, and Brixham in particular about how it meets its housing needs.

The application is CIL liable at £70 per sq m, as I understand that it is vacant. As such the council would not seek “sustainable development” s106 contributions. However, it is liable for 20% affordable housing as a minimum i.e. 4.6 units which should be provided on site where possible. If the Affordable Housing Manager agrees an offsite contribution, this would be 4.6 x £115,400. I would welcome a 100% affordable scheme in this location, particularly given the BPNP designation as affordable housing. It is important that Social Housing Exemption from CIL is sought prior to commencement of works.

A S106 contributions will be required as a site deliverability matter to mitigate recreational impact on the Berry Head SAC (calcareous grassland), currently at £135 per dwelling.

I note that it is proposed to discharge surface water into the exiting watercourse, and that Dave Stewart has raised no objections to this. In general, the council would seek to introduce sustainable drainage/water conservation measures on sites, but this may not be practical in this instance. The proposal does not have footway along New Road, but this issue was also present in the previous application. It is for Highways to identify any pedestrian safety measures they would seek through S278 agreement to offset any road safety matters – and these would be a site deliverability matter.

Torbay Council’s Affordable Housing Manager:

Response dated 20/03/2026

This application has been submitted on a former Brownfield site in Brixham. The current building is still in situ on New Road. The previous application P/2024/0311 was granted consent in August 2025. This application was deemed not to be viable to provide any Affordable Housing contributions on or off site. This new planning application was submitted for 23 units of housing which the applicant has stated remains unable to provide any Affordable Housing either on or off site due to viability issues.

Policy Position

This application offers 23 units of accommodation on a brownfield site. H2 of the adopted Local Plan policy states that on brownfield sites of 20+ dwellings, 20% should be of an affordable tenure. Therefore, this site should provide 4.6 units of Affordable Housing.

The applicant has stated that this proposal cannot provide any on or offsite Affordable Housing as it is not viable. However, Local Plan policy SS7 states that when seeking

planning obligations, regard will be given to the evidence of viability. The viability will be examined by an independent expert.

The applicants agreed to allow Miller Commercial to undertake an independent viability assessment of the site. The report has now been concluded, and the findings have been provided to the Council in a comprehensive report. This assessment has also concluded that the scheme is not viable to make any provision for Affordable Housing either on site or as an off-site payment to be used elsewhere within Torbay.

Housing Need

There are currently over 1700 households on the Devon Home Choice register in bands A – D in Torbay. The need is recognized, and whilst this development cannot provide any Affordable Housing through the planning process, the enabling team will continue to seek any other solutions that may include an opportunity for those on the housing register.

Conclusion

Unfortunately, this application will be unable to secure any Affordable Housing as a planning obligation on the grounds that it is not viable to meet this policy requirement of H2 of the Local Plan.

Torbay Council's Drainage Engineer:

Response dated 02/03/2026

I can confirm that providing the flood resistance and resilience measures identified within the site specific flood risk assessment are included within the construction of the development, and the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, I have no objections on drainage grounds to planning permission being granted for this development.

South West Water:

Response dated 25/02/2026

Asset Protection

Our records show a 1050mm Environment Agency surface water sewer is within the site.

The applicant will need to liaise with the EA regarding protections this pipe will require.

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable

(with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Discharge to surface water body

Having reviewed the applicant's current information as to proposed surface water disposal for this development, the method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

The applicant proposes to discharge to a nearby culvert as detailed in drawing AT2624 03 Rev A Oct 25.

Water Conservation

The applicant is strongly advised to consider maximising the use of water efficiency opportunities within the design of their proposals. The current average water use in the UK is approx. 142 litres/person/day [l/p/d] (Water UK, 2020), with the South West experiencing a higher-than-average consumption rate than the rest of England. With climate change progressing with trends set to add further stress upon available water resources, SWWL would support the LPA imposing a condition requiring the optional Building Regulations requirement (G2) of 110 l/p/d for the proposed residential development.

Clean Potable Water

South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

Foul Sewerage Services

South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services. For more information and to download the application form, please visit our website:

www.southwestwater.co.uk/building-and-development/services/pre-development-services

Informatives

South West Water response relates to surface water discharge to our network, where the discharge is from buildings and yards belonging to buildings. Where the applicant has highlighted that the surface water does not connect to South West Water network, we are not commenting on this as it is not our responsibility.

South West Water has no duty to accept land drainage runoff, flows from natural watercourses or groundwater to the public sewer system, and this is not permitted to discharge to the South West Water network. The applicant should make alternative arrangements to deal with this separately during the development and once the construction work is complete.

South West Water are not responsible for Highway Drainage and our comments do not relate to accepting any of these flows. The applicant should discuss and agree with the Highway Authority, where the highway water connects to.

If the applicant wishes to connect this development to the South West Water network, they should engage with us separately to see if we can accommodate this. No highway drainage will be permitted to be discharged to SWW foul or combined public sewer network either directly or indirectly.

If the applicant is looking to have their sewers adopted (surface and foul), they should design and construct the sewers to the current version of the Design and Construction Guidance. The process for doing this can be found on South West Water's website at [Adoption of new sewers | Building & Development | South West Water](#)

Environment Agency:

Response dated 03/02/2026

No objections to the proposed development subject to the inclusion of a condition on any permission granted. The suggested wording for this condition and the reason for this position is provided below.

Before you determine the application, your Authority will also need to be content that the flood risk Sequential Test has been satisfied unless (or until) a site-specific flood risk assessment demonstrates that no built development within the site boundary would be located on an area that would be at risk of flooding now and in the future, in accordance with paragraph 175 of the NPPF Dec 2024. As you will be aware, failure of the Sequential Test is sufficient justification to refuse a planning application.

Condition – Implementation of the Flood Risk Assessment

The development shall be carried out in accordance with the submitted flood risk assessment (ref. AT2624 issue P3 by AquaTech dated 27 Oct 2025) and the mitigation measures proposed in section 9 of the document. These mitigation measures shall be fully implemented prior to occupation 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.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

Reason – Flood Risk

The site is located partially within flood zone 3 according to the indicative flood maps published by the Environment Agency. In broadest terms we concur with the findings of the submitted flood risk assessment (FRA) by Aquatech version P3 dated 27 Oct 2025. It is evident that New Road, and the proposed forecourt/and lower parts of the proposed car park would be in an area at 'high' risk of flooding from both fluvial and surface water.

We acknowledge that all accommodation, and the 'secondary pedestrian access off the adjacent Torbay Trading Estate access road to the rear of the building', (paragraph 8.1.4 of the FRA), would be elevated above flood levels. Your authority should be mindful in making your decision given that the hazard rating which the flooding poses within New Road and the forecourt/front part of the undercroft parking area would be likely constitute a 'Danger to all – including emergency services' when in consideration of Table 13.1 of R&D report GUIDANCE FOR NEW DEVELOPMENT FD2320/TR2' in a 1 in 100 year plus climate change scenario based upon the findings of the applicants flood risk assessment.

The duration of the peak of hazardous flooding is unlikely to exceed a few hours albeit this has not been expressly mentioned in the FRA. The onset of flooding is likely to be short given the steep partly urbanised nature of the catchment in question and this is alluded to in the FRA. These are material safety issues that your authority should take into consideration in determining the application. We would recommend that you consult with those within your authority with a remit for Emergency Planning.

We also recommend the following informative is provided to the applicant:

Informative

We note the presence of a culverted watercourse through the site, such being the Lupton Stream which is designated as an 'ordinary' watercourse. All parties should be aware that riparian ownership responsibilities will apply here for which the landowner is responsible. It is therefore in the interests of the applicant to ensure the development layout is such that it does not compromise the ability to carry out future repairs,

replacement works for which the landowner is responsible. We strongly advise the developer to engage with Torbay Council's Lead Local Flood Authority team regarding the presence of the culverted watercourse within the site boundary given they may be party to information of relevance to the planning application.

SWISCo's Senior Tree Officer:

Response dated 27/01/2026

No objection. The existing site is a commercial premises, the structures of which dominates the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity.

A tree survey (BS5837) has been undertaken relative to the proposal for this site. This identified trees which are unsuitable for retention based on their current condition.

The proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene.

Proposed planting should be taken forward in this area and further detail on the soil planting volumes and appropriate tree species should be secured by a planning condition including soft and hard landscape details. The use of structural soils and or bespoke tree planting pits may be required if trees are to be successfully integrated into the frontage of the property. Porous surfaces above tree pits may help with surface water management, and soil rooting volumes should be consistent with advice from the Tree Design Action Group / Green Blue Urban to ensure species suitability for the available space. Magnolia grandiflora 'Exmouth' merits consideration as a local specimen tree cultivar with flowering interest and an upright form.

Recommendation

The provision of two trees on the roadside frontage should be incorporated into the detailed hard and soft landscape design for the development. A planning condition should secure all the relevant information to enable new tree planting to be secured, established and to for the chosen trees to achieve their species potential at maturity.

Devon County Council's Ecologist:

Response dated 29/01/2026

South Hams Special Area of Conservation for Greater Horseshoe Bats

The Site falls within the South Hams SAC Sustenance zone for Greater Horseshoe Bats. However, the proposal would not impact upon a potential commuting route,

foraging habitat or cause increased illumination of these habitats due to the urban nature of the Site. HRA is therefore not required.

South Hams Special Area of Conservation Berry Head Recreational Zone

The HRA developed and agreed with Natural England for the Torbay Local Plan concluded that as long as the s106 contributions as described above are implemented as part of development in the Brixham Peninsula, development in this area will have no adverse effect upon the integrity of any of the European sites and the conservation objectives would be sustained.

Recreational Impacts on Berry Head: in order to mitigate the potential recreational impacts on the protected site the applicant needs to make the agreed payment, as per the Supplementary Planning Document on Recreational Impacts on Berry Head. HRA Conclusion - With this measure secured, there will be no adverse effect on the integrity of the SAC.

Financial contribution per dwelling, as per the Torbay Local Plan and supplementary planning document, to mitigate recreational impacts on the South Hams SAC – these contributions will be secured via a S.106 agreement.

Bat Roosts – Buildings/Trees

- The building had corrugated metal or asbestos roof material. This type of roofing is unsuitable for bats, due to its poor thermoregulation and lack of crevice features that bats could use.
- There was wooden soffits and lip-lap boarding on the third section. However, the boarding was single-skin and did not provide any crevice habitat. The soffit was quite open and attached to a metal structure, it was checked but it was considered to have negligible potential.
- The structure of the buildings were flimsy and made of pannels. The first structure was more substantial but made of concrete and breeze blocks. No crevice features were present that bats could use.
- There are areas of ivy growing on the exterior of the building but this did not cover any potential crevice spaces or provide any features that bats could use.
- The site is in a very built-up area with possible flight lines constrained by near-by buildings and a lack of vegetation present which bats could fly into.
- No signs of any bat use were discovered.
- The interior of all three sections were open, with windows (partially broken) skylights present. The internal joists were mostly metal and did not provide any crevice opportunities, as shown in photo 2.
- There was no attics or any other cavity spaces that bats could use.

- Most of the roof material was unlined except the area in section 3, shown photo 3. However, this was under metal roofing material, which would cause too much temperature fluctuations for bats. The boarding was also tight and no potential entry points could be seen.
- 2025 walkover – there is no change to the site since the 2023 survey. There were no potential crevice or cavity spaces that bats could use. The building was draughty with abundant light ingress.

The LPA concurs, the building has negligible potential for bat roosts.

There is negligible potential for bats using this building so the proposals do not have to consider the presence of bats.

In the unlikely event of bats being found using this structure or any other on the property by anyone before or during the proposed development works then those carrying out the works must stop immediately and contact an ecologist.

Informative: Bats and their roosts (resting/breeding places) are protected by law. In the event that a bat is discovered then works should cease and the advice of Natural England and/or a suitably qualified ecologist should be obtained. Works should not resume until their advice has been followed.

Nesting Birds/Schedule 1 Birds

The 2019 survey noted gulls on the roof of the lift building. These could not be seen in this position or anywhere else on the roof during this 2023 inspection. However, herring gulls were noted flying around and there was evidence of them sitting on a roof ridge as shown in photo 4 by the presence of their droppings. Therefore, gull breeding could not be ruled out at a different time.

Inside pigeons were roosting on the rafters. However, there was no evidence of nesting activity.

There is a small area of very young, colonised trees and bramble at the end of section 3, with dense ivy. Sparrows were flying in and out of this area indicating likely breeding. The area that the trees occupy is a gap between the building and the boundary wall, less than 0.5m wide.

The 2025 survey did not note any roosting or breeding by birds. This maybe because it was December. However, there was no change to the buildings structure so the 2019 and 2023 surveys are still valid. The dese ivy area was also colonised by bramble that was spreading across the roof of the building. This has increased the size of potential habitat to sparrows and other nesting birds. However as long as the mitigation is implemented in this report the threat to breeding birds will be removed.

The LPA concurs. The ivy and bramble growth on the roof in particular provides suitable habitat for nesting birds.

The vegetation at the rear and some of the western side of the building MUST be removed between September and February or in March, July or August following a check by an ecologist. It cannot be removed April to June as it is likely that birds will be breeding. The vegetation can be removed prior to demolition if it means its removal avoids the bird breeding season.

The building can be demolished between September and February with no ecological check or at other times if an ecologist has carried out a check and confirms that there are no birds breeding either in or on top of the building. If bird breeding is confirmed work must be delayed until all young are fledged.

LPA: The LPA notes as pigeon were observed roosting within the building, there is potential for nesting activity within the buildings as well as the ivy and bramble growth. As such a pre works check for nesting birds should be carried out before works begin to any potential nesting habitat if being carried out in the breeding season.

Informative: Nesting birds are protected by law. If any nesting birds are discovered using the areas to be affected, work should not proceed until breeding has finished and all fledglings have departed the nest.

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

Net Gain

The site is exempt from BNG under the de minimis exemption, this is a development that does not impact a priority habitat and impacts less than 25 square meters. As it is entirely on hardstanding, using an existing building's footprint it falls under this exemption.

This development is not subject to the statutory Biodiversity Gain Plan condition because it is exempt as under the de minimus exemption.

Due to the construction of the building integrated features are not possible so a similar woodcrete external bat box and an insect house such as must be fitted such as a single bees block

Additional to this to mitigate for the loss of sparrow breeding habitat climbers must be included on the walls of the new building. Due to the height of the building swift features must be included (sparrows are known to use these too) near the climbers at a minimum height of 5m. These must have at least 4 holes such as Swift Four Chamber Nest Box or four single holed bricks/nest boxes arranged together.

Agent/applicant/ecologist to confirm what further enhancements could be implemented.

Police Designing Out Crime Officer:

Response dated 30/01/2026

Having reviewed the documents submitted for the proposed development I support and welcome the addition of the detailed Crime Prevention Statement. I would respectfully ask that a condition is in place should planning be granted for the measures detailed within this document to be undertaken. My rationale for this request is in line with DE1 of the Torbay Local Plan and BH5 of the Brixham Peninsula Neighbourhood Plan.

It is noted that the bicycle storage within the undercroft parking is open; in order to reduce potential thefts, it would be beneficial to enclose this, if space allows and does not impact on the parking provisions. It would also be recommended that the bicycle storage system meets the requirements as detailed within the Secured By Design Residential Guide.

As detailed within the Crime Prevention Statement the use of Secured By Design products and practices, may result in the development achieving a Secured By Design award, should the applicant be seeking this I would request they make early contact with me, and I will be happy to assist and discuss the process.

WSP on behalf of the Local Highway Authority:

Response dated 03/02/2026

Trip Generation

The applicant has provided a Traffic Impact Assessment to assess the likely trip generation of the proposed site. The proposed trips have been predicted and derived from TRICS traffic generation against the extant use of the site as a builder's merchants. This is an acceptable methodology.

Table 5-3 of the Transport and Travel Plan Statement contains the estimated peak hour vehicular trips for the proposed site. The table shows that there will be 10 two-way movements between the peak hours of 08:00 – 09:00, and 10 two-way

movements between the peak hours of 15:00 – 16:00. In comparison to the existing use, this proposed site will generate one extra movement during 08:00-09:00 and one less movement between 15:00-16:00. Due to the number of extra trips generated and scale of the development, the Highway Authority are satisfied that the number of trips generated by the proposed development are likely to have a negligible impact on the surrounding local highway network.

Highway Safety

The Highway Authority have reviewed the Personal Injury Collisions (PIC) which shows that one collision occurred opposite the petrol station on New Road (August 2024, Slight) and a collision at the junction of New Road and Penpethy Close (November 2020, serious). Based on the existing collision history, there are no significant highway safety concerns near the proposed site.

Pedestrian and Cycle Access

Access to the site will remain as existing, via New Road. The applicant has proposed that a secondary pedestrian access will also be provided to the west, between the proposed site and the neighbouring property, as shown in the Proposed Site Plan (drawing no. 12001). The retained pedestrian access from New Road is proposed to have stairs whereas the secondary pedestrian access to the rear of the proposed site is a flat surface.

It is noted there are no dropped kerbs or tactile paving on the side road crossing adjacent to the site, and the footway immediately across the site is very narrow. This is contradictory to DfT's Inclusive Mobility Guide which states that a minimum width of 2m should be provided.

It is also noted that in response to P/2024/0311, the conclusion regarding the footway adjacent the site was that the applicant should demonstrate how the proposed layout will tie into the existing footway network. At present, it is not clear from Drawing 4959-KEA-ZZ-XX-DR-A-12001-A4-P5 how the site will connect to the footway on New Road.

Cycle Parking

The applicant has provided Proposed Internal Floor Plans (drawing no. 22010) which shows double stacked cycle storage with space for 24 cycles on the ground floor in the car park. The number of cycle stands is in line with Appendix F of the Torbay Local Plan. However, the Highway Authority are concerned that double stacked bike storage is unsuitable for cyclists who may have larger, heavier bikes. Cycle parking should be inclusive for all cycle types and users of all mobilities. Alternative cycle parking arrangements should be considered.

Public Transport Access

The nearest bus stops are located a 2-minute walk east of the proposed site on New Road. Both bus stops have bus stop markings and a flag and pole arrangement. Both bus stops service the 12 and 13, which provide access to Brixham Town Centre, Newton Abbot and Torbay Hospital. It is recommended that both bus stops have a Kassel Kerb arrangement, in line with DfT's Inclusive Mobility Guide, so as to allow level boarding for all users and mobility types.

Paignton Train Station is located approximately 5 miles north of the proposed site making it an unlikely travel choice.

Vehicular Access

It is understood that vehicular access to the site is to remain as existing via New Road as shown in the Proposed Floor Plans (drawing no 22010). The Transport and Travel Plan Statement states that landscaping on-site will ensure a visibility splay 2.4m back from the carriageway edge and 43m along the carriageway, with a vertical line drawn at 1.05m driver height is achievable as per the previous application. This is reasonable.

Car Parking

It is understood from the Proposed Internal Floor Plans (drawing no. 22010) that there will be 12 parking spaces on site (8 covered parking bays and 4 external parking bays at the site entrance). According to Appendix F of the Torbay Local Plan, there should be 1 car parking space per flat, with 20% of allocated parking spaces to have EV charging points. However, the applicant states that the site has good accessibility and therefore parking requirements can be reduced. The Highway Authority accept this approach, however to support this position, the applicant must ensure the site is safely accessible for all users. As mentioned previously, this would require - at minimum – ensuring site access ties in with the that the footway outside of site and that it is accessible for all users so as to encourage safe sustainable travel into Brixham and along New Road.

Due to the under provision of parking, the applicant should also detail how parking on-site is to be managed / allocated between residents to manage demand.

The applicant has stated provision of EV charging will be provided in accordance with Policy and Building Regulations. This must be demonstrated. Furthermore, it is understood that the applicant has not provided any disabled parking. In line with the Torbay Local Plan, the applicant must allocate 10% of car parking spaces to be dedicated and appropriately designed for disabled people.

Refuse / Servicing / Emergency Access

According to the Application Form and the Proposed Internal Floor Plans waste and plant material is to be stored in the ground floor car park, located to the south of the

parking area. The applicant states that refuse collection will be taken from the kerbside. This arrangement is suitable.

Based on the existing arrangement of the site, it appears that emergency vehicles can access the front of the property on New Road. However, it is recommended that the Planning Officer should consider whether a Fire Statement or strategy is required for access to the rear of the building.

Trees

The applicant has stated that U-category trees are to be removed, which are located to the rear of the site by the existing boundary wall. The applicant has stated that the lost trees are to be replaced with soft landscaping.

Planning Obligation

The Local Highway Authority will seek the necessary 278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD (<https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>) and Table 4.3. For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Construction Traffic Management Plan

A Construction Traffic Management Plan will be required to ensure construction vehicles will not have a detrimental impact on the vicinity of the site and a condition will be required to provide adequate parking for construction vehicles on-site to prevent on-street conflict and impacts to the highway safety. A Construction Traffic Management Plan will be required for all phases of the construction, including demolition, excavation and construction of all elements of the building. A condition should be attached to any planning consent granted for these proposals setting out the requirement for a CTMP.

Conclusion

The application is similar to the previous submission at the site (P/2024/0311), proposing an increase to the number of dwellings previously submitted, and the pedestrian and vehicular access remains the same. Therefore, the Highway Authority's overall position remains as per the comments previously given to application P/2024/0311, and the Highway Authority does not wish to raise an objection subject to the recommended planning conditions.

Any sustainable travel obligations / CIL should be determined by the Planning Officer.

A Construction Traffic Management Plan which follows the standard Torbay Council wording must also be implemented to any granting of permission.

The recommended conditions are:

- Pedestrian Access: *Prior to commencement of the hereby approved application, notwithstanding the access design shown on Drawing No. 4959-KEA-ZZ-XX-DR-A-12001-A4-P5, a detailed design that demonstrates how the proposal ties in with the existing footway network must be submitted to the planning authority for approval.*
- Cycle Parking: *Prior to commencement of the hereby approved application, notwithstanding cycle parking design shown on submitted drawing no. 4959-KEA-ZZ-XX-DR-A-22010-A4-P7, a design that provides secure and practical cycle stands in line with the DfT's LTN1/20 cycle parking best standards must be submitted to the planning authority for approval. Once approved, the cycle parking design must be retained and maintained across the full lifetime of the site.*
- EV Parking: *Prior to commencement of the hereby approved application, detail of two EV charging points (including specification and location) must be submitted to the planning authority for approval.*
- Disabled Parking: *Prior to commencement of the hereby approved application, detail of one allocated disabled parking bay must be submitted to the planning authority for approval. This bay should be designed in accordance with the requirements of the Local Plan which stipulates Parking spaces for disabled persons should be a minimum of 4.8m by 3.6m.*

Torbay Council's Principal Historic Environment Officer:

No response received.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design, Visual Appearance and the Character of the Area
3. Impact on Designated and Non-Designated Heritage Assets
4. Impact on Residential Amenity
5. Impact on Highway Safety
6. Impact on Trees
7. Impact on Ecology and Biodiversity
8. Impact on Flood Risk and Drainage
9. Affordable Housing Contributions
10. Designing Out Crime
11. Low Carbon Development

1. Principle of Development

The Development Plan (i.e. the Local Plan and the relevant Neighbourhood Plan) is the legal starting point for determining planning applications, and proposals should be assessed against it. A judgement should be made as to whether a proposal is in compliance with the Development Plan (when taken as a whole). Where the Development Plan is out of date, it retains its statutory force, but the focus shifts onto other material considerations particularly the NPPF and presumption in favour of sustainable development.

Employment

Policy SS5 of the Local Plan outlines that proposals for the loss of employment space will be considered on the basis of the impact on the economic prosperity of Torbay, the appropriate mix of uses within a locality and on amenity. Where there is no reasonable prospect of a site being used for other (non-Use Class B) employment purposes or such a use would conflict with the Local Plan, alternative uses that support sustainable local communities will be supported. Where the proposed loss of employment space is agreed, the Council will seek financial contributions to mitigate the loss of employment.

The proposal will result in the loss of an employment use, albeit small scale with a tenant operating the premises as a vehicle mechanics workshop. The adjacent Torbay Trading Estate will remain unaffected by the proposed development and will continue to operate. It is noted that the Neighbourhood Plan allocates a portion of the adjacent Trading Estate for housing (15no. units). As the application site is allocated for housing, albeit the proposal is for a larger quantum of housing than the allocation, the loss of employment is anticipated and therefore the proposal is considered to accord with Policy SS5 of the Local Plan.

Housing

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 20no. affordable units (Former Jewson). The building currently in this location has no constraints with regards to its retention and the principle of meeting the Neighbourhood Plan allocation is considered to be acceptable. The proposed development is for 23no. residential units in this location, which is above the policy allocation. The Council's Principal Policy and Project Planner has stated that the increase from the previous consent by 6no. units will make a moderate but valuable contribution towards meeting Brixham's housing needs on a brownfield site within the settlement boundary. Objectors have raised concerns regarding the density of the proposal.

Policy BH3 of the Neighbourhood Plan allocates residential development for the Neighbourhood Plan area, subject to proposals demonstrating that there is no likely

significant effect, either alone or in combination with other plans or projects on the integrity of European sites. As previously confirmed, the application site is an allocated residential development site, known as “H3-I8 Former Jewson”.

The Housing Site Assessment describes the application site as *“The detached industrial building fronts the main road and has forecourt car parking. The main section is of two-storey construction with two, single-storey bays to the rear. The site was previously used as the main Brixham branch of the national builder’s merchants Jewson until their relocation to purpose designed premises elsewhere in the town. The building has been re-let but its future is unclear”*.

In terms of the quantum of development, the Assessment states: *“There is a proposal as received in the Regulation 14 consultation from an experienced local affordable housing developer stating his interest in developing the site for 20 small affordable homes. This is a high site density. However, the specialist local knowledge of the developer is acknowledged as is the pressing need for affordable housing within the town. On this basis it is considered to allocate the site for 20 smaller affordable homes. The affordable housing need in the Bay has been outlined in Torbay Council’s Housing and Health Needs Assessment (November 2015) which states: “Affordable housing is an issue in Torbay with an undersupply of social housing and relatively expensive property prices. There is a large waiting list for social housing. There is a pressing need for affordable housing in Torbay to meet the needs of local people who are unable to afford open market house prices or rents.”*.

The Assessment outlines the opportunities for the application site as *“The site provides a real opportunity for a number of affordable homes for the young people of the town located at a short distance from the town centre.”*.

Policy BH4 of the Neighbourhood Plan outlines that subject to compliance with other policies in the Neighbourhood Plan, residential development on brownfield site in preference to greenfield sites will be encouraged and supported. Policy BH4 confirms that brownfield sites within defined settlement boundaries, as designated under Policy E2 of the Neighbourhood Plan, are the preferred locations for development. The application site is brownfield in nature.

The NPPF at Paragraph 124, promotes the effective use of land in meeting the need for homes and other uses, and also guides that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and promotes support for the development of under-utilised land and buildings, especially where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

Policy E2 of the Neighbourhood Plan defines the settlement boundaries in the Neighbourhood Plan area. The supporting Policy Map confirms that the application site is located within the settlement boundary. Policy E2 goes on further to outline that subject to compliance with other policies in the Neighbourhood Plan, proposals for sustainable developments within settlement boundaries will be supported where developments demonstrate good design and follow the guidance in the relevant Design Statement as outlined in Policy BH5 of the Neighbourhood Plan.

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location.

There is a pressing need for homes in Torbay. The Government published the most recent Housing Delivery Test in December 2024. Torbay's result is 66%. The Council have recently reported that their housing land supply figure has decreased to 1.72 years through a recent planning appeal (ref: APP/X1165/W/24/3354507) and the Council's most recently published figure is 1.65 years supply. The Housing Delivery Test requires that the presumption in favour of sustainable development and a 20% buffer be applied as per Paragraph 11 of the NPPF.

It is relevant to appreciate that the Council cannot currently demonstrate a 3- or 5-year housing land supply and for decision making this means that the policies most important for determining applications for housing in the Local Plan are considered to be out of date.

Paragraph 11 of the NPPF states:

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:*
 - i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or*

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 194) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.

Whilst government guidance pulls in somewhat different directions, there is a clearly stated government objective of boosting the supply of housing. Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF. Accordingly, the presumption in favour of sustainable development is applied to applications involving the provision of housing.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Development Plan which are most important for determining the proposal are out-of-date. The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply.

As concluded within this report neither of the above positions are breached in order to signify the proposal should be refused. The provision of housing and the local housing supply context weighs heavily in favour of the grant of planning permission.

2. Design, Visual Appearance and the Character of the Area

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed and beautiful places” offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state 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 139 states that ‘development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design’. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan requires that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. To achieve good design, an important part is to

respond to and integrate with local character and landscape context as well as the built environment. Policy BH5 reiterates the NPPF, that planning permission will be refused where poor design fails to take opportunities available for improving local character and quality of an area and the way it functions.

The application site comprises of an existing building which has been extended and adapted over the years which detracts from its original art deco style façade. There is an area of hardstanding and existing access from New Road, as well as a secondary access from the private road. The application site is allocated for residential development and there are no constraints to resist the demolition of the existing buildings onsite. The existing building has an approximate height of 10.8 metres, an approximate width of 24.4 metres without accounting for the large wall adjacent to the building and No.52 New Road, and an approximate depth of 29.3 metres excluding the wall.

The proposal seeks permission for the redevelopment of the former Jewson site consisting of the total demolition of the existing commercial buildings and the erection of a new four to five storey residential building to comprise 23no. two-bedroom flats. The vehicular access would retain the existing access from the southern side of New Road. The proposed building would have an approximate height at the highest point of 16.4 metres (excluding the lift overrun), an approximate width of 22 metres, and an approximate depth of 27.6 metres (excluding balconies). When considering the existing and proposed layouts, the existing built form has a larger footprint of the plot than the proposed built form. The main bulk of the proposed development, first floor and above, would maintain the building line of the nearby terraces Nos.52-70 New Road. The proposed building would be stepped back on the north elevation as it increases in height. Objectors have raised concerns that the proposal would set an unwanted precedent, constitute an overdevelopment, removes an eyesore, but would have a negative impact on the local area and would not be in keeping with the local area.

The proposed material palette includes a stone clad plinth to the ground floor and part of the first floor, a white rendered finish to the first, second and third floors, and hung slate cladding several areas of the elevations. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

The use of materials and stepping back as the built form gains height has assisted at breaking up the massing of the proposal. Given the constraints of the application site, namely that the application site is partially within Flood Zone 3. It should be considered that the allocation for residential development and the quantum of 20no. units within the Neighbourhood Plan, was likely to anticipate a built form of several storeys. There is a varied height of existing development in the nearby vicinity, Torbay Trading Estate lies to the east and south of the application site, and residential development lies to

the north and west of the application site. The residential development is mainly two storeys in height with some flatted development being three storeys. The adjacent industrial buildings increase in height as become further away from New Road, increasing the perceived massing of the buildings. Whilst New Road appears relatively flat, the topography to the south of New Road increases in height further to the south, which the other units of the Torbay Trading Estate fail to positively relate to.

The siting, scale and design of the development is considered acceptable given the context. The scale of the proposed building would be one storey greater than the extant planning permission (ref: P/2024/0311), however it is considered that the proposal will sit comfortably aside the existing Torbay Trading Estate that forms part of the immediate and broader visual context. The proposal positively and considerably breaks up the principal facade into a stone clad plinth at ground floor level, white render with recessed colour render panels at first, second and third floors, and hung slate cladding to the fourth floor. The proposed recessed colour render panels will reflect the site's history as a former paintworks. Planning conditions are recommended to secure details of the external materials and boundary treatments.

The use of recessed vertical panels creates a rhythm to the main facade and contrasting colours will add depth and animation. The proposed palette of materials takes note of the existing buildings on this part of the site, whilst providing a modern and contemporary feel. The design and detail are considered to harmonise well with the adjacent neighbouring uses.

The proposal is considered to maintain the character and qualities of the area and would be in keeping with the appearance of the locality. Given the proposed siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality. Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy DE1 of the Local Plan, Policies BH5 and BH6 of the Neighbourhood Plan, and the guidance contained within the NPPF.

3. Impact on Designated and Non-Designated Heritage Assets

It is incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 66(1)), to 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, and (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

This statutory requirement needs to be considered alongside the NPPF which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance.

Paragraph 210 of the NPPF goes on to state that in determining applications, local planning authorities should take account of:

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

Paragraph 212 of the NPPF considers that *“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.

Paragraph 213 of the NPPF 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), requires clear and convincing justification.

Paragraph 215 of the NPPF outlines 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.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay’s conservation areas. Policy BE1 of the Neighbourhood Plan confirms that proposals which affect designated and non-designated heritage assets must comply with the requirements of the NPPF and relevant policies of the Local Plan. Policy BE1 goes on to state that all developments should ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092). The Council’s Principal Historic Environment Officer has previously verbally confirmed that the extant permission would have a neutral impact on the Brixham Town Conservation Area and the setting of the Grade II listed building. Given that the proposed development is for an additional storey but has the same design ethos, it is considered that the impact would be similar. Therefore, the proposed development is considered to accord with Policy SS10 of the Local Plan and Policy BE1 of the Neighbourhood Plan.

The above conclusion has consideration of Paragraph 212 of the NPPF which identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

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.

4. Impact on Residential Amenity

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

Internal Living Space

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 135 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy DE3 of the Local Plan sets out the minimum floor space standards for new dwellings and apartments. The proposed 23no. two-bedroom residential units all comply with the nationally described space standards.

The proposed apartments are considered to provide a good quality internal environment for future occupiers with habitable rooms served by adequate light and outlook and layouts set out in a functional manner. Therefore, the proposed residential accommodation is considered to comply with this criterion of Policy DE3 of the Local Plan.

The application site is adjacent to the remainder of the Torbay Trading Estate. Paragraph 200 of the NPPF outlines that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. The NPPF states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after

they were established, therefore where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed. Objectors have raised concerns regarding the agent of change and odour.

Having undertaken a review of the planning history relating to the Torbay Trading Estate, it can be confirmed that such units were given permission as the former B1 use class, which is now use class E(g)(iii). The definition of use class E(g)(iii) is for an industrial process which can be carried out in any residential area without causing detriment to the amenity of the area. It should be noted that there are many uses within Brixham that alongside residential development and the existing Torbay Trading Estate including the application site is adjacent to residential development. Also, the application site is allocated for residential development where amenity and 'agent of change' issues would have been taken into account prior to the allocation. The Council's Senior Environmental Health Officer has been consulted on the application, the application was supported by a Noise Impact Assessment which demonstrates that the levels of environmental noise affecting this site would require mitigation in order to achieve suitable internal and external noise levels, a planning condition is recommended to secure an Acoustic, Insulation and Ventilation Plan. The Officer previously recommended, in relation to the extant permission, that a planning condition is employed in relation to plant, such is also relevant should planning permission be granted for this application.

External Amenity Space

Policy DE3 of the Local Plan states that flatted development should provide 10 square metres of outdoor amenity space, which can be provided individually or communally.

The proposed layout demonstrates that several apartments include balconies and terraces. There would be no outdoor amenity space for some of the future occupiers. However, the site is within close proximity to public open spaces, which mitigates this deficit and it is appreciated that town centre living, albeit the application site is not in the town centre but in very close proximity, often comes without the ability to deliver outdoor space due to the natural constraints of its location. Therefore, it is considered that the proposal broadly accords with Policy DE3 of the Local Plan.

Neighbour Amenity

Objectors have raised concerns regarding loss of light, overshadowing, overbearing, noise and privacy/overlooking. The application site is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site. The proposed development will be in close proximity to No.52 New Road and No.58 New Road. The existing building adjoins No.52 New Road and is higher than No.52's adjoining neighbour. The proposal will separate the proposed built form from No.52 New Road by approximately 2.3 metres.

The proposal would be approximately 11.5 metres from No.58 New Road. It is noted that No.58 New Road sits behind the terrace of Nos.52-56 New Road and is at a higher level given the topography.

In terms of the finished development, the residential use aligns with the residential uses nearby and the proposed use would not result in undue noise or general disturbance. 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/Demolition Management Plan, which is recommended as a planning condition. Subject to the recommended planning condition, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of noise.

With regards to privacy and overlooking, there are several kitchen windows (Flats 2, 8, 12, 14, 18 and 23) that have the ability to overlook or have intervisibility issues with adjacent neighbours, so a planning condition is recommended to ensure such windows are obscurely glazed, this is considered acceptable given that the kitchens are not considered habitable rooms as they do not offer seating. The proposal also includes projecting balconies which will provide future occupiers with an amount of outdoor amenity space, however given the position of the application site and proximity to neighbours, it is considered necessary to secure privacy screens on several balconies to maintain an acceptable level of privacy for both future and neighbouring occupiers. Furthermore, the proposal included elements of outdoor amenity spaces for Flats 7, 13 and 19, however similar to the previously consented scheme, concerns are raised regarding the potential for overlooking into adjacent existing neighbours. Therefore, a parapet to the roof edge has been introduced to reduce visibility and well as recommending a planning condition to prevent use of the balconies except for cleaning and maintenance purposes. Subject to the recommended planning conditions, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of privacy/overlooking.

In terms of loss of light, the application has been supported by a sun path analysis to show the summer and winter solstices in relation to the existing building and the proposed building. The existing building overshadows No.52 New Road in the morning summer solstice, in terms of their outdoor amenity space and their southern elevation. In terms of the summer solstice, the proposal would increase the level of overshadowing in the morning to both Nos.52 & 54 and late afternoon to No.52. It is noted that given the existing built form, Nos.52-56 New Road has overshadowing to their frontages in the summer mornings and the proposal would increase such but it is considered to not have a detrimental impact on their access to natural light. In terms of the winter solstice, the proposal would result in a very minor increase of overshadowing than the existing situation to adjacent neighbours.

Several planning conditions are recommended to protect the amenity of adjacent neighbours, including obscure glazing, privacy screens and restrictions to flat roof areas to prevent intervisibility/overlooking. Subject to the aforementioned planning conditions, given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, or access to natural light, and therefore the proposal is considered to accord with Policy DE3 of the Local Plan.

5. Impact on Highway Safety

Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and d) 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 through a vision-led approach. Paragraph 116 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The application site is located on the southern side of New Road (A3022), which is an adopted public highway and a classified road. New Road is the main arterial route into Brixham. New Road is a single carriageway, two-way road that connects Brixham to the rest of Torbay. It features footways on either side and property access frontages. New Road is subject to a 30mph speed limit and on-street parking restrictions on both sides of the road. Objectors have raised concerns regarding highway safety, traffic and access.

The proposal seeks to maintain the existing access from New Road. The application site is located approximately 300 metres to the west of the designated town centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site. The nearest bus stops are within 60 and 120 metres of the application site.

Access

The access for the proposed development will remain as per existing arrangement from the New Road. The Highway Authority are satisfied with the retention of the existing arrangement.

The supporting Transport and Travel Plan Statement states that the existing structures, kiosk and wall, that currently obstruct visibility when emerging from the application site will be removed as part of the proposals and thereby removing the current obstruction to visibility in both directions. The areas will be replaced with ground level soft landscaping and a boundary treatment so as not to impede a visibility splay plotted 2.4m back from the carriageway edge and 43m along the carriageway, with a vertical line drawn at 1.05m driver height to a point 0.60m above the carriageway. Additionally, the supporting Transport and Travel Plan Statement highlights that junction sight lines, visibility splays, will be in accordance with the requirements of Manual for Streets for 30mph speed limit of New Road. The Highway Authority have considered such acceptable.

Traffic Impact

A comparative assessment has been undertaken, assessing the likely trip generation arising from the proposed residential land use in the context of the extant use of the site. The Highway Authority has accepted the methodology. Due to the scale of the proposed development, and the extant use, the Highway Authority are satisfied that trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

The Highway Authority have confirmed that based on the existing collision history, there are no significant highway safety concerns near the proposed site.

Pedestrian and Cycle Access

New Road features footways on both sides of the carriageway for the majority of its length. To the east of the site, the south side footway ends near the Lower Manor Road bus stop, while the north side footway extends to the junction with Market Street, Fore Street, and Bolton Street. To the west, footways on both sides continue to the junction with New Road and Monksbridge Road. The footway network also features

dropped kerbs at the side road accesses and property driveways, enhancing overall pedestrian connectivity.

The supporting Transport and Travel Plan Statement indicates that nearly all of Brixham is accessible within a 25-minute walk from the application site, with the town centre a 10-15 minute walk. It notes that all local amenities and facilities, including key services such as education, hospital, and shops, are within a 20-minute walk. The development proposal includes delivering a new segregated pedestrian access from New Road along the western boundary, leading to stairs to the first floor of the proposed built form. The supporting Transport and Travel Plan Statement also demonstrates that nearly all of Brixham is accessible within a 10-minute cycle time of the application site.

The existing footway in front of the application site is not shown to be part of the adopted highway network. The Highway Authority previously noted that the existing footway across the application site is narrow (approximately 1 metre). The Highway Authority previously suggested that the applicant should explore footway widening to enable safe and suitable access for pedestrians which would also increase access towards Brixham town centre. Whilst it is acknowledged that widening the existing footway would provide a safer and more suitable pedestrian access for all ages and abilities, by doing so would only affect a small portion of New Road given that if such would happen, the existing footway would remain narrow in front of Nos. 52-70 New Road and in front of the Torbay Trading Estate Units which front New Road.

Car and Cycle Parking Provision

Appendix F of the Local Plan requires 1no. car parking space (of which 20% should provide electric vehicle charging infrastructure) and 1no. cycle parking space should be provided per apartment. The proposal is for 23no. apartments. This calculates a total requirement of 23no. car parking spaces across the application site (of which 20% of the car parking spaces should provide electric vehicle charging infrastructure) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 12no. car parking spaces will be provided across the site. The submitted plans do not include details of electric charging facilities, a planning condition is recommended to secure such. The submitted layout also includes a communal area of cycle storage, however it is unknown whether such would be secure. The proposed cycle storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of covered and secure cycle storage prior to the first occupation of the development. The proposed parking provision is considered to be acceptable, therefore a planning condition is recommended to secure such prior to the occupation of the development.

Bin Storage

Policy DE3 of the Local Plan requires the satisfactory provision for the storage of containers for waste and recycling. Policy W1 of the Local Plan states that as a

minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes.

Building Regulations H6 stipulates that *“Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority”*.

The submitted plans indicate an area of bin storage on the ground floor for the proposed development. The proposed plans lack detail on whether the proposed bin store would be suitable for the number of waste and recycling containers required. The proposed bin storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of bin storage prior to the first occupation of the development.

Sustainable Travel Contributions

The Local Highway Authority have confirmed that they would seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Section 4.3 of Planning Contributions and Affordable Housing Supplementary Planning Document (2022) seeks additional Sustainable Transport contributions for major schemes.

Concluding Remarks

The Highway Authority has no objection subject to planning conditions for a Construction Traffic Management Plan, Pedestrian Access, Cycle Parking, Electric Vehicle Charging Parking and Disabled Parking.

The proposed development is therefore considered to comply with Policies TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

6. Impact on Trees

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

The application is supported by a Tree Survey. SWISCo's Senior Tree Officer has been consulted on the application and has raised no objections to the proposed

development. The application site is a commercial premises, the structures of which dominate the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity. The Officer has confirmed that the proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene. A planning condition is recommended to secure soft and hard landscaping details.

Subject to the recommended planning condition, the proposal is considered to have an acceptable impact on trees in accordance with Policy C4 of the Local Plan.

7. Impact on Ecology and Biodiversity

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plan states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the 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. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 193 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.

The site is within the Sustenance Zone of the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC). The application is supported by a Bat Preliminary Roost Assessment Update (Abbas Ecology, April 2023).

South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats (GHBs). Devon County Council's Principal Ecologist has confirmed that the application site does not contain any habitats that could support foraging or commuting by GHBs, furthermore the surrounding area is well lit by internal and external light sources. The Ecologist has concluded that it is unlikely that GHBs would pass through the site and therefore a Habitat Regulations Assessment (HRA) is not required and the proposal would not cause a likely significant effect on the SAC. It is

considered that excessive lighting should be discouraged and therefore a planning condition is recommended to be employed in relation to external lighting.

European and Other Protected Species

Devon County Council's Ecologist has confirmed that no impacts to roosting bats are anticipated, however the proposed enhancement measures are considered proportionate and are encouraged. A planning condition is recommended that the proposal is carried out in accordance with the supporting ecology report. Devon County Council's Ecologist has outlined that the demolition and vegetation removal would likely impact nesting birds and result in a loss of nesting opportunities. Therefore, a planning condition is recommended in relation to vegetation clearance and building works.

South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwelling. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The local financial contributions section of this report states the anticipated contribution.

Biodiversity Net Gain

As a further matter in England, Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021) for major developments. This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application the site is absent of habitat and is a completely sealed surface. The development is deemed exempt from BNG.

Concluding Remarks

Subject to the aforementioned recommended planning conditions and securing the mitigation payment for the South Hams SAC Berry Head Recreation Zone, the proposal is considered to accord with Policies NC1 and SS8 of the Local Plan and Policy E8 of the Neighbourhood Plan.

8. Impact on Flood Risk and Drainage

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

The site is partially located within Flood Zone 3 (closest part of the application site to New Road) and the remainder of the site is within Flood Zone 1 and the Critical Drainage Area. The application is accompanied by a Site Specific Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage and utility infrastructure.

The supporting Flood Risk Assessment confirms that soakaway testing is yet to be undertaken. However, given the requirements of Building Regulations, the development layout has insufficient space to satisfactorily accommodate any form of soakaways to be compliant with such requirements. Therefore, infiltration drainage on site is not recommended. The nearest watercourse is the Lupton Stream which passes in a culvert through the site forecourt. The proximity to the watercourse allows the development the opportunity to dispose of surface water run-off directly to the stream. The proposed surface water design arrangement will include attenuation of the new drainage system and outfall to the adjacent stream culvert.

The Council's Drainage Engineer has reviewed the Site Specific Flood Risk Assessment and drainage strategy and has confirmed that providing the surface water drainage is constructed in accordance with submitted drainage layout drawing and the submitted hydraulic designs, and the flood mitigation measures identified within the site specific flood risk assessment are incorporated into the final development, the Engineer raises no objections on drainage grounds to planning permission being granted for the proposed development. The Environment Agency has been consulted on the application and provided a consultation response. The Environment Agency does not raise an objection to the proposed development subject to the inclusion of planning conditions relating to the implementation of the submitted Flood Risk Assessment. The Environment Agency has also suggested including an informative relating to a culverted watercourse.

Paragraph 174 of the NPPF outlines that the sequential test steers new development to areas with the lowest risk of flooding from any source. Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 027 Reference ID: 7-027-

20220825) confirms that the sequential test should be applied to 'major' and 'non-major' development proposed in areas at risk of flooding, however there are exceptions including where the site has been allocated for development and subject to the test at the plan making stage (provided the proposed development is consistent with the use for which the site was allocated and provided there have been no significant changes to the known level of flood risk to the site, now or in the future which would have affected the outcome of the test). As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the sequential test does not need to be applied to the proposal.

Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 035 Reference ID: 7-035-20220825) is clear:

The Exception Test should only be applied when following application of the Sequential Test, it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives).

Where a development proposal is in accordance with an allocation made in a Plan following the application of the Sequential and Exception Tests, it should not be necessary to repeat aspects of the Exception Test unless:

- *Elements of the development that were key to it satisfying the Exception Test at the plan-making stage (such as wider sustainability benefits to the community or measures to reduce flood risk overall) have changed or are not included in the proposed development; or*
- *The understanding of current or future flood risk has changed significantly.*

As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the exception test does not need to be applied to the proposal.

Subject to the recommended planning conditions, the proposal is therefore considered to accord with Policy ER1 of the Local Plan and the guidance contained in the NPPF.

9. Affordable Housing Contributions

Paragraph 65 of the NPPF states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The Planning Contributions and Affordable Housing Supplementary Planning Document (2022) have applied the NPPF threshold as a material consideration, despite the starting point being Policy H2 of the Local Plan. The current proposal is major in nature, as the proposed number of residential units is over 10no. residential units, and therefore it triggers the requirement for affordable housing contributions in Policy H2 of the Local Plan.

The proposal falls within the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15 dwellings or more. For a net increase of 20+ dwellings, it would have an affordable housing target of 20% which is to be delivered on-site, commuted sums would only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.

The proposal seeks to provide no affordable residential units. The application has been supported by viability information. An independent review of viability has now been undertaken by a third party RICS Valuer for the application site. The review concluded that it would not be viable for the scheme to provide any affordable housing on-site or off-site as a contribution, having made an assessment about scheme incomes and benchmark costs. The Council's Affordable Housing Manager has confirmed that the Council is prepared to accept the independent findings of the external valuer.

10. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy BH5 of the Neighbourhood Plan outlines that major housing developments should adequately take into account the safety and security of the users of the facilities and the neighbouring residents.

The proposal includes a crime prevention statement. The Police Designing Out Crime Officer has been consulted and supports the supporting crime prevent statement. The Officer has commented that the bicycle storage within the undercroft parking is open and may lead to thefts and as such it would be beneficial to enclose such. A separate planning condition previously mentioned shall ensure bicycle storage is covered and secure.

It is recommended that a planning condition should be employed to secure the measures outlined within the submitted crime prevention statement. Subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan.

11. Low Carbon Development

Policy SS14 of the Local Plan seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials.

Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating,

cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

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

The applicant has submitted a Low Zero Carbon Study and completed the Torbay Sustainability Checklist for Major Development. The Council's Principal Climate Emergency Officer has been consulted on the application and has provided a consultation response. The Officer has confirmed that there is reference to a low carbon fabric approach to be taken to inform external materials and construction methods. However, the Low Zero Carbon Study is only a review of low carbon options and recommendations to the applicant. It does not fully outline what will be installed by the applicant in the final design of the development.

The proposal would incorporate electric vehicle charging points and cycle storage to promote sustainable travel.

Given the limited information provided, a planning condition is recommended to ensure that the proposed development provides a low carbon fabric approach. Subject to the aforementioned planning condition, the proposal is considered to accord with Policies SS14 and ES1 of the Local Plan.

Sustainability

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

The Economic Role

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

The proposal would result in the loss of an employment use, however the application site is allocated for 20no. residential units in the Neighbourhood Plan. Therefore, the loss of employment is anticipated.

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 housing. Given the NPPF priority to significantly boost the supply of housing the residential units to be provided must carry significant weight in this balance.

The provision of housing would provide an appropriate use and offer units within a sustainable location. On balance, the social impacts of the development weigh in favour of the development.

The Environmental Role

The proposed development would have a neutral impact upon the Brixham Town Conservation Area and the Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The proposal is considered to have an acceptable impact on trees, biodiversity and drainage. A landscaping scheme has been submitted which results in street trees to provide visual amenity and the proposal will provide low carbon and energy efficiency measures.

The proposed development is located in a sustainable location within close proximity to local amenities and public transportation links. This weighs in favour of the proposal.

In respect of the environmental element of sustainable development, the balance is considered to weigh in favour of the development.

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

Ecology

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy NC1 of the Torbay Local Plan and as identified as a necessary mitigation.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022).

Given the previous scheme, a unilateral undertaking was secured for 17no. residential units equating to an obligation of £2,295.00. Therefore, the monies from the extant permission will be transferred across to this application and then additional monies for the 6no. units which equates to £810 would amount to a total of £3,105.

Affordable Housing

Policy H2 of the Local Plan states that developments of 20+ residential units on brownfield sites should provide 20% affordable housing. No provision of affordable housing or affordable housing contributions are to be provided given the tested viability of the proposal.

Sustainable Transport

In accordance with Policy SS7 of the Local Plan and the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) (to open market housing only) Sustainable Transport obligations should be secured.

This equates to a contribution of £1,075 x 22 = £23,650 and £1,290 x 1 = £1,290, however, as the 23no. units are CIL liable such cannot be sought.

Public Open Space, Sport and Recreation

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are

expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities
- Equipped play facilities for young people
- Greenspace/Open spaces
- Allotments/sustainable food production

However, such contributions cannot be sought due to 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

Employment

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure loss of employment for use classes B2, B8 or E(g) uses, however such cannot be sought on the 23no. open market units as such are CIL liable and would be ineligible due to site deliverability matters.

Education

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

NHS Devon

The site is allocated in the Development Plan for 20no. units and as such the development in this area is anticipated and therefore the demand on the GP surgeries was considered at the time of allocation. The proposal is over the allocated amount by 3no. units, which is not considered to attract the contribution as this number of units (3no.) would be considered a windfall site.

Lifelong Learning Obligations

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

Waste and Recycling

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

CIL:

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm.

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

CIL is a "Local Finance Consideration" relevant to determining applications. However, in the officer's assessment, it is not a determining factor (either way) in the planning balance assessment below.

EIA/HRA

EIA:

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

HRA:

Due to the scale, nature and location this development will not have significant effects on the South Hams SAC does not require a formal HRA.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal and development plan policies.

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 Plans often contain policies that pull in different directions and it is sometimes difficult to come to a view whether a proposal is in accordance with the development plan "taken as a whole".

The proposal is supported by policies in the Local Plan that seek to boost housing supply. As noted above, the Council has less than 5 years housing land supply and on this basis the Development Plan must be "deemed" to be out of date. At 1.65 years supply, the shortfall is serious and must be given significant weight in the planning balance. The proposal is for 23no. residential units, the NPPF outlines that substantial weight should be given to using suitable brownfield land which the proposal does given its allocation. Out-of-date policies can still carry weight in the planning balance, but in

practice attention shifts to other material considerations, especially the Presumption in Favour of Sustainable Development which is set out in Paragraph 11(d) of the NPPF. As concluded within this report neither limb of Paragraph 11(d) of the NPPF are breached in order to signify the proposal should be refused.

On balance, the public benefits of the scheme as a whole outweigh any identified harm, and are considered to justify the proposal and the proposal is considered to represent sustainable development when considering the Local Plan, Neighbourhood Plan and NPPF taken as a whole as there are no other adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits of the development.

Conclusions and Reasons for Decision

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

In terms of material considerations, the provision of 23no. residential units, is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded to housing supply is not insignificant where the most recent Housing Delivery Test in December 2024 stated Torbay's result is 66%. Torbay's most recent housing land supply (2025) is that there is 1.65 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post construction in terms of local household spend within the local economy. In addition, social, economic and environmental benefits associated with building and occupying homes weigh in favour of the development.

In-line with the above conclusions and the assessment within this report, the proposals are considered to be in principle accordance with the provisions of the Development Plan and to demonstrate that an acceptable scheme could be accommodated on the site. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay.

Due to the level of accordance with the Development Plan and in the absence of material considerations that weigh sufficiently against the proposal, the Officer recommendation is one of approval, subject to suitable planning conditions.

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.

The NPPF guides that decisions should apply a presumption in favour of sustainable development and for decision making that means approving development proposals that accord with an up-to-date development plan without delay. For housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, the NPPF guides to granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a strong reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (23no. residential units), when assessed against the policies in the NPPF when taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination. Subject to the recommended planning conditions and planning obligations, there are no impacts on protected areas or assets of particular importance to provide a strong reason for refusal.

Officer Recommendation

Approval: subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Place Strategy.
2. The completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone.
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.

Planning Conditions

1. Construction/Demolition Management Plan

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.

- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays. Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- j) Procedures for maintaining good neighbour relations including complaint management.
- k) Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.

Reason: In the interests of highway safety with regards to construction traffic and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

2. External Materials

Prior to their installation, technical details and/or samples of the proposed exterior materials including wall finishes, roofing materials, eaves, fascias and rainwater goods shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policies DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

3. Boundary Treatment

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

Reason: To ensure a satisfactory completion of development in the interests of visual and residential amenity and to protect the privacy of future and neighbouring occupants in accordance with Policies DE1, SS10 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

4. Landscaping

Prior to first occupation of the development hereby approved a hard and soft landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- (a) size, species and positions for new trees and plants,
- (b) surfacing materials (including roadways, drives, patios and paths)
- (c) any retained planting and
- (d) a detailed programme of implementation.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with others of a similar size and the same species. All hard landscaping works shall be permanently retained thereafter in accordance with the approved details.

Reason: In interests of visual and residential amenity and in accordance with Policies C4, DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

5. External Amenity Spaces

The development hereby approved shall not be occupied or brought into use until the outdoor amenity spaces, including balconies, detailed on the approved plans (refs: '4959-KEA-ZZ-ZZ-DR-A-22010-A4-P7 (GF, 1F, 2F)' and '4959-KEA-ZZ-XX-DR-A-12001-A4-P5 (site plan)', received 27th November 2025, '4959-KEA-ZZ-ZZ-DR-A-22011-A4 P3 (3F, 4F)', received 2nd April 2026) have been provided in full. The outdoor amenity spaces and balconies shall thereafter be maintained and retained for the use of the development's occupiers for the life of the development.

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

6. Obscure Glazing

Prior to the occupation of the development hereby approved, the openings in the following locations:

- Kitchen window of Flat 2 (first floor - west elevation)

- Kitchen window of Flat 8 (second floor - west elevation)
- Kitchen window of Flat 12 (second floor - west elevation)
- Kitchen window of Flat 14 (third floor - west elevation)
- Kitchen window of Flat 18 (third floor - west elevation)
- Kitchen window of Flat 23 (fourth floor - west elevation)

Shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. The windows shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The windows shall thereafter be permanently retained in that condition.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

7. Privacy Screens

Notwithstanding the approved plans, prior to the following approved balconies being brought into use:

- Flat 2 (first floor)
- Flat 8 (second floor)
- Flat 12 (second floor)
- Flat 14 (third floor)
- Flat 19 (third floor)
- Flat 23 (fourth floor)

1.8m high obscure glazed privacy screens (to a minimum of Pilkington Level 4 or similar standard) shall be erected on the west elevation of the balconies and shall be maintained and retained as such for the lifetime of the development. The height of the privacy screens are measured from the finished floor level of the balconies.

Reason: In the interests of adjoining amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

8. Restricted Flat Roof Use

No part of the external flat roofs from the living room, bedroom 1 and bedroom 2 of Flats 7, 13 and 19 shall be accessed other than for cleaning and maintenance purposes.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

9. Parking Provision

The residential units hereby approved shall not be occupied or brought into use until the parking areas as detailed on approved plans (ref: '4959-KEA-ZZ-ZZ-DR-A-22010-A4-P7 (GF, 1F, 2F)', received 27.11.2025), have been provided in full and are available for use. The parking areas shall thereafter be permanently retained for the use of parking for the associated apartment for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

10. Electric Vehicle Charging Points

Prior to the occupation of the development hereby approved, a scheme for the insertion of 3no. electrical charging points to be located within the site shall be submitted to and approved in writing by the Local Planning Authority. Details shall include design, location, specification and a timescale for insertion prior to occupation. The agreed electrical charging point shall be thereafter maintained and retained for the lifetime of the development.

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

11. Bicycle Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for 23no. cycles shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and maintained and retained as such for the lifetime 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.

12. Waste Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to

and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained and maintained for the life of the development.

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

13. Waste Management Plan

Prior to the first occupation of the development a Waste Management Plan for the building, setting out recycling and waste collections methods which follow the waste hierarchy to ensure locally established recycling targets at the that time are met, together with measures to review and respond to evolving targets, shall be submitted to and approved in writing by the Local Planning Authority. The approved Waste Management Plan 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, which will not receive waste collection from the local authority due to the location within a building, accords with locally established recycling rates, to accord with Policies W1 and W2 of the Adopted Torbay Local Plan 2012-2030.

14. Travel Plan

Prior to the first occupation of the development hereby approved a Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall outline measures to encourage non-car, sustainable forms of transportation, including a scheme of implementation, an annual review and travel surveys taken at appropriate timescales. The approved measures shall be undertaken in accordance with the approved scheme of implementation and shall be monitored and reviewed in accordance with the agreed Travel Plan targets to the satisfaction of the Local Planning Authority.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy TA1 of the Adopted Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

15. Ecology Report

The recommendations and ecological enhancements given in the approved ecological report (ref: '5562 (bat survey)', received 18.12.2025), shall be followed including the installation of 2no. sparrow terraces, 1no. bat box and 1no. bee block. The 2no.

sparrow terraces, 1no. bat box and 1no. bee block shall be installed prior to the first use of the development hereby approved and shall be retained thereafter.

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

16. Vegetation Clearance

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

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

17. External Lighting

No external lighting shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, number, luminance, angle of illumination and type of each luminaire or light source and a lux diagram showing the light spill from the scheme. The lighting shall thereafter be installed, operated and maintained operated in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

18. Surface Water Drainage

The development shall proceed in full accordance with the approved drainage details and drainage strategy (ref: 'AT2624-P3 (inc. drainage calcs)', received 27.11.2025) and shall be fully implemented prior to the occupation of the development hereby approved. The drainage system shall then be maintained at all times thereafter to serve the development.

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

19. Flood Mitigation Measures

The development hereby approved shall be undertaken in strict accordance with the flood mitigation and resilient measures contained in the approved flood risk assessment (ref: 'AT2624-P3 (inc. drainage calcs)', received 27.11.2025). These mitigation and resilient measures shall be fully implemented prior to occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: In the interests of flood safety and in accordance with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030.

20. Unexpected Contamination

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.

Reason: For the protection of controlled waters from contaminated discovered during demolition or construction and in the interests of public health and the natural environment in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and the guidance contained within the National Planning Policy Framework.

21. Investigation - Contamination

No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a scheme which has previously been submitted to and approved in writing by the Local Planning Authority.

The results of the site investigation shall be submitted to and approved by the Local Planning Authority before any development begins. If contamination posing unacceptable risks is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved use shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and guidance contained within the National Planning Policy Framework.

This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore, these details need to be agreed by submission of an assessment report before work commences in addition to any assessment provided with the planning application. This condition does not restrict commencement of enabling works provided that these may be demonstrated to be entirely for the purposes of ground investigations deemed necessary to inform the risk assessment.

22. Designing Out Crime

The development hereby approved shall be undertaken in strict accordance with the approved Crime Prevention Statement (ref: '4959-KEA-XX-XX-RP-A-90002-P2 (crime prevention)', received 27.11.2025) and shall be fully implemented prior to the first occupation of the development hereby approved, and retained thereafter.

Reason: In the interests of crime prevention in accordance with Policy DE1 and SS11 of the Adopted Torbay Local Plan 2012-2030.

23. Sustainability

Notwithstanding the approved plans and details, a detailed energy and sustainability statement shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the development hereby approved. The statement shall identify the specific details that will be incorporated into the site including how the proposed development:

1. Conserves energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling,
2. Uses energy efficiently within the fabric of the building,
3. Uses on-site renewable technologies to achieve 20% reduction in carbon emissions,
4. Minimises water consumption and run-off,
5. Uses construction methods and materials to reduce carbon release,
6. Minimises waste.

The Statement shall be accompanied by detailed plans and elevations that demonstrate the incorporation of these details into the design of the development. The approved details shall be implemented in full prior to the occupation of the development and retained for the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In interests of low carbon development and in accordance with Policy SS14 and ES1 of the Adopted Torbay Local Plan 2012-2030.

24. Plant Noise

Cumulative noise from all mechanical building services plant shall not exceed a rating noise level of 51dB (07:00 to 23:00) or 17dB (23:00 to 07:00), measured in accordance with BS4142:2014 at 1 metre from the façade of any noise sensitive receptor.

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

25. Acoustic, Insulation and Ventilation Plan

Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.

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

Informative(s)

Positive and Proactive

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.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Culverted Watercourse

The Environment Agency has noted the presence of a culverted watercourse through the site, such being the Lupton Stream which is designated as an 'ordinary' watercourse. All parties should be aware that riparian ownership responsibilities will apply here for which the landowner is responsible. It is therefore in the interests of the applicant to ensure the development layout is such that it does not compromise the ability to carry out future repairs, replacement works for which the landowner is responsible.

We strongly advise the developer to engage with Torbay Council's Lead Local Flood Authority team regarding the presence of the culverted watercourse within the site boundary given they may be party to information of relevance to the planning application.

Relevant Policies

BE1 – Heritage Assets and Their Setting

BH3 – Delivery of New Homes

BH4 – Housing Development – Brownfield (Previously Developed) and Greenfield (Not Previously Developed) Sites

BH5 – Good Design and the Town and Village Design Statements

BH6 – Roofscape and Dormer Management

BH8 – Access to New Dwellings

C4 – Trees, Hedgerows and Natural Landscape Features

DE1 – Design

DE3 – Development Amenity

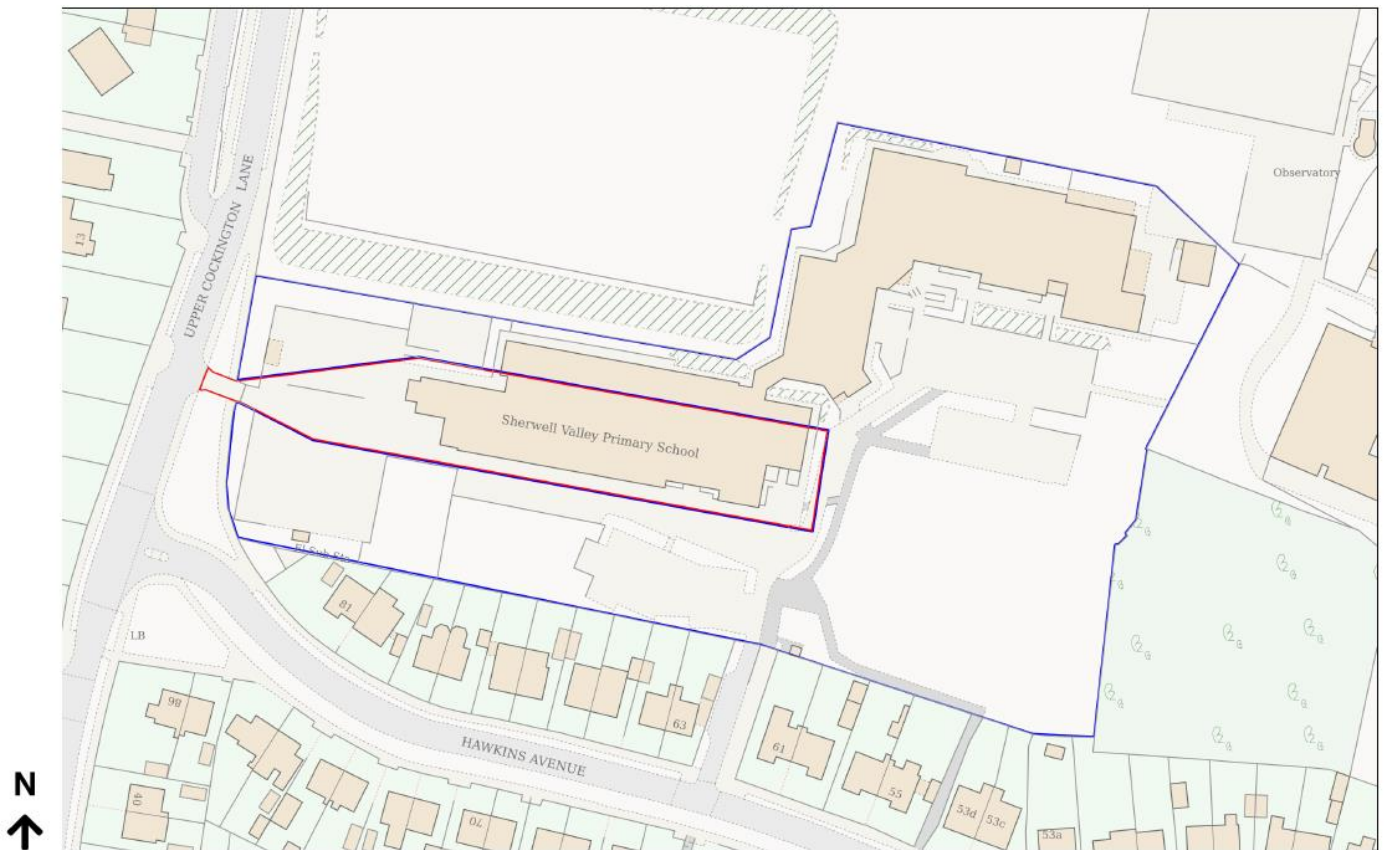
E2 – Settlement Boundaries

E8 – Internationally and Nationally Important Ecological Sites
ER1 – Flood Risk
ES1 – Energy
H1 – Applications for New Homes
H2 – Affordable Housing
NC1 – Biodiversity and Geodiversity
SDB1 – Brixham Peninsula
SS3 – Presumption In Favour Of Sustainable Development
SS5 – Employment Space
SS8 – Natural Environment
SS10 – Conservation and the Historic Environment
SS11 – Sustainable Communities
SS13 – Five Year Housing Land Supply
SS14 – Low Carbon Development and Adaptation to Climate Change
T1 – Linking of New Developments to Travel Improvements
TA1 – Transport and Accessibility
TA2 – Development Access
TA3 – Parking Requirements
W1 – Waste Hierarchy

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Application Site Address	Sherwell Valley Primary School Hawkins Avenue Torquay TQ2 6ES
Proposal	Installation of X 5 A/C condensers, associated cable trays and acoustic enclosure. Installation of insulation and associated works.
Application Number	P/2026/0016
Applicant/Agent	Torbay Council
Date Application Valid	29/01/2026
Decision Due date	26/03/2026
Extension of Time Date	01/05/2026
Recommendation	Approval subject to: <ol style="list-style-type: none"> 1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy. 2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	The application site is land owned by the Council and an objection has been received.
Planning Case Officer	Verity Clark

Location Plan



Site Details

The site contains an established school complex. The school buildings are modern in design, with low-lying one and two-storey buildings with flat and pitched roofs and rendered walls with areas of cladding. Access to the school is obtained via entrances on Upper Cockington Lane and Hawkins Avenue.

The site is located within Flood Zone 1 and a Critical Drainage Area and the wider site contains trees protected by TPO.

Description of Development

This is a full planning application for the installation of 5no. A/C condenser units with associated cable trays, an acoustic enclosure and the installation of external insulation.

1no. A/C condenser will be located within the existing bin store located on the east elevation. 2no. of A/C condensers will be wall hung at high level on the west elevation which will include the associated refrigerant pipe work and electrical cabling in a galvanised steel cable tray above the units. The pipe work will be routed across to a nearby gutter. 2no. of A/C condenser units will be installed at ground floor level on the west elevation which will be enclosed by a new acoustic enclosure approximately 2.5m high. 150mm of external wall insulation is to be installed around the building on the north, south, east and west elevations which then features a silicone render finish.

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"); and
- The Adopted Torquay Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan")

Material Considerations

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

Relevant Planning History

P/2011/1064 Installation of solar panels on roof(s) of building(s). Approved 04/11/2011

P/2009/0372 Alterations, extension to form cloakroom/store; formation of parking area; formation of paved areas and wall. Approved 03/06/2009

P/2008/0970 Remove temporary classrooms; extension to provide 4 classrooms, storage, circulation space. Approved 30/09/2008

P/2006/0812 UPVC Windows. Approved 25/07/2006

P/2003/0179 Part Demolition And Erection Of 6 New Classrooms With Stores/Caretakers Workshop /Toilets/Cloakroom/ Boiler Room (Phase 2). Approved 03/04/2003

P/2000/0516 Alterations, Extensions And Erection Of 7 Classrooms, Library, Staff Room, Admin Areas, Car Park Extension And Ancillary Accommodation To Link Existing Primary And Junior Schools. Approved 01/08/2000

P/1996/0471 Erection Of 2 Additional Classrooms For Infants. Approved 12/06/1996

P/1994/0558 Formation Of New Entrance Doors. Approved 07/07/1994

Summary of Representations

1 letter of objection has been received. Issues raised:

- Request that a noise survey is carried out
- Noise impacts
- Impact on light to classrooms

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No response received.

Torbay Council's Senior Environmental Health Officer: (Response dated 04/02/2026)

The application includes a brochure for the proposed equipment and details of an acoustic enclosure, however there is not sufficient information to determine whether the noise impacts

of the scheme will be acceptable. Please could you ask the applicant to submit a noise assessment?

(Response dated 25/03/2026 following the submission of a noise report)

I'm OK with the condition being 7am to 11pm every day. The noise report compared to background levels measured over a period that included a weekend so the consultant has assumed weekend use when they came to their conclusion. I just wanted to check the school really did want weekends as well.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact
3. Residential Amenity
4. Ecology
5. Flood Risk and Drainage
6. Low Carbon Development and Climate Change

1. Principle of Development

The proposal seeks permission for the installation of 5no. A/C condenser units with associated cable trays, an acoustic enclosure and the installation of external insulation.

Paragraph 100 of the NPPF states that local planning authorities should give great weight to the need to create, expand or alter early years, schools and post-16 facilities through the preparation of plans and decisions on applications.

Policy SC3 of the Local Plan specifies that the Local Plan will support the improvement of existing and provision of new educational facilities to meet identified needs in Torbay. Policy SC5 of the Local Plan states that new development will be assessed for its contribution towards reducing child poverty, proportionate to the scale and nature of the proposal. This includes the need to support investment in existing schools.

The proposed development would improve and upgrade the existing facilities at the school. As such, it is considered that the principle of the development would accord with Policies SC3 and SC5 of the Local Plan.

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

2. Design and Visual Impact

Paragraph 131 of the National Planning Policy Framework (NPPF) states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. 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 139 states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents. Policy DE1 of the Local Plan states that proposals

will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The proposal seeks to install a total of 5no. new A/C condenser units on the school. 1no. A/C condenser will be located within the existing bin store located on the east elevation. 2no. A/C condensers will be wall hung at high level on the west elevation which will include the associated refrigerant pipe work and electrical cabling in a galvanised steel cable tray above the units. The pipe work will be routed across to a nearby gutter. 2no. of A/C condenser units will be installed at ground floor level on the west elevation which will be enclosed by a new acoustic enclosure approximately 2.5m high. The proposal also includes the addition of 150mm of external wall insulation which is to be installed around the building on the north, south, east and west elevations which then feature a silicone render finish.

The location of the development, with the exception of the A/C unit located within the existing bin store, will be visible from public vantage points from Upper Cockington Lane and Hawkins Avenue. The external visual appearance of the A/C units and associated works are considered to be acceptable within the context of the school setting and the existing appearance of the buildings. The acoustic enclosure on the west elevation is considered to be visually acceptable and will be viewed in the context of existing enclosures and boundary treatments within the site. The new external wall insulation will be finished in a matching render finish and is considered to have little impact on the external appearance of the building, again appearing visually acceptable.

It is considered that the proposed development in terms of visual amenity is acceptable thereby according with Policy DE1 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and guidance contained within the NPPF.

3. Residential Amenity

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

An objection has been raised in respect of the potential noise and impacts on nearby residential amenity.

The nearest proposed A/C unit is located approximately 28.8m from the rear elevation of the nearest residential dwellings along Hawkins Avenue.

Following the receipt of the objection and a request from the Environmental Health Officer, a noise impact assessment was provided. The assessment concluded that *'the report has established the existing background noise levels at the closest residential façade to the site and the assessment of the impact of the site operation on nearby residential properties. The resulting emissions from the site running on a worst case scenario show no conflict with 'low impact' criteria and give a strong indication that complaint and impact on the local amenity is unlikely.'*

The Council's Senior Environmental Health Officer assessed this report and raised no concerns from an amenity standpoint. They asked for confirmation from the applicant about the intended hours of operation and this was confirmed to be 7am – 11pm every day. The Officer has confirmed that these hours are acceptable as the noise report compared to background levels measured over a period that included a weekend so the consultant has

assumed weekend use when they came to their conclusion. An hours of use condition is therefore recommended in line with the proposed hours of use.

Given the separation distances and form of development, the proposal as a whole is considered to result in an acceptable impact on the amenity of all surrounding occupiers/users.

Concerns were raised within an objection over the impact on the existing classroom use from the proposal and specifically the new acoustic enclosure. The applicant has confirmed that whilst the enclosure will block some natural light to the south elevation of the adjacent classroom, there are 2no. sets of additional windows on the north elevation which also provide natural light to this classroom. On the west elevation the acoustic enclosure sits in front of two high level windows which serve existing WC/changing facilities. The plan notes that this will result in a reduction of natural light however upgraded artificial lighting will be provided to compensate the impact if required.

Overall the impact on the exiting classroom and WC/changing facilities and the wider school use is considered to be acceptable.

Given the clarification provided in respect of the likely noise generated, the distance from the nearest residential properties to the proposed equipment and type of development, it is considered that the proposal will retain an adequate level of amenity for nearby residential properties and the existing school use. The proposal is therefore considered to accord with Policy DE3 of the Local Plan and the guidance contained within the NPPF.

4. Ecology

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

The application has been accompanied by a bat survey report. The report states that no features with potential to be used by bats were identified during the survey and the buildings were assessed as having 'Negligible' suitability for roosting bats. The wider site comprises largely school associated structures and hardstanding, interspersed with amenity grassland. It is considered that surrounding habitats provide moderate quality opportunities for foraging and commuting bats. Where areas of suitable foraging habitat occur close by, the chance of roosting features being used generally increases. Limited evidence of nesting birds was recorded during the survey, such as occasional feathers and nesting material which were scattered along the flat roof at the easternmost area of the zone of impact. These were not recent, and appeared to have been washed away, likely from the neighbouring flat roof outside of the zone of impact. The building could provide limited potential for breeding bird species typical of urban and suburban habitats. No evidence of other protected species was recorded during the surveys.

The report confirmed that no further surveys are required. The report suggests biodiversity enhancement in the form of 1 bat box and 1 bird box. The recommendations and enhancement measure are recommended to be secured by condition. With the addition of the recommended condition the proposal is considered to accord with Policy NC1 of the Local Plan.

5. Flood Risk and Drainage

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

The application site sits within Flood Zone 1 and the wider Torbay Critical Drainage Area as designated by the Environment Agency.

The proposed development would not result in an increase of impermeable footprint of over 20 square metres and in accordance with the standing advice it is not necessary to condition drainage.

6. Low Carbon Development and Climate Change

Paragraph 161 of the NPPF guides that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change. It should help: to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Policy SS14 of the Local Plan supports national guidance and states that development should be designed to be appropriately resilient to the local climate, including extreme weather events, commensurate with the anticipated lifetime and use of the proposal. Policy ES1 of the Local Plan seeks to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited.

The application form confirms that the proposed work is to decarbonise the school with the A/C units required to meet the heating loads of the school's blocks A and H. The external insulation will improve the thermal performance of the building. The development will therefore help with reducing the Carbon emissions of Torbay Council, in line with the Environment and Net Zero Carbon Policy.

The proposal is considered to accord with Policies ES1 and SS14 of the Local Plan, and the guidance contained within the NPPF.

Sustainability

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

The Economic Role

Minor development with limited impact on economic benefits. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

The Social Role

The principal social benefit of the proposed development would be the improvement of the existing facilities. On balance, the social impacts of the development weigh in favour of the development.

The Environmental role

With respect to the environmental role of sustainable development, the elements that are considered to be relevant to the proposed development are impacts on the streetscene, ecology, drainage and low carbon development. These matters have been considered above. The proposed development is considered in terms of the environmental element of sustainable development to weigh in favour of the development.

Sustainability Conclusion

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

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

CIL – Not applicable.

S106 - Not applicable.

EIA/HRA

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. The development does not meet the thresholds for screening and is not in a sensitive area.

BNG

The application is not liable for Biodiversity Net Gain (BNG) due to the de minimis exemption.

Proactive Working

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and creative way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area; will have an acceptable impact on neighbour amenity; would provide acceptable arrangements in relation to flood risk and ecological constraints and is acceptable from a low carbon development perspective. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

Officer Recommendation

Approval: subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Place Strategy.
2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.

Planning Conditions

1. Ecology

The recommendations and mitigation given in the Bat Survey Report dated September 2025, shall be followed, including precautions to prevent threat of harm during construction works, timings of works, and the installation of one bat box and one bird box. The bat box and bird box shall be installed prior to first use of any of the A/C condenser units 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.

2. Hours of use

The A/C condenser units hereby approved shall only be operational between the hours of 7.00am and 11.00pm.

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

Relevant Policies

Development Plan Relevant Policies

SS14 - Low Carbon Development and Adaption to Climate Change

DE1 - Design

DE3 - Development Amenity

ER1 - Flood Risk

ES1 - Energy

NC1 - Biodiversity and Geodiversity

SC3 - Education, skills and local labour

SC5 - Child poverty

TH8 - Established Architecture

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TORBAY COUNCIL

Application Site Address	3 Keysfield Road, Paignton, TQ4 6EP
Proposal	Reserved Matters to application P/2024/0831 (Variation of P/2021/0808 (Demolition of existing building and formation of 14 apartments (Outline). Reserved Matters to be discharged: (i) landscaping (to include biodiversity enhancement measures).
Application Number	P/2025/0688.
Applicant	Keysfield Limited.
Agent	AD Architecture.
Date Application Valid	13.01.2026.
Decision Due date	14.04.2026.
Extension of Time Date	TBC.
Recommendation	Approval. Subject to a legal agreement to secure recreational pressures mitigation on the Berry Head SAC (£1,890). The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	Major Reserved Matters application.
Planning Case Officer	Scott Jones.

Location Plan



Site Details

The site sits on the northern side of Keysfield Road and presently holds an apartment building that is under construction, which was approved under Outline planning application P/2021/0808 and Reserved Matters for landscaping application P/2023/0446.

The building under construction sits towards the western side of the plot with parking to the front and the main garden setting to the east of the building, which somewhat replicates the historic plot arrangement. In terms of access there is to be one central vehicular and pedestrian access with the previous pedestrian access that was set towards the west on the southern border to be closed.

In regard to designations the plot sits within the Roundham and Paignton Harbour Conservation Area. There is also an Area Tree Preservation Order (Ref 1974:14) that covers the site, and the site is within a Critical Drainage Area that covers most of Torbay.

Description of Development

This is a Reserved Matters application relating to matters of landscaping linked to the previously approved scheme for 14 residential flats as part of outline planning application P/2021/0808 and as revised by S73 application P/2024/0831.

The proposed landscaping works align with those approved under the Reserved Matters application P/2023/0446 submitted pursuant to the initial outline consent that has been amended through a S73 variation. It is this variation of the Outline that has triggered the requirement for this Reserved Matters application. The proposals include:

- Retained mature trees on boundaries southern and eastern borders of the site.
- Retention/creation of lawn to the north and east of the proposed units.
- Formation of parking spaces as approved with hedging and planting bordering.
- New tree and shrub planting along the northern (rear) border.

The proposed biodiversity enhancement measures submitted with the reserved matters also align with those approved under the previous Reserved Matters application P/2023/0446 and include:

- The retention of existing landscape value trees within the property and the planting of a range of new deciduous and evergreen tree and shrub specimens.
- x7 bat boxes within the new building.
- x6 swift bricks within the new building.

The above enhancement measures are detailed on the submitted elevations following consideration of the ecology comments received by Devon County Council.

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 "TLP")
- The Paignton Neighbourhood Plan (the "PNP")

Material Considerations

- Roundham and Paignton Harbour Conservation Area Appraisal
- 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.
- Planning (Listed Buildings and Conservation Areas) Act 1990: General duty as respects conservation areas in the exercise of planning functions (72) to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

Relevant Planning History

Outline Application: P/2021/0808: Demolition of existing building and formation of 14 apartments. (Approval sought for Access, Appearance, Layout and Scale. Landscaping Reserved)(as revised by plans received 17.11.2022 and 19.12.2022, including revised description). Approved 23.01.2023.

Reserved Matters: P/2023/0446: Major Reserved Matters relating to outline consent application P/2021/0808, (Demolition of existing building and formation of 14 apartments.) Matters relating to 01 (i) - landscaping, 02 - biodiversity enhancement measures. Approved 12.09.2023.

Section 73 amendment (to the Outline): P/2024/0831: Variation of condition to P/2021/0808 (Demolition of existing building and formation of 14 apartments (Outline). Vary Condition P1 (Plans). Variation sought: Minor layout changes across all floors and minor elevation changes, changes to size and arrangement of 3rd Floor (penthouse). Approved 14.04.2025.

Summary of Representations

None.

Summary of Consultation Responses

Torbay Council Senior Tree Officer

No objection, landscaping proposals are acceptable.

Devon County Council Ecologist

No Objection. The proposed hedge planting and tree planting will provide a suitable provision for biodiversity and provide food/shelter for a range of species. In addition 7

x Schwegler 1FE access + back panels, and 6 x swift bricks included within the Biodiversity Enhancement Scheme (2023) will provide a significant gain for biodiversity. Clarity on the location of the enhancement measures should be sought.

Key Issues/Material Considerations

Planning Officer Assessment

Outline planning permission has been granted for the demolition of existing building and construction of 14 residential flats. Matters of Access, Appearance, Layout and Scale were approved in detail through the outline application with only matters of Landscaping reserved for future consideration. Reserved Matters for Landscaping for the original outline consent were subsequently approved. The original outline has subsequently been amended and hence this application seeks Reserved Matters approval for the landscaping for the amended outline consent, as the previously approved landscaping detail does not link to the now revised outline application.

As the only matter reserved to be considered within this application relates to landscaping, which should include consideration of biodiversity enhancement measures as sought by a planning condition. The landscaping and biodiversity enhancement proposals are considered below.

1. Landscaping and Trees

In terms of the Development Plan policy expectations Policy C4 states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features, particularly where they serve an important biodiversity role. Policy PNP1(c) of the Paignton Neighbourhood Plan states that development should strengthen local identity (including by retaining natural features) and include new tree planting.

The NPPF presents similar guidance within Paragraph 135, which includes that development should ensure it is visually attractive, and that includes appropriate and effective landscaping, and Paragraph 136, which states that trees make an important contribution to the character and quality of urban environments and can also help mitigate and adapt to climate change, and furthers that planning decisions should ensure that opportunities are taken to incorporate trees in developments and that existing trees are retained wherever possible.

The landscape proposals retain the significant trees that line the front southern border with Keysfield Road and that line that eastern side boundary, which is in accordance with the outline and reserved matters plans previously submitted. This is a central positive strategy when considering the character and ecological benefits of the mature trees within the urban environment and within the designated Roundham Conservation Area.

In addition to retaining the mature trees along the front and side borders the landscaping proposals proposes trees and shrubs to intermittently line the northern rear border and western side border. In addition, within the space around the proposed building the space will be largely laid to lawn with areas of shrub and herb planting.

The transition from soft landscaping towards the rear and sides with the predominantly hard landscaping of the parking towards the front of the building is to be defined by native species hedge planting. The combination of retained trees and the proposed planting is considered to provide an attractive landscape setting for the development and will also present useable outdoor amenity space for future occupiers.

The Council's Senior Tree Officer has been consulted on the application and considers the landscaping scheme satisfactory.

As a material consideration the landscaping details mirror those submitted and approved under the reserved matters approved pursuant to the initial outline consent, prior to it being revised through a minor material amendment application. This decision was made under a similar umbrella of local policy and national guidance.

The proposed development, for the reasons stated above, is considered acceptable with regards to Policies C4, SS11 and DE1 of the Torbay Local Plan and Policy PNP1(c) of the Paignton Neighbourhood Plan, and guidance contained within the NPPF.

The above conclusion has taken account the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

2. Ecology and Biodiversity

Policy NC1 of the Torbay Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy PNP1(c) of the Paignton Neighbourhood Plan includes guidance to support development safeguards biodiversity and protects features of biodiversity value. The policy also furthers that hedgerow habitat should be provided on at least one border wherever possible and for bat boxes and bird boxes to be included in development.

The NPPF guides that planning decisions should contribute to and enhance the natural and local environment, including by minimising impacts on and providing net gains for biodiversity.

As detailed within the report the outline consent (as revised) included a condition that required the reserved matters to include details of measures to enhance biodiversity. A Biodiversity Statement is submitted that includes the provision of the retention of existing landscape value trees within the property and the planting of a range of new deciduous and evergreen tree and shrub specimens, the provision of 7 bat boxes within the new building, and the provision of 6 swift bricks within the new building. The locations of these nesting/roosting facilities on the revised building have been detailed through amended plans to respond to the comments provided by the Devon County Council Ecologist. The locations mirror those previously approved.

As a material consideration the biodiversity enhancement measures mirror those submitted and approved under the Reserved Matters approved pursuant to the initial outline consent, prior to it being revised through a minor material amendment

application. This decision was made under a similar umbrella of local policy and national guidance.

For the reasons above the biodiversity enhancement measures are considered in accordance with Policy NC1 of the Torbay Local Plan, PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

Local Finance Considerations

S106:

Site Acceptability Matter:

Recreational pressures mitigation on the Berry Head SAC (£1,890). See HRA Section below. Based on 14 units @ £135 per unit.

CIL:

Not applicable to reserved matters for landscaping. The development is CIL liable though.

EIA/HRA

EIA:

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

HRA:

The site is located within the extended Berry Head Recreational Zone of influence. The Zone is now an 8km radius, extended from 5km, which now takes in the site of this application.

Berry Head is part of a European Site and Habitats Regulations places a legal requirement on competent authorities to carry out an assessment of plans or projects which might impact the features of a European Site. Recreational use of the calcareous grassland at the Berry Head to Sharkham Point component of the South Hams SAC has the potential to cause degradation through scrub encroachment, erosion by walkers and eutrophication through dog fouling. The impacts of recreation are increased as a result of population growth (i.e. new housing and tourist accommodation). The impacts of housing and tourism accommodation developments on the SAC (within the Zone of Influence) can be mitigated through the implementation of Policy NC1 which states:

“Developer contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure”.

The funding outlined above is used to deliver mitigation for recreation impacts and the detail for how these contributions are calculated is set out in the Council’s Adopted Planning Contributions and Affordable Housing SPD.

The mitigation outlined above is a site deliverability matter, and it would be in breach of law (habitats regulations) to grant permission without seeking this mitigation payment. This is relevant to a Reserved Matters application, as with any application where the obligation has not previously been secured and the application type would result in authorisation for a project to succeed.

To comply with habitat regulations a s106 legal agreement (bilateral or unilateral) that secures £1,890 (14x£135) is required prior to any grant of consent. The recommendation responds to this.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a positive impact overall and help with the supply of much needed housing. The development has previously been approved, including a similar landscaping and biodiversity enhancement scheme.

Statement on Human Rights and Equalities Issues

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

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

Proactive Working

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

Conclusions and Reasons for Decision

The landscaping, considering the number and range of retained and proposed trees, plants and shrubs, would present adequate softening of the built form that would offer a positive and attractive residential environment for future occupiers. The biodiversity enhancement measures are also considered suitable. Both matters align with proposals previously approved under the initial outline consent.

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

Officer recommendation is therefore one of approval, subject to the identified Berry Head SAC mitigation payment being secured.

Officer Recommendation

Approval:

Subject to a legal agreement to secure recreational pressures mitigation on the Berry Head SAC (£1,890).

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

Conditions:

Informative(s)

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

Development Plan Relevant Policies

Relevant Policies

DE1 – Design

SS10 – Conservation and the historic environment

SS11 – Sustainable communities

C4 – Trees hedgerows and natural landscape features

NC1 – Biodiversity and Geodiversity

SS3 – Presumption in favour of Sustainable Development

PNP1(c) – Design Principles

TORBAY COUNCIL

Application Site Address	Access Track South of Limekiln Close Paignton. Torbay
Proposal	Change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track.
Application Number	P/2023/0143
Applicant	Abacus Projects Limited and Deeley Freed Estates Limited
Agent	Cushman & Wakefield
Date Application Valid	15.03.2023
Decision Due date	10.05.2023
Extension of Time Date	01.05.2026
Recommendation	<p>1. Amendment of the Committee resolution part 1. Of Minute 26 of the Planning Committee dated 18 September 2023 to remove the 6-month time limit for completion of the s106 in order to enable a decision to be issued for this application.</p> <p>And</p> <p>2. Note the post-committee amendment to wording of conditions 2 (Materials) and 5 (Lighting).</p> <p>And</p> <p>3. Approval subject to:</p> <p style="padding-left: 20px;">i. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.</p> <p style="padding-left: 20px;">ii. The planning conditions in the original report at Appendix 1 and subject to the changes identified in this report with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy.</p> <p style="padding-left: 20px;">iii. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.</p>

Reason for Referral to Planning Committee	Amendment to the Committee resolution
Planning Case Officer	June Pagdin

Purpose of Update Report

To seek to remove the 6-month time limit on the period for completion of a Section 106 Legal Agreement. The legal agreement secures important public access rights along a proposed alternative route for the northern section of the Northern Access Route (NAR) relating to the Inglewood housing development.

Introduction

The application P/2023/0143 seeks full planning permission for “the change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track”. This is to provide an alternative route for the Inglewood NAR.

The application was considered at Planning Committee on 18th September 2023 and committee resolved the following:

Approved subject to

1. The completion of Section 106 Legal Agreement within 6 months of the Committee date to secure the heads of terms as outlined at the meeting;
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.

Regarding Item 1 of the resolution, the 6-month period expired on 18th March 2024. However, the S106 legal agreement was completed after that date; on 5th February 2026. Amendment of the resolution by removing the 6-month time limit is required to enable a planning decision to be issued for this application and the related application for up to 25 dwellings at Land east of Limekiln Close.

Background

The application site comprises a narrow, curving strip of land running from a point on the approved route of the (NAR) in the White Rock woodland walk, along a private section of Limekiln Close and on to the public highway in Limekiln Close and White Rock Way. The surfaces along the route are various and the ownership is split. There is a gate across the route at the southern end of Limekiln Close.

The NAR is part of the Inglewood housing development (P/2017/113 MOA as varied by P/2023/0377 and RM P/2022/1119) and will provide a pedestrian and cycle link between that development and the White Rock centre.

In the original Inglewood proposal, the route ran through a triangular piece of land now known as Land to the East of Limekiln Close. That piece of land is now the subject of a separate planning application (P/2022/1173) for up to 25 dwellings. Planning Committee resolved to approve that application (subject to conditions and a s106 legal agreement) on 18th September 2023. However, development of those dwellings necessitates this alternative route for the northern end of the NAR. It is conditional on the planning permission for Land East of Limekiln Close that the development shall not commence until the alternative NAR route, the subject of this application (P/2023/0143), is constructed and available for public use.

The proposed housing development at Land East of Limekiln Close is included in the Council's Housing Land Supply as part of the Regulation 18 Local Plan Review documents but cannot be implemented until the NAR alternative route is constructed. The NAR is, therefore, a key piece of enabling infrastructure for the development of 25 dwellings as well as a key piece of infrastructure for the 373 dwellings currently under construction (and part occupied) at Inglewood.

The developers of Inglewood have engaged positively in negotiations with the Council to upgrade the NAR to adoptable standard and the details have been agreed in a s38 Agreement. They wish to progress construction of the NAR as soon as possible and intend to regularise the amendments to the Inglewood permissions as necessary.

Reason for Exceeding 6-month Time Limit

A S106 Legal Agreement requires signature by all owners of the relevant land. The alternative NAR route runs through land owned by the applicant, Deeley Freed, and Persimmon, the developer of Inglewood. It also runs along a short section of Limekiln Close that is under ownership of the White Rock Estate and is not due to be adopted as public highway. This section was also under ownership of the housebuilder for that part of White Rock.

A time limit of 6 months had been recommended as an incentive to achieve swift completion of the agreement. However, in practice the complex land ownership pattern meant that the deadline was not met. Other factors included negotiations over the s106 Agreement for the Land East of Limekiln Close (P/2022/1173), which was being prepared in parallel but was not subject to the same time limit.

S106 agreements for both applications were completed on 5th February 2026.

Post Committee Amendments to Conditions

The recommended conditions on application P/2023/0143 (Nos 2 and 5) have been amended post-Committee determination subsequent to the developers of Inglewood engaging with the Council to upgrade the route to adoptable standard, with details agreed through the s38 procedure. The amendments to the conditions are summarised below.

Condition 2: Materials method and timing. The original submission was for a permeable surface. However, a bituminous surface is required for adoptable routes (to ensure inclusive access in all weathers, durability and ease of maintenance). The condition has been reworded to omit reference to permeable surfaces and to state “Notwithstanding the approved drawings, the path shall be constructed to adoptable standard or be the subject of an agreement with the Council made pursuant to s38 of the Highways Act 1980.”

The surface and method of construction have been approved for the remainder of the NAR at Inglewood (CN/2023/0108 as part of P/2022/1119RM).

Condition 5: Lighting. The original scheme proposed no lighting. To achieve adoptable standard some lighting is required. The route runs through a bat commuting and foraging area. A lighting scheme has been negotiated as part of the Inglewood development and achieves a sensitive scheme that is acceptable to the County Ecologist. (See CN/2024/0091 as part of P/2023/0377MOA). The wording of this condition has been amended to:

“No external lighting shall be installed at any time at the application site unless otherwise approved in writing by the Local Planning Authority. All approved lighting shall be implemented in accordance with the approved details and retained in that condition thereafter.”

Local Finance Considerations

S106:

See body of report. Not financial.

CIL:

The CIL liability for this development is Nil.

Conclusions and Recommendations

The application is for an alternative route for the Inglewood NAR with a s106 agreement to secure public access rights along it. The NAR is a key piece of infrastructure for the 373 dwellings currently under construction (and part occupied) at Inglewood. It is also a key piece of enabling infrastructure for the development of 25 dwellings at Land East of Limekiln Close.

Removal of the 6-month time limit from the previous Planning Committee resolution will enable a planning decision to be issued for the application.

Recommendations

1. Amendment of the Committee resolution part 1. Of Minute 26 of the Planning Committee dated 18 September 2023 to remove the 6-month time limit for completion of the s106 in order to enable a decision to be issued for this application.

And

2. Note the post-committee amendment to wording of conditions 2 (Materials) and 5 (Lighting).

And

3. Approval of application P/2023/0143 subject to:
 1. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.

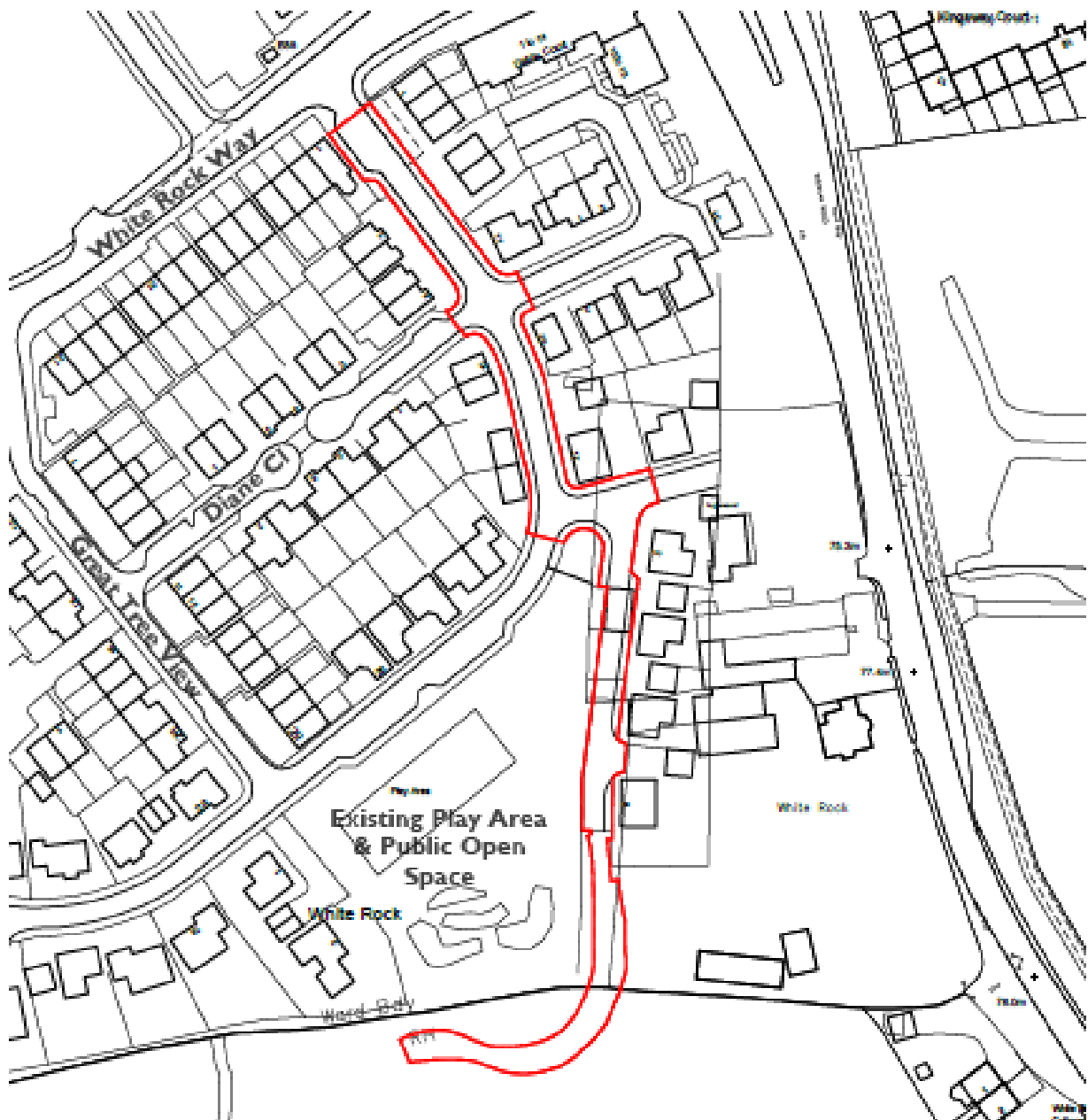
 2. The planning conditions outlined in the original report at Appendix 1 and subject to the changes identified in this report with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy.

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

TORBAY COUNCIL

Application Site Address	Access Track South of Limekiln Close Paignton. Torbay
Proposal	Change of use of land for the establishment of a public footway/cycleway link to include improvement works to existing track.
Application Number	P/2023/0143
Applicant	Abacus Projects Limited and Deeley Freed Estates Limited
Agent	Cushman & Wakefield
Date Application Valid	15.03.2023
Decision Due date	10.05.2023
Extension of Time Date	30.09.2023
Recommendation	<p>Approval subject to:</p> <ol style="list-style-type: none"> 1. The completion of a S106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers. 2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency. 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.
Reason for Referral to Planning Committee	The application is associated with application P/2022/1173.
Planning Case Officer	June Pagdin

Location Plan



Site Details

The application site comprises a thin parcel of land south of Limekiln Close, most of Limekiln Close and a section of White Rock Way at White Rock, Paignton.

The southern part of the site is located at the south end of Limekiln Close from which it is currently gated off and stretches south into the woodland area south of White Rock. This part is just beyond the south east corner of the public open space at White Rock.

The remainder of the site provides a means of access from this area to the adopted public highway on white Rock Road to the north. This part includes the roadway and

footways of Limekiln Close and White Rock Way which connect to the public highway in White Rock Road. The road outside numbers 4 to 8 Limekiln Close is private. The roadway from outside No 2 Limekiln Close to White Rock Way is to be adopted as public highway under a Section 38 agreement for the White Rock development (P/2011/0197MOA and P/2014/0071 MRM). The application does not propose any physical works to these existing roads.

To the south of the surfaced roadway of Limekiln Close, the ground is unsurfaced and rises slightly before sloping down to the south towards the Inglewood development area. The land is fenced off from the White Rock open space and gated from Limekiln Close. However, it is used informally as a pedestrian access to the recently planted woodland area to the south of the White Rock development.

The woodland contains some unmarked paths and a “woodland walk” which has a compacted loose-gravel surface. This latter is a leisure route (secured through Section 106 agreement to the White Rock development) that leads westwards to further footpaths in the surrounding countryside.

Background

A Northern Access Route (NAR) was approved as part of the Inglewood development (P/2017/113 as varied by P/2022/0112). The approved NAR enters the woodland from the south, crosses the Woodland Walk, then runs through the triangle of land to the north east (Land East of Limekiln Close) to connect with a spur off the northern end of Limekiln Close. The NAR is subject to condition 25 of the outline permission and planning obligations in the s106 of the related agreement. The condition and Section 106 agreement, in summary, require:

- A shared footway and cycleway (drawing 0734-055)
- To be constructed and made available and connected to a safe route (c25)
- Provide prior to first dwelling being occupied (c25)
- Maintained as such at all times (Section 106 Sch1,art4)
- The route shall be transferred to a Management Entity (ME) for the Inglewood site (Section 106 Sch1,art 4)
- The ME shall manage and maintain the route (Section 106 Sch1,art 4)
- Owner/ME to keep route open as a permissive path freely available for use by public in perpetuity (Section 106 Sch1, art I7)

The northern part of the current application site is within the White Rock Future Growth Area of Paignton and is part of a designated development site (CDSP.18) in the Torbay Local Plan (TLP) (Appendix C), the White Rock Site as designated in Policy SDP3.5 of the TLP and in the Paignton Neighbourhood Plan (Policy PNP21).

The southern part of the application site extends into the Brixham Peninsula Neighbourhood Plan area and is within an area designated as a Country Park in the Torbay Local Plan 2012-2030. This part of the site is a known bat commuting and foraging route and has been planted with trees (related to the White Rock development LEMP (P/2011/0197). It connects into the Northern Access Route (NAR) for the Inglewood development.

Description of Development

The application seeks full planning permission for construction of a cycle and footway. The proposed route is intended to provide an alternative northern section to the approved Northern Access Route (NAR) that was approved in the outline permission for Inglewood.

The current application proposes to:

- Provide an alternative route for the northern part of the NAR between the woodland (that lies between White Rock and Inglewood) and the public highway on Limekiln Close,
- Construct a 3m wide, approximately 80m long stretch of surfaced pathway,
- Create a shared foot and cycle surface connecting to the south end of Limekiln Close,
- Install a removable vehicle barrier at the south end of Limekiln Close (details to be determined with Highway Authority),
- Connect into route of the NAR in the woodland between Inglewood and White Rock,
- Provide a permissive route in perpetuity (see submitted Cover Letter),
- Accompanying access easement over Limekiln Close to connect with public highway,
- Surface materials to be determined (resin-bound surface removed from proposal),
- lighting to be determined and controlled by condition.

The NAR is required by condition 25 on the outline Inglewood permission, to be provided before the first occupation of the Inglewood development and retained in perpetuity. The Inglewood Section 106 sets out certain design criteria for the route (as set out in the Highways and Access section of this report) and secures maintenance of the route. It is considered that, in order to provide a suitable alternative, any other route would also need to comply with these stipulations.

Through the course of the application amended plans were submitted to provide a route that would achieve adoptable standards with regards to gradients, radii and permeability for the shared foot and cycle way.

Pre-Application Enquiry

Informal advice sought prior to submission of application.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

- National Planning Policy Framework (NPPF 2021)
- Planning Practice Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Relevant Planning History

P/2011/0197 (White Rock): Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m² gross employment floorspace, a local centre including food retail (up to 1652m² gross) with additional 392m²A1/A3 use and student accommodation, approximately 15 hectares of open space, a sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application). Approved 29.04.2013.

P/2014/0071 (Limekiln Close): Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197. Approved 16.05.2014.

P/2017/1133 (Inglewood as varied by P/2022/0112): Outline application for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved. Allowed on Appeal 26.04.2021.

P/2022/1119 (Inglewood Reserved Matters): Major Reserved Matters application relating to outline consent P/2022/0112 for approval of (i) layout, (ii) scale, (iii) appearance, (iv) landscaping for the construction of 373 dwellings (Use Class C3), provision of serviced land for primary school and nursery school, internal access roads including vehicular and pedestrian/cycle access, the provision of public open space (formal and informal) and strategic mitigation. Approved 04.04.2023.

P/2023/1173 (Land East of Limekiln Close): Outline application for residential development of up to 25 dwellings and associated works. Details of access to be determined with all other matters reserved. Under consideration.

Summary of Representations

Neighbour letters were sent out on 20th March 2023. A site notice was displayed on 22nd March 2023.

Following receipt of the revised site boundary plan re-consultation letters were sent and a site notice displayed for 21 days from 31.07.2023 and 02.08.2023 respectively.

One response was received. The comments can be summarised as:

- Increase in traffic and noise along Limekiln Close where traffic and access are issues,
- Route should link into existing path further west adjacent to White Rock Court,
- Existing path links with the play area,
- The proposal would destroy trees,
- Better to combine with the route of the Woodland Walk,
- Prefer original plan to use land to east of Limekiln Close - traffic free and safer.

Summary of Consultation Responses

Broadsands, Churston and Galampton Neighbourhood Forum: No response received.

Community Safety: no objections

Devon and Cornwall Police: Comments that the proposed route would be more direct. Also comments on maintenance and lighting from security and personal safety perspectives.

Arboricultural Team: 12.04.23 and 14.08.23: no significant arboricultural concerns to the proposal owing to the historic land use and existing compaction of the area adjacent to the large tree group to the east of the proposed route. However, to prevent any potential impact within the RPA of the trees we would like to see the submission of a tree protection plan that will detail the level of protection that needs to be afforded to the trees during construction.

DCC Ecology: No concerns over impacts on foraging habitat within sustenance zone of Greater Horseshoe Bats. However, artificial lighting could have potential negative impacts. No objection subject to a condition over no external lighting being installed without LPA permission.

Highways:

08.06.2023: The applicant will be required to ensure that the development proposals complement the strategic pedestrian/cycle route outlined in Planning Applications P/2017/1133 and P/2022/1119 (aka Inglewood Outline and Reserved) to the South of site. The proposed route should link into adopted public highway. The Nar route should be adopted and have appropriate surface (usually metalled with fixed edge). Resin-bound surfaces would not be acceptable.

Clarification is required of site boundary outside 8 Limekiln Close.

The NAR should have sufficient lighting in the interests of safety, subject to ecological sensitivities. Planting should be low-level to allow visibility of route.

Design guidance in LTN1/20 Cycle Infrastructure Design (DoT, July 2020) is advised – a minimum width of 3m is required for shared surfaces.

Requires applicant to enter into a s38 agreement for adoption of land to connect the route to the public highway. A connection path to the play area is also advised.

12.07.2023: No objection upon receipt of documentary evidence of legal consent from the land owner for the new route to the top of Limekiln Close. Following discussions, it is understood that the NAR is a committed component of the Inglewood permission to be delivered under legal obligation and conditions as a permissive (non-adopted) route. The applicant has stated that they have the legal consent from the land owner for the new route to the top of Limekiln Close. On receipt of documentary evidence this is considered acceptable. The requirement to enter into a s38 agreement is therefore no longer necessary. Materials and lighting do not need to be to full adoptable standard. However, it is understood that the applicant is willing to work with TC to ensure it is built to an adoptable standard. The route is to be 3m wide in line with LTN 1/20.

Drainage: 19.05.23 and 15.08.23

Providing the footway/cycleway is constructed using permeable surface I have no objections on drainage grounds to planning permission being granted.

Legal: consulted 16.05.2023 and 08.06.2023

Requirements for public use and maintenance would normally be placed on the landowner and would be directly enforceable. There will always be difficulties with a positive obligation to maintain– it would always be at risk of ownership changes. However, a covenant that the route is kept open would be readily enforceable against the landowner. Recommend a s106 obligation to secure this.

In conclusion, an agreement with Inglewood developer, and the landowners is required , which should at the very least secure the long-term public rights. The responsibility to maintain would need to remain with Persimmon. However, you would hope that once done, not much maintenance would be needed.

Key Issues/Material Considerations

1. Principle of development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Ecology & Biodiversity
6. Flood Risk and Drainage
7. Low Carbon and Sustainability

Planning Officer Assessment

1. Principle of development

The proposal seeks permission for construction of an alternative route for the cycle and footway approved under planning permission P/2017/1133 (as varied by P/2022/0112).

The principle of the Northern Access Route (NAR) linking the residential development at Inglewood to the service and transport facilities at White Rock has been agreed.

The current application seeks to provide an alternative route and falls to be considered against other Policies of the Plan notably those relating to transport access, active travel, residential amenity, ecology, green infrastructure and drainage. These matters are considered below and other relevant material considerations, which will be discussed in further detail below.

In principle, and subject to the recommended condition, the proposal is, therefore, considered to be consistent with previously approved scheme (Appeal permission P/2017/1133 as varied by P/2022/0112) for a pedestrian and cycle connection between the Inglewood development and facilities at White Rock and vice versa.

The timing for construction of this section of the NAR is recommended to be before commencement of construction of the development for 25 houses on Land East of Limekiln Close. This is recommended to be secured through a condition on planning permission P/2022/1173. The provision of the proposed alternative route is a prerequisite of that development proceeding. If that development does not proceed the original NAR route could be implemented. The Inglewood planning permission requires provision of the full NAR prior to the first occupation of that development.

These measures are considered sufficient to ensure that the route is provided if needed as an alternative to the approved NAR.

The proposed alternative route would require to be compliant with the relevant conditions and Section 106 obligations of the outline planning permission. These are discussed further in the Highways section.

2. Impact on Visual Amenity

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 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

Policy PNP1(c) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the property, to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

The proposal is to install a shared foot/cycle way surface on the ground. The visual impact would be minimal subject to the selection of a surface material to reflect the

country-park/semi-rural setting and the landscape colours in the vicinity. Details of colour and texture can be secured by condition.

A removable bollard is proposed at the northern end of the new surface at the juncture with the existing metalled surface of Limekiln Close will also need to be in a style and materials suited to the setting and of a design to prevent entry by motorised vehicles. Details can be secured by condition.

Subject to the recommended conditions and given the siting, scale, and design of the proposal it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality.

The proposal is considered to be in accordance with Policy DE1 of the Local Plan, Policy PNP1(c) of the Paignton Neighbourhood Plan, BH of the Brixton Peninsula Neighbourhood Plan and the guidance contained in the NPPF.

3. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development should provide a good level of amenity for future residents and should not unduly impact upon the amenity of neighbouring properties and surrounding uses.

The NAR is intended to provide an active travel link connecting into the surrounding areas for the benefit of existing residents and future residents of Inglewood. However, its provision is tied into the Inglewood development commencing.

Residents of White Rock currently use the application stie as an informal route between Limekiln Close and the woodland. This link is unsurfaced (bare earth) and the surface quality deteriorates in wet weather. It provides a route for able bodied active people but is not a surface that can be used easily by wheelchair or pram users. The provision of a surfaced path would improve the accessibility for those groups. The approved path would provide such a surface for pedestrians and cyclists.

The proposed alternative route to the approved indicative one is direct and would run along the route of the existing roadway in Limekiln Close to connect to the adopted highway.

Objections have been received on grounds of increased traffic on Limekiln Close causing noise and disturbance to residents of Limekiln Close. Existing residents have expressed that the existing gravel path linking the western side of the open space to the Woodland Walk is a preferred route.

The proposed design links directly into the southern end of Limekiln Close, which is a private road at this point. The proposed route would run for approximately 60m along the private section to link with adopted public highway further north. This footway is already used by people walking from White Rock up to the woodland area (e.g. dog walkers).

Any increase in traffic use of Limekiln Close resulting from the proposed shared surface route would be in pedestrian and cycle traffic.

The shared surface would connect to the pedestrian footway in Limekiln Close via a dog-leg configuration, which would act as a restraint on the speed at which people (pedestrians) would enter the southern end of Limekiln Close. The dog-leg would also deter cyclists from using the footway. Cyclists would use the carriageway of Limekiln Close, separated from the houses by the kerbed footway.

The existing metalled footway passes in front of the four houses on Limekiln Close. The houses face onto the public open space and play area and the frontages are open to public view. Each house is set back behind front gardens varying in depth from 2m to 6m. The existing ground floor front windows of these houses are fitted with blinds. Therefore, a level of privacy is established between the houses and the roadway outside.

An increase in the flow of pedestrians along the footway is likely to arise as a result of the proposed foot/cycleway. In practice some pedestrians would be likely to use the existing gravel link on the western side of the open space, which leads directly to the play area gate and connects into White Rock Road

However, this is not considered likely to be of such a level to cause a significant loss of privacy to the houses on Limekiln Close over and above the current situation.

With regards to noise and disturbance, as the proposed pathway would be within and adjacent to the dark skies area of the woodland. Any lighting would be required to be low-level. As such, it would not encourage use at unsocial hours. Compared to the approved route, which would run behind the houses in Limekiln Close, the current proposal would create fewer unsurveilled spaces and would be more naturally surveilled.

Given the design of the proposal, it is considered that the proposal would not result in any significant unacceptable harm to the amenities of neighbours.

The proposal is considered to be in accordance with Policy DE3 of the Local Plan.

4. Impact on Highway Safety, Access and Parking

Policy TA1 of the Local Plan requires developments to ensuring that the most sustainable and environmentally acceptable modes of transport are promoted as an integral part of developments and sets (i) walking and (ii) cycling as the highest priorities. Policy TA2 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 PNP22 of the Paignton Neighbourhood Plan endorses low-carbon and active travel facilities in the Western Corridor area, within which this site falls.

The approved route is subject to condition 25 on Planning permission P2017/1133 (as varied by P2022/01120) and the related Section 106. These require the following to be complied with:

- Shared footway and cycleway (drawing 0734-055),
- Constructed and made available and connected to a safe route ,
- Provide prior to first dwelling being occupied,
- Maintained as such at all times,
- The route shall be transferred to a Management Entity for the Inglewood site,
- The Management Entity shall manage and maintain the route,
- The route shall be kept open as a permissive path freely available for use by public in perpetuity.

The proposed alternative route will need to meet the same condition and obligations.

Design of route

The approved NAR would provide a utility link between the White Rock and Inglewood areas and the services that each provides e.g. the school and pub/restaurant community facility in Inglewood and the retail, employment and college facilities at White Rock. The NAR provides a link in Torbay Council's LCWIP Western Corridor Active Travel Improvements (LTP figure 6).

The current application would provide an alternative route at the northern end of the NAR. The proposed alternative would provide a shorter (by 80m), more visually direct link from the woodland area to the northern end of Limekiln Close.

The path links into the NAR in the woodland area from where it leads into the Inglewood site.

Design and Gradients

The submitted plan shows a 3m wide path with a shared cycle and footway. Proposed groundworks would adjust the gradients of the path to comply with access the requirements of Sustrans' publication "Path Design for Cycles, Walkers and Wheelers" and LTN1/20 guidance for traffic-free routes (e.g. with regards to gradients and suitable radii of corners/bends).

Surface Material

A hard-wearing surface is required, especially where the gradients are steeper. The quality and durability of the surface needs to be balanced with requirements for permeability/drainage and low maintenance.

The surface would need to accommodate people with mobility needs in providing a firm surface for year-round use, suitable for people using mobility aids with small wheels e.g. wheelchair front wheels, prams and children's scooters/bicycles. Therefore, a surface with similar durability to a metalled surface is sought. The

Highways Department has informally advised that a compacted subbase with a surface dressing can achieve a suitably durable surface and is more easily maintained than the submitted suggestion of resin-bound permeable surface. The applicants have responded that they are prepared to accept a condition requiring details of the surface to be submitted for approval.

Discussions are taking place with the Developer for Inglewood over the potential for the Council to adopt the NAR (full route) under a Section 38 agreement. This is currently under negotiation. There are certain requirements to be met for adoption, hence, the recommendation that the final surface treatment for this northern section be agreed through condition.

Connection point into Limekiln Close

The connection point into Limekiln Close for the cycle path will be required to link into the carriageway at level with suitable kerbing and physical means to prevent unauthorised motorised vehicles from entering the path.

Similarly, the connection point between the footpath surface and the footway on Limekiln Close will need to be level and adequately treated.

It is recommended that these details are submitted for approval and that this be secured through a condition.

Right of access and maintenance

The Inglewood Section 106 agreement requires the route of the NAR and right of access over it to be retained in perpetuity. It also requires that the route be maintained and kept open for public use (except for repairs and then for the minimum time necessary).

The applicants have agreed to prepare an agreement to secure positive obligations between the relevant parties (landowner of the private road, the applicants and the Inglewood developer) to provide access and maintenance.

The Council's Solicitor has commented that requirements for public use and maintenance would normally be placed on the landowner and would be directly enforceable. They highlight that the positive obligations to maintain would be at risk of ownership changes. However, a covenant that the route is kept open would be readily enforceable against the landowner.

In conclusion, an agreement with the Inglewood developer and the two landowners is required, which should secure the long-term public rights. The responsibility to maintain the path would need to remain with Persimmon/the Inglewood Management Entity. However, once implemented, it is considered that maintenance would be low.

As a result, it is recommended that the right of access for the public to pass freely over the route is secured through a Section 106 agreement with the applicant and land owners.

Maintenance of this route would also need to be secured. The obligation to maintain is with Inglewood's owner or Management Entity (in the Inglewood Section 106 agreement) and it would be consistent and reasonable for this to be the case for the alternative route. This will also need to be secured through a Section 106 obligation.

Parking

Policy TA3 and Appendix F of the Local Plan states the minimum dimensions for parking spaces, including garages.

The proposal retains the vehicular access and off-street parking for properties in Limekiln Close.

Subject to the recommended conditions and Section 106 obligations, the proposal is considered acceptable with regards to Policies TA2, TA3 and Appendix F of the Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

5. Landscape and Trees

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm (amongst other things) protected trees or other natural features of significant landscape, historic or nature conservation value, and that, where the loss of trees or landscape features is considered acceptable as part of development, that replacement trees or other mitigation measures will be required through a planning condition or legal agreement.

A stand of large mature trees sits along the southern boundary of the public open space at White Rock. The proposed path would run on the east and south of this stand of trees.

The Arboricultural Team have commented that the roots of these trees should be protected and requested a condition securing a Tree Protection Scheme during the construction of the proposed pathway. This is recommended.

Subject to this condition, the proposal is considered acceptable with regards to Policy C4 of the Local Plan.

6. Ecology & Biodiversity

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy PNP1c).2 of the Paignton Neighbourhood Plan seeks protection and enhancement of the biodiversity value on development sites and connections with related sites.

The site passes through the dark skies areas identified in the Ecological Addendum to the Environment Statement (April 2011) for White Rock development (P/2011/0197). The DCC Ecologist has commented that the proposed foot/cycle route should not be lit in order to preserve the dark skies foraging area for protected bat species, particularly the Greater Horseshoe Bats. Any lighting in this area is required to be below a certain lux level and to have restricted spill.

This is considered against the comments of the Devon and Cornwall Constabulary and Highways Department. The concerns over personal and transport safety for people using the path are recognised. However, the protection of the Greater Horseshoe Bat foraging area is a due a significant weight in legislation and policy terms. The defined Dark Skies Area is not extensive but is targeted to where it is most needed.

Given the specifics of this location, it is considered that greater weight should be given to the ecological interests in this application.

Subject to the recommended condition restricting the lighting the proposal is considered to comply with Policy NC1 of the Local Plan and Policy PNP1c).2 of the Paignton Neighbourhood Plan.

7. Flood Risk and Drainage

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

The site is located within the Critical Drainage Area in an area designated as Flood Zone 1 by the Environment Agency.

The Drainage Team has commented that provided a permeable surface is used the scheme is acceptable.

It is recommended that the surface materials are submitted for approval further to a condition on planning permission pending discussions over the adoption of the NAR and the consequent design requirements. It should be noted that in certain circumstances high quality surface-dressed finishes (non-bituminous) can be acceptable in rural settings and these can be permeable. The adoption process would require adequate drainage to be provided in discussion with the Highway Department.

Given the nature of the proposal, it is recommended that a condition be imposed requiring full details of drainage to be submitted and agreed prior to installation of the initial and any subsequent surface. Subject to an appropriate drainage condition, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

8. Sustainability and Low Carbon

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Policy ES1 seeks to ensure that carbon emissions associated with energy use from new developments are limited. Paignton Neighbourhood Plan Policy PNP1(f) states that new development should aim to achieve, where appropriate and subject to viability, connecting cycleways and footpaths (where development involves new road infrastructure).

The provision of an active travel route for strategic connection in this location supports low-carbon means of transport. As such, it supports the principles of Policies SS3 and ES1 of the Torbay Local Plan.

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

CIL

Not liable for CIL

S106

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

- Right of access for the public to pass freely over the entire route.
- Maintenance of this route by Inglewood's owner or Management Entity.

Planning Balance

The proposal would provide an alternative route for the northern section of the Northern Access Route between Inglewood and White Rock. In principle the proposal is consistent with previously approved scheme (Appeal permission P/2017/1133) for a pedestrian and cycle connection.

The proposal has been assessed with regards to visual impact, residential amenity, highways and access, landscape, ecology, flood risk and sustainability.

The timing for construction of this section of the NAR is required to be before commencement of construction of the development for 25 houses on Land East of Limekiln Close (P/2023/0143). If that development does not proceed the original NAR route could be implemented. The Inglewood planning permission requires provision

of a route prior to the first occupation of that development. Consequently, further conditions over timing of provision of the route are not considered necessary.

Subject to the recommended Section 106 obligations and conditions, the proposal would not result in a significant impact on highway safety and amenity. Any potential negative impacts of the proposal would not be significant and would be outweighed by the social benefits of the proposal.

Conclusions and Reasons for Decision

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

Officer Recommendation

Approval subject to:

1. The completion of a Section 106 Legal Agreement within 6 months of the Committee date to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.
2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.
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.

Conditions

1. Flood Risk Assessment

In the event that the proposed surface materials for the path hereby permitted are not water permeable, prior to the commencement of development details of the means of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. The details of the means of surface water drainage shall include evidence of how surface water will be dealt with in order not to increase the risk of flooding to surrounding buildings, roads and land. As Torbay is a Critical Drainage Area the submitted means of surface water drainage shall ensure that all off-site surface water discharges from the development must be limited to the "Greenfield" run off rate for the 1 in 10-year rainfall event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100-year storm event plus a 50% allowance for climate change. The approved surface water drainage system has been completed as approved prior to the first use of the path and shall be continually retained and maintained thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030, Policy PNP1(i) of the Paignton Neighbourhood Plan and the guidance contained in the NPPF. This needs to be a pre-commencement condition to ensure

that the impacts of construction on flood risk and drainage are mitigated from the outset of development.

2. Materials, construction method and timing

Prior to the commencement of the development hereby permitted, details of the means of construction and colour, type and texture of all surface and wall materials to be used in the construction of the proposed development shall be submitted to and approved by the Local Planning Authority. The path shall be designed to be permeable and to adoptable standards as defined in the Council's Highways Design Guide for New Developments, save with respect to lighting. The details shall include a schedule for implementation. The development shall be implemented in accordance with the approved details and maintained in that condition thereafter.

The path shall not be used until it has been constructed to adoptable standards or is the subject of an agreement with the Council made pursuant to s38 of the Highways Act 1980.

Reason: To ensure a satisfactory form of development in accordance with Policies DE1, TA1 and TA2 of the Torbay Local Plan 2012, Policy PNP22 of the Paignton Neighbourhood Plan and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the path is constructed in an acceptable manner with regards to amenity, highway safety and convenience of users from the outset of development.

3. Removable bollards and kerbs at connection point to Limekiln Close

Prior to the commencement of the development hereby permitted, details of the proposed removable bollards to prevent vehicle access and kerbs to be used in the construction of the path at the point of connection to Limekiln Close shall be submitted to and approved by the Local Planning Authority. The materials shall be designed to adoptable standards as defined in the Council's Highways Design Guide for New Developments. The details shall include a schedule for implementation. The development shall be implemented in accordance with the approved details prior to its first use and shall be maintained in that condition thereafter.

Reason: To ensure a satisfactory form of development in accordance with Policies TA1 and TA2 of the Torbay Local Plan 2012-2030, Policy PNP22 of the Paignton Neighbourhood Plan 2019 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the path is constructed in an acceptable manner with regards to highway safety and convenience of users from the outset of development.

4. Root Protection – Trees on adjacent land

(i) Works to trees and hedges to be retained. Any work carried out to trees and hedges to be retained on site or close to the boundary of the site shall be with the written approval of the Local Planning Authority. Such work will be to British BS 3998: 1989 as a minimum standard.

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

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

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

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

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

Reason: To ensure that all existing trees and hedges on the adjoining sites are adequately protected while development is in progress, in accordance with Policy NC1 of the Torbay Local Plan 2012 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the vegetation in this locality is adequately protected during the construction phase.

5. Lighting Restrictions

No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. All approved lighting shall be implemented in accordance with the approved details and retained in that condition thereafter.

Reason: In the interests of biodiversity and residential amenity, in accordance with Policies SS8, NC1 and DE3 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

6. CMP

No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement for the development has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:

- (i) The parking of vehicles of site operatives and visitors.
- (ii) Loading and unloading of plant and materials.
- (iii) Storage of plant and materials used in constructing the development.
- (iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- (v) Wheel washing facilities.
- (vi) Measures to control the emission of dust and dirt during construction.
- (viii) Measures to minimise noise nuisance to neighbours from plant and machinery.
- ix) Construction working hours and delivery and removal of materials, plant and waste shall be from 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays or Public Holidays, unless otherwise agreed in writing by the Local Planning Authority
- x) Details of how lighting will be controlled during the construction phase of development.

The approved Statements shall be adhered to throughout the construction period of the development.

Reason: In the interests of highway safety and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

Informatives

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

Relevant Policies

The proposed development has been tested against the following policies of the Development Plan and other relevant material considerations and in the opinion of the Local Planning Authority the proposed development is not in conflict with these policies:

Torbay Local Plan

SS2 - Future Growth Areas
SS3 - Presumption in favour of sustainable development
SS8 - Natural Environment
SS9 - Green Infrastructure
SS14 - Low carbon development and climate change
SDP3 - Paignton North and Western Area
TA1 - Transport and accessibility
TA2 - Development access
TA3 – Parking requirements
C4 - Trees, hedgerows and natural landscape
DE1 - Design
DE3 - Development Amenity
NC1 - Biodiversity and geodiversity
ER1 - Flood Risk
ES1 - Energy

Paignton Neighbourhood Plan

PNP1 – Area wide
PNP1(c) – Design Principles
PNP1 (f) – Towards a Sustainable Low-Carbon, Energy-Efficient Economy
PNP1(g) – Designing out Crime
PNP1(h) – Sustainable Transport
PNP1(i) - Surface Water
PNP21 – White Rock and nearby areas
PNP22 – Western Corridor

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