

Friday, 19 May 2023

**PLANNING COMMITTEE**

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

**Tuesday, 30 May 2023**

commencing at **2.00 pm**

The meeting will be held in the Burdett Room, Riviera International Conference Centre, Chestnut Avenue, Torquay TQ2 5LZ

**Members of the Committee**

Membership to be confirmed following the adjourned Annual Council meeting on 25 May 2023

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**Together Torbay will thrive**

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

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

# PLANNING COMMITTEE AGENDA

1. **Apologies for absence**

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

2. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on 13 March 2023.

(Pages 5 - 7)

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 Chairperson decides are urgent.

5. **Preston Down Road, Paignton - P/2022/0820**

Construction of 101 dwellings including a mix of 1,2,3 and 4 bedroom homes (30 affordable) together with new means of access, landscaping, public open space, play areas and associated works on two fields north and south of Preston Down Road.

(Pages 8 - 49)

6. **7 - 9 The Riviera, Paignton - P/2023/0028**

Change of use from a residential care home (Use Class C2) to form 11 supported living accommodation units (Use Class C3b).

(Pages 50 - 71)

7. **Sports Pitch - Side Adjacent to Brixham Cricket Club, 83 North Boundary Road, Brixham - P/2022/0339** (Pages 72 - 115)  
Change of use from agricultural land to outdoor football pitch, formation of parking area, changing rooms, boundary fence and associated works. (Part-retrospective).
8. **Sports Pitch - Site Adjacent to Brixham Cricket Club, 83 North Boundary Road, Brixham - P/2020/0480** (Pages 116 - 163)  
Change of use from agricultural land to outdoor football pitch for sports and recreational use, formation of parking area and associated works. (Part-retrospective).
9. **Gazebo - Cafe, Oddicombe Beach - P/2023/0205** (Pages 164 - 172)  
Construction of gazebo (Part Retrospective).

### **Public Speaking**

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) before 11 am on the day of the meeting.

We are trialling hybrid meeting arrangements to give registered speakers the opportunity to either attend the meeting in person to give their views or to attend the meeting remotely via Zoom. If you would like to attend the meeting remotely to speak you will be provided with a Zoom link to join the meeting. We also ask that you provide a copy of your speech to [governance.support@torbay.gov.uk](mailto: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, 24 May 2023. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

### **Meeting Attendance**

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

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

### **Live Streaming**

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

## **Minutes of the Planning Committee**

**13 March 2023**

**-: Present :-**

Councillor Pentney (Chairman)

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

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

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### **38. Apologies for absence**

It was reported that, in accordance with the wishes of the Independent Group, the membership of the Committee had been amended to include Councillor Brown in place of Councillor Manning.

### **39. Minutes**

The minutes of the meeting of the Committee held on 13 February 2023 were confirmed as a correct record and signed by the Chairman.

### **40. Land To The South Of White Rock, Adjacent to Brixham Road, (Inglewood, Paignton) - P 2022 1119**

The Committee considered a major reserved matters application for land to the south of White Rock, adjacent to Brixham Road, (Inglewood, Paignton) under application number P 2022 1119, relating to outline consent for approval of layout, scale, appearance, 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.

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 confirmed that outline planning consent had already been granted by the Planning Inspectorate in respect of this application and that application number P 2022 0112 referred to a Section 73 variation in respect of the outline planning.

The Planning Officer informed the Committee, that the supplementary report contained a revised schedule of adaptable affordable housing units and confirmed

that the number of adaptable units remained at 19 but the tenure mix and type of units had been improved to increase the number of social rent adaptable units from three to six in a range of sizes.

The Planning Officer advised the Committee that details of the drainage for most of the first phase of the residential development had been submitted to the drainage officer who confirmed that they were acceptable.

At the meeting Mr Alistair MacDonald addressed the Committee in support of the application.

Resolved (unanimously):

Approved subject to:

1. the conditions as outlined within the submitted report, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;
2. the addition to condition 16 to include that the Landscape and Ecological Management Plan identifies the responsibility for future management and maintenance of each area of the site;
3. the addition to condition 27 that the external walls of the buildings shall not be painted in any colour other than as specified on the approved materials plans and that no external lighting should be installed; and
4. 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.

#### **41. Former St Kilda's Residential Home - P/2021/0531**

The Committee considered an application in respect of the former St Kilda's Residential Home under application number P/2021/0531, relating to partial demolition of the existing care home and development of 23 'later living' flats with associated parking; change of use of the retained villa to single dwelling (24 units total) and minor works to the retained villa.

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

Resolved (unanimously):

Approved subject to:

1. recreation pressures mitigation obligation of £3,240.00 to be secured via a Section 106 legal agreement;

2. the completion of the Nomination Agreement to secure 23 units of affordable housing;
3. the conditions as outlined within the submitted report with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency including the inclusion of an over 55s condition to secure continued use of the form of development sought, and;
4. 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.

**42. Former St Kilda's Residential Home (Listed Building Consent) - P/2021/0532**

The Committee considered an application for the former St Kilda's Residential Home under application number P/2021/0532 for listed building consent relating to partial demolition of the existing care home and development of 23 'later living' flats with associated parking; change of use of the retained villa to a single dwelling (24 units total), and minor works to the retained villa.

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

Resolved (unanimously):

Listed building consent granted subject to:

1. the conditions detailed in the submitted report; and
2. the final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Divisional Director of Planning, Housing and Climate Emergency.

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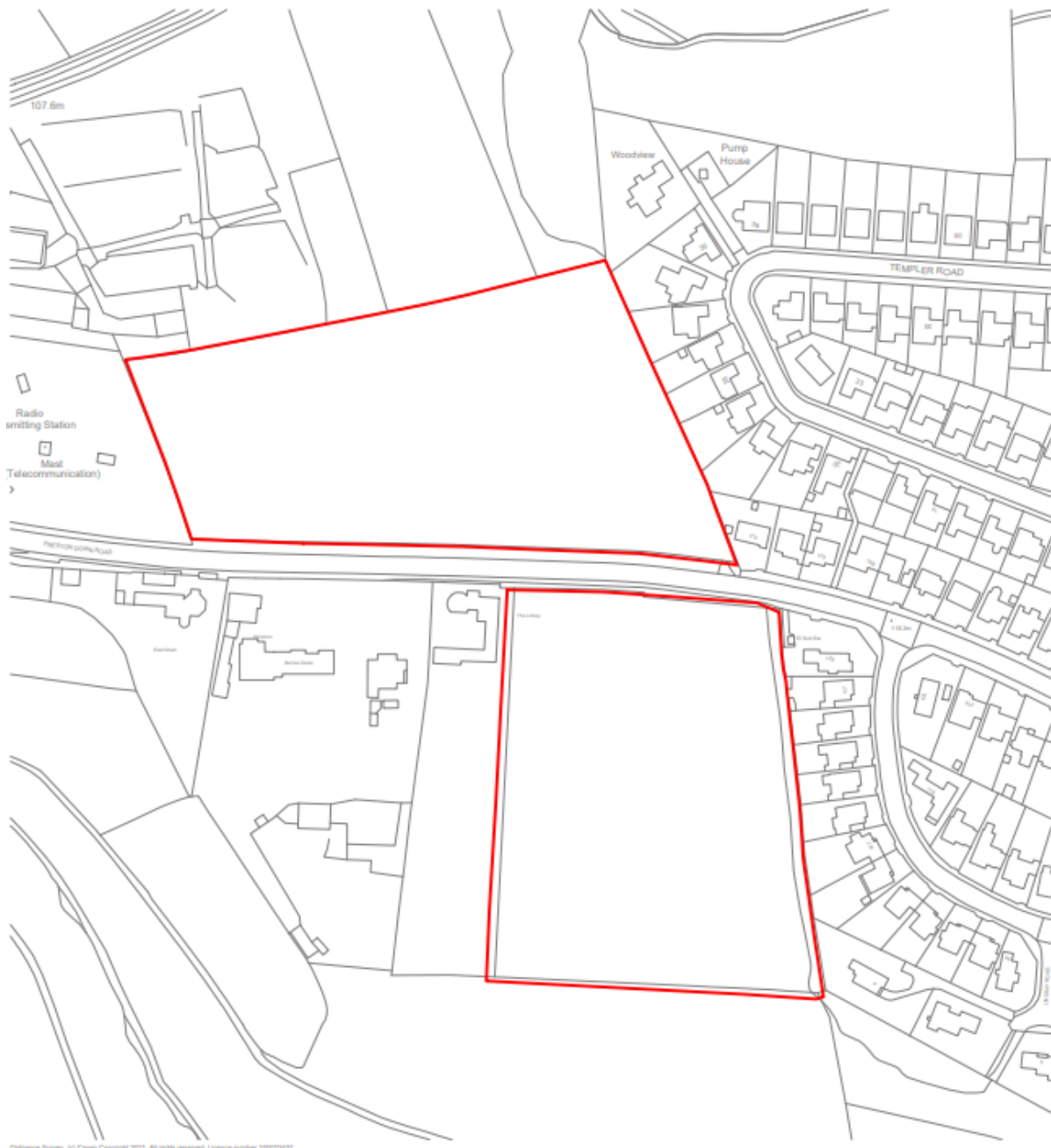
Chairman

## TORBAY COUNCIL

Application Site Address	Land At Preston Down Road, Paignton
Proposal	Construction of 101 dwellings including a mix of 1,2,3 and 4 bedroom homes (30 affordable) together with new means of access, landscaping, public open space, play areas and associated works on two fields north and south of Preston Down Road.
Application Number	<u>P/2022/0820</u>
Applicant	TDA
Agent	Boyer Planning
Date Application Valid	14.07.2022
Decision Due date	13.10.2022
Extension of Time Date	31.05.2023
Recommendation	<p>Completion of a satisfactory Section 106 planning agreement and the agreement of any necessary extensions to the statutory determination period to complete this agreement.</p> <p>The conditions as outlined, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Major Application.
Planning Case Officer	Jim Blackwell



## Location Plan



## Site Details

The two parcels of land are being considered within one full planning application and relate to the fields lying to the north and south of Preston Down Road. The site lies towards the western edge of the local authority boundary which reaches as far as Occombe Farm before running north to south. There are few local services in walking and cycling distance, although Preston Down Road is a bus route. There is a transition from 40mph speed limit to 30mph limit at this point of Preston Down Road moving towards Paignton.

For clarity, the two sites are described separately below:

Land to the north:

- A broadly rectangular piece of land (2.05ha) running parallel to Preston Down Road.

- There are two gated access points into the field from Preston Down Road with a 2m verge and vehicle pull in half way along.
- The entire rectangular boundary has dense hedgerow and mature trees. The north boundary has mature trees the entire length.
- The rear gardens of residential properties on Templar Road are to the east. There are five mature oaks in this section protected by Tree Preservation Order (TPO).
- Beyond the northern boundary is an agricultural field with a number of polytunnels and other structures associated with the Sutton Seeds Nursery to the northwest.
- There are a range of below ground constrains including an intermediate pressure gas main running west to the south east entrance to the site. There is also a sewer running diagonally through the field serving Torbay Coast and Countryside Trust.

Land to the south:

- Rectangular piece of land (1.97ha) with the shorter edge bounding Preston Down Road.
- The topography of the site falls from its highest point in the north-west corner by approximately 20m to the lowest point in the south east corner.
- It is separated from the highway by a narrow footway and mature hedge running its entire length.
- The boundary to the east has a mature hedgerow separating the rear of detached properties on Sandringham Drive.
- There is a bank of mature trees to the south.
- The boundary to a west is a well-managed fence and hedge with residential property behind.

The overall site:

- Located in Flood Zone 1 and within Torbay Critical Drainage Area.
- The Occombe Site of Special Scientific Interest (SSSI) is located approximately 125m north.
- To the south is Occombe Valley Woods LNR and Occombe Woods County Wildlife Site (CWS).
- Contains a mix of Grade 2, Grade 3a, 3b and Grade 4 Agricultural land. However, the site is currently no longer in active agricultural use, though the grass is periodically cut.
- The two sites are not allocated within the adopted Local Plan and are identified as countryside, the land parcels are identified as key housing sites under Policies SDP3.1 (sites PNP1 and 2) and SS1 of the Paignton Neighbourhood Plan (PNP).

### **Description of Development**

The application proposes:

- 101 dwellings across the north and south field.
- A total of 30 affordable dwellings are proposed, 17 in the northern field and 13 in the southern field.
- There are 14 different house types proposed including accessible flats, bungalows, detached, semi-detached and terraced houses and split-level house types.
- The dwelling mix would range between 1 bed accessible flats, 2 bed flats, 2, 3 and 4 bedroom houses and 3 bed bungalows.
- A range of storey heights is provided across the site including 1, 2 and 2.5 storey.
- Vehicular access to the site will be taken from the creation of two new access junctions located on the northern and southern side of Preston Down Road.
- The internal layout of both the northern and southern proposed development sites consists of two cul-de-sacs that branch out to provide connected roads, turning points and access to off-road parking spaces and garages.

- The principal pedestrian and cycle access into the proposed development will be via the main site access junctions onto Preston Down Road. A new section of footway is proposed connecting the pedestrian access for each parcel of the site with the existing footway adjacent to the kerb line of Preston Down Road.
- Informal pedestrian connections are proposed to the north and south.
- Retained and improved green infrastructure.
- Hard and soft landscaping.
- Sustainable urban drainage systems.
- Public open space and a new informal play space is proposed within the southern site.

Amendments and additional information have been submitted during the life of this application. These include:

- Completed Sustainability Checklist.
- Landscape and Ecological Management Plan (BR0704/LEMP Rev C)
- Ecological Impact Assessment, dated January 2023 (BR0599/ECIA Rev B)
- Amended drawing packs including house types, house type variation plans, plan of informal play area plan, illustrative street scenes, existing sections, proposed layouts, boundaries plans, hard landscaping and soft landscaping plans.
- Refuse vehicle tracking (3552. ENG. 116).
- Parking space access vehicle tracking (3552. ENG. 117 and 3552. ENG. 118).
- Further drainage information including Surface Water Drainage Design (Ref. 3552/D01).
- Amended Written Scheme of Investigation (Ref. SX88066293).
- Biodiversity Net Gain Report (BR0599/BNG Rev. B).
- Biodiversity Net Gain Calculation Metric dated 15th December 2022.
- Updated Habitats Regulations Assessment (Rev C dated January 2023).
- Revised Preston Down Road Junction Layout (3552.ENG.100 Rev. C)
- Lighting Impact Assessment with appendices (1084-LB-XX-XXRP-E-7080-02) dated 5<sup>th</sup> January 2023.
- Visitor parking and cycle parking.

### **Pre-Application Enquiry**

DE/2022/0034: Construction of 101 dwellings on two fields either side of Preston Down Road: the principle of the proposed residential development is acceptable subject to a wide range of considerations, including ecology, landscape character, residential design and access.

### **Relevant Planning Policy Context**

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

Development Plan:

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

Material Considerations:

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published standing advice.

- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

### **Statement of Community Involvement**

The application is supported by a Statement of Community Involvement. This process included:

- Community engagement with Ward Councillors, Paignton Partnership Group and Neighbourhood Planning Forum.
- An online consultation page was live between 18 February - 28 February 2022. An in person public exhibition was also held on 28 February at Occombe Farm.
- In total 188 feedback forms were received.

The responses covered concerns around the impact on highways, traffic capacity, loss of greenfield, community infrastructure and facilities, impact on local character. The SCI demonstrates that the engagement has influenced the layout, impact on adjoining neighbours, landscape design and connectivity.

### **Relevant Planning History**

P/1990/0791: Land Opposite Burrow Down, Preston Down Road and Adjacent Templar Road, Paignton – refused 06.09.1990.

P/2022/0348: Environmental Impact Assessment (EIA) Screening Opinion - EIA is not required 08.04.2022.

### **Summary of Representations**

There have been approximately 52 objections to the scheme had been received at the time this report was drafted.

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

- Drainage.
- Impact on local area.
- Not in keeping with local area.
- Loss of light.
- Noise.
- Over development.
- Privacy and overlooking.
- Traffic and access.
- Impact on landscape, trees and wildlife.
- Loss of agricultural land.
- Landscape impact.
- Loss of public open space and routes.
- The quality of the submitted sustainability credentials.

One letter of support has been received:

- Impact on local area.
- It provides facilities.
- It provides houses.
- Provides / retains jobs.

### **Summary of Consultation Responses**

**Paignton Neighbourhood Forum:**

No comments received.

**County Archaeologist and Historic Environment Manager:**

No objection subject to the submission of a Written Scheme of Investigation and Post Investigation Report which can be resolved via suggested conditions.

**Natural England:**

No objection. Your AA concludes that Devon County Council is able to ascertain that the proposal will not result in adverse effects on the integrity of the South Hams Special Area of Conservation (SAC). Having considered the revised assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures specified in the AA are appropriately secured by conditions in any planning permission given.

**Torbay Council's Engineering Service Manager:**

No objection providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design, I have no objections on drainage grounds to planning permission being granted for this development.

**South West Water:**

No objection. The method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

**Environment Agency:**

No comments to make, standard conditions apply.

**Police Designing Out Crime Officer:**

No objection subject to a suggested condition requiring further details around security of gardens.

**Torbay Council's Highways Engineer:**

No objection. The following details were made to the satisfaction of the Highways Engineer: The following requests for further information were made:

- A revised TRICS assessment is required to determine the number of multi-modal trips anticipated to be generated by the proposed development;
- An operational capacity assessment is required for the staggered junction proposed with Preston Down Road at the site accesses;
- The Highway Adoption Plan needs to be provided to confirm that waste collection operatives have access to the full site, in accordance with Manual for Streets guidance;
- Confirmation is required as to the proposed internal speed limit of the site;
- Proposed relocation of the eastbound and westbound bus stops closer to the development site;
- Visitor car and cycle parking should be considered, and information provided as to the quality, quantity and location of such parking; and
- SMART targets should be identified within the Framework Travel Plan in line with policy guidance to reduce reliance on single occupancy vehicles by residents of the site.
- The applicant should note that wider sustainable transport contributions may be required for the scheme. This will be calculated at £171 per trip as per the Planning Contributions SPD.

**Senior Tree and Landscape Officer:**

No objection. The proposal is sustainable from an arboricultural perspective. Please ensure compliance condition with the Tree Protective Plan and arboricultural supervision aspects of the reports.

**Ecologist:**

No objection subject to additional information being provided.

- The Site falls within the Landscape Connectivity Zone for South Hams Special Area of Conservation (SAC). An HRA is required to Appropriate Assessment level.
- The Occombe SSSI is of national interest for its lowland meadow grassland habitats. It lies c.125m to the north of the site. Approximately 1ha of the northern field lies within the 50-200m Impact Risk Zone (IRZ) for this nationally important designated site, and the remainder lies within the 200-500m IRZ. NE to be consulted. Applicant to discuss mitigation proposals with LPA once NE consultation response has been received.
- Pollution controls required to avoid water-borne impacts. Condition suggested: Pollution controls to avoid impacts to Occombe SSSI to be outlined in CEMP and submitted to LPA for approval.
- Occombe Farm and Scadson Woods LNR immediately adjacent to the Site to the north and south. (NB: this LNR contains Occombe SSSI). Further information required on mitigation details.
- Occombe Valley Woods LNR lies immediately to the south, further information required on mitigation details.
- Occombe Woods (W) CWS lies immediately adjacent to the Site to the south. Overlaps in part with the Occombe Valley Woods LNR. Further information required on this route including the expected amount of habitat loss required and confirmation of the method of drainage pipe installation. Applicant to examine whether there are routes which avoid the CWS entirely.
- Satisfied with the hedges proposals subject to condition: Condition: Woodland, retained hedgerow and trees within and bordering the Site to be protected in accordance with BS 5837:2012 (Trees in relation to design, demolition and construction) and details outlined in CEMP. Condition: All hedges to be managed as per details outlined in LEMP. Condition: All new hedges to be Devon hedges i.e. with banks. Details to be outlined in LEMP and submitted to LPA for approval.
- Bat flight lines and foraging. Potential for loss of commuting and foraging opportunities through habitat loss and introduction of new artificial lighting sources, particularly along northern boundary where bat activity is greatest. Light spill into the dark buffer along northern boundary has been demonstrated by the Lighting Impact Assessment to exceed 0.5 lux. This will therefore impact on the functionality of this buffer as commuting route for light-sensitive bat species such as Greater Horseshoe Bat. See South Hams SAC comments above.
- Bat roosts details satisfactory subject to condition. Condition: Applicant to follow methods outlined in EclA report to avoid impacts to roosting bats. Details to be outlined in CEMP and submitted to LPA for approval. Condition: Details (including locations) of artificial bat roost features to be outlined in LEMP and submitted to LPA for approval.
- Other protected species are satisfactorily protected but subject to conditions.
- BNG Planting specification for SUDS basin required. Applicant to provide this demonstrating that all species will be native as per recommendations in EclA report.

**Devon and Somerset Fire and Rescue Service:**

These include Vehicle Access, including minimum road widths, turning facilities for fire service vehicles and maximum reversing distances of 20 metres. In addition, the provision of appropriate water supplies for firefighting (Street Hydrants) including appropriate flow rates will need to be achieved.

**Waste and recycling**

No objection subject to waste management contributions.

**Torbay and South Devon NHS Foundation Trust**

No objection subject to Section 106 funding towards improvement to local medical practices.

**NHS Devon Clinical Commissioning Group (CCG)**

No objection subject to Section 106 funding towards improvement to local medical practices.

**Devon and Somerset Fire and Rescue**

No objection subject to Building Control compliance.

**Housing Strategy and Enabling Officer**

The Planning Statement confirms the provision of 30 affordable housing units which is consistent with Policy H2. The layout and clustering of the affordable dwellings as set out in the Northern and Southern layouts ref: dwgs 0102 & 0103 is well thought out and well-integrated into the development.

The affordable housing SPD stipulates an affordable housing tenure split of 1/3 social rent, 1/3 affordable rent & 1/3 shared ownership. The breakdown is set out in the layout dwgs referred to and complies the relevant SPD.

Layout North		
8, 46, 47, 48, 49, 50	Shared Ownership	6
6, 18,19	Affordable Rent	3
10,11,12,13,14,15,16,17	Social Rent	8
Layout South		
15,16,17,18	Shared Ownership	4
22,23,24,25,26,27,28	Affordable Rent	7
20,21	Social Rent	2

The affordable housing proposals are compliant. The affordable housing provision will need to be secured by way of section 106 agreement.

A few other comments:

- The application is silent on First Homes. Other LPAs are considering First Homes national policy and, on that basis, would not consider this a compliant application.
- It is not usual for the applicant to name the Registered Provider in the Planning Statement, and this should have no bearing on the planning decision.

**Accessibility standards H6**

Policy H6 states that all new dwellings should be capable of adaptation for disabled people, where practical. Housing developments of 50+ dwellings should provide a minimum of 5% new homes to Building Regulations Approved Document Part M4(2)

The Planning Statement at 4.5 states that the proposed development includes the provision of 8 flats (including x2 accessible {not defined}), 6 bungalows, and 87 houses. On the face of it the application this is not compliant with H6 and no reference has been made to Policy H6. As I understand it the LPA does impose this Policy on other applications.

**Planning Policy Officer**

No objection. The officer is content that 10 shared ownership homes meet the Local Plan requirement. We have given the WMS promoting First Homes due regard, but there is a pressing need for RP administer housing too, so we are not going to insist on First Homes.

We are also taking a similar approach to “Self build affordable housing” in Policy H3. In practice it is often easier to accept 30% RP housing.

The Local Plan Site Options Consultation will consider First Homes, but in my view, we should still accept Shared Ownership rather than First Homes, if that approach works better for everyone. Likewise, the policy on First Homes needs clarification in the Local Plan update.

### **Planning Officer Assessment**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of development
2. Design and visual impact
3. Open space and landscaping
4. Ecology, biodiversity and trees
5. Impact on heritage assets
6. Residential amenity
7. Highways, movement and parking
8. Designing out crime
9. Drainage, flood risk and contamination
10. Low carbon development
11. Affordable housing
12. Housing supply

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

The proposal would help meet housing need and the Council's 5 year housing supply. This accords with the objectives of Policies SS1 (Growth strategy for a prosperous Torbay), SS2 (Future Growth Areas), SS11 (Sustainable communities), SS12 (Housing) and SS13 (Five year housing supply) H1 (Applications for new homes) of the Local Plan.

Policy SS1 sets out a growth strategy for a prosperous Torbay, supports regeneration that creates sustainable living, working and leisure environments, and seeks delivery of homes.

Policy SS2 proposes Paignton North and West Area for future growth. Development located here must be integrated with existing communities, reflect the landscape character of the area as informed by Torbay's Landscape Character Assessment (2010), be timed in accordance with provision of essential infrastructure, be informed by ecological surveys and flood risk assessments and should be consistent with the levels of growth set out in Policies SDT1, SDP1 and SDB1, and their related SD Policies.

Policy SS11 assesses development's contribution to improving the sustainability of existing and new communities within Torbay. Development must help to create cohesive communities within a high quality built and natural environment where people want to live and work. The criteria includes the need to meet the needs of residents and enhance their quality of life, close the gap between the most and least disadvantaged people and neighbourhoods in Torbay, develop a sense of place and local identity, promote social inclusion, and seek to eliminate exclusion based on access to housing, health, education, recreation or other facilities, create a well-connected, accessible and safe community, deliver development of an appropriate type, scale, quality, mix and density in relation to its location and provide a good standard of residential accommodation, by seeking to retain small to medium sized homes (2–4 bedrooms).



Policy SS12 sets out how the Authority will maintain a 5 year housing supply on a rolling basis, but it is accepted that Torbay currently has under a 3 year housing land supply. Therefore, the terms of the NPPF apply where a tilted balance applies in favour of sustainable housing proposals and the Local Plan cannot be considered up to date with regard to housing planning policy.

SS13 Five year housing land supply sets out the Council's rolling 5 year supply of specific deliverable sites to meet the trajectory of 8,900 new dwellings. For the period of 2022/23 – 2029/30 a trajectory of 555 dwellings per year are proposed.

Policy H1 states that proposals for new homes in the built-up areas of Torbay will be supported (subject to other Plan policies); promotes re-use of brownfield land and urban regeneration; and seeks to reduce the need to travel by car.

The PNP shows the land parcels are identified as key housing sites under Policies SDP3.1 (sites PNP1 and 2) and SS1 of the PNP. It includes both the land parcels as part of the housing sites phasing conclusions with anticipated delivery of 50 dwellings on each parcel between 2027/30.

SDP1 Paignton sets out the rejuvenation of Paignton through high-quality mixed use development, of which green infrastructure (GI) will underpin both recreation and flood resilience measures. Development sites to the west will be delivered through neighbourhood planning and masterplanning, to provide family housing opportunities that will be underpinned by an enhanced transport infrastructure, and account for environmental sensitivity through a GI led design approach. Paignton will seek to provide 4,290 new homes over the plan period.

SDP3 Paignton North and Western Area highlights the provision in a range of housing, especially family housing, naming Preston Down Road (SDP3.1) as one of the identified five broad areas for development. Development in this location should provide resilience to the effects of climate change, through the provision of GI, and adhere to guidance on Greater Horseshoe Bats as well as other species.

Policy C1 relates to resisting development in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy C1 also sets out, amongst other things, that major new development should focus on Future Growth Areas (FGA) in the Strategic Delivery Areas. The proposed development does not close the gap between urban areas and does form part of planned growth.

The Strategic Housing Land Availability Assessments (SHLAA) Paragraph 5.3.3.6 identified each site as having a capacity of around 50 dwellings. The land is to the north of the Western Corridor and therefore less constrained than other areas in Policy SDP3. Development of the sites must be sensitive to the landscape setting, to minimise impact on the rural areas around the location.

As part of the technical evidence base to inform the Local Plan review and brownfield register, in December 2021 the Council have undertaken a Housing and Economic Land Availability Assessment (HELAA) ref. no. 21P017 (north) and 21P018 (south). This identifies potential sites and assesses whether they are suitable, available and achievable for housing, employment or other economic development uses. The site has been assessed as being a yellow site, with the conclusion that there are minor constraints on the sites. However, the

HELAA panel were positive towards both the sites and described them as being 'an obvious choice for housing'.

Policy PNP1 Area Wide supports development proposals that provide housing growth appropriate to meet local needs and strategic needs set out in the Local Plan 2015, including affordable housing. The policy continues to state it will protect local identity and seek to achieve sustainable development.

Policy PNP19 Safeguarding open countryside acknowledges the countryside is a finite resource and ensures that any further development in the countryside does not damage its quality and the relationship between urban and rural areas. The site is located outside yet adjacent to the rolling farmland of Occombe Cross rural character area.

In addition to the above, the Council cannot currently demonstrate a 3 or 5 year housing land supply, which is a relevant material consideration to the principle. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision making process. The 'tilted balance' in favour of sustainable housing development therefore applies subject to the detail wording of the NPPF Para 11 and the associated footnotes. This principally means that for permission to be withheld either (a) the application of policies in the NPPF that protect areas or assets of particular importance (habitats sites (and those sites listed in para 181 of the NPPF) Sites of Special Scientific Interest; Area of Outstanding Natural Beauty; irreplaceable habitats; and designated heritage assets) provides a strong reason for restricting the overall scale, type or distribution of development or (b) harm would significantly and demonstrably outweigh benefits. This current context therefore increases the prospect of planning permission being granted because it 'tilts' the balance in favour of approving an application for housing.

Whilst the site is not allocated within the Local Plan, the proposal demonstrates compliance with the adopted spatial strategy and delivers residential development within the North and Western strategic delivery area. The development proposal therefore does accord with the intention of housing delivery outlined in the PNP and as will be demonstrated below the proposal results in several benefits that would outweigh any harm as required by NPPF Paragraph 11 (criterion d) ii.

Drawing together the policy landscape there is support for the provision of a residential use on both the identified parcels of land. The policy support is clear within Policy SS1 of the Local Plan and the current shortfall in housing land supply strengthens this support. This position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the forthcoming sections of the Officer Assessment.

## **2. Design and visual impact**

The NPPF (2021) states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition, it states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. New development should be sympathetic to local character and history, including surrounding built environment and landscape setting.

Policy SS11 of the Local Plan states that development must help to create cohesive communities within a high-quality built and natural environment where people want to live and work and that development proposals will be assessed according to whether they achieve certain criteria as far as they are relevant and proportionate to the development.

Criterion 3 refers to development that helps to develop a sense of place and local identity and criterion 10 refers to delivering development of an appropriate type, scale, quality, mix and density in relation to its location.

Policy DE1 (Design) of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy DE4 (Building Heights) cites that the height of new buildings should be appropriate to the location and that they should be built to the prevailing building height unless there are sound socio-economic benefits to justify a deviation.

In terms of further policy context design outcomes are also prominent within the PNP with PNP1 (Area Wide) including reference to enhancement of local identity, PNP1(a) citing the importance of development responding positively to its context when in the Rural Character Area, PNP1(c) again identifying the importance of strengthening local identity, and PNP19 (Safeguarding the open countryside) express the importance of sensitive development within the rural context.

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

The Design and Access Statement includes the Building for a Healthy Life Assessment as required by Local Plan policy DE2. A Health Impact Assessment Screening has also been submitted in accordance with the Healthy Torbay SPD.

### **Quantum of development**

The quantum of development has been broadly established at around 50 dwellings in each field in the SHLAA and HELAA. The proposed 101 dwellings reflect the challenges of the on-site constraints such as existing retained landscape, topography, biodiversity, heritage, below ground utilities and access.

Topography has been a critical part of the design evolution as the fields are on a slope which at the greatest represents a 1:6 gradient. The steeper parts of the site often fall outside the net developable area and would be challenging to develop due to the requirement for ground remodelling and retaining structures. A number of representations raised the quantum of development. A higher density could be achieved if for example more 2 beds were proposed at the expense of 4 beds. The proposed blended mix is made up of 1, 2, 3 and 4 beds based upon demand. In terms of the site constraints the scale is considered acceptable.

The scheme has evolved during the pre-application process and in response from comments made during the early consultation exercise. One key example is the site's landscape structure has been revised to enhance the ecological provision on site, creating dark corridors for bats along the site peripheries and deliver pedestrian connections to the wider landscape.

The layout in both fields includes areas which will not be developed and create space for biodiversity net gain, ecology mitigation dark corridors for bats along certain boundaries, public open space and surface water drainage storage in the form of a pond in the northern field and crates in the southern field.

The application also proposes the provision of 30% affordable units, which is the policy compliant level for development of this scale on greenfield sites, occupation type, specifications, and delivery. For clarity, 30% of 101 total units is 30.3. The Local Plan rounds up at 0.5 % therefore 30 affordable dwellings are the minimum that the Council would seek under Policy H2 of the Local Plan.

Policy H6 of the Local Plan states that housing developments of 50+ dwellings should provide a minimum of 5% new homes to Building Regulations Approved Document Part M4(2). M4(2) is a higher standard that designs new dwellings so that they're more easily accessed and adapted should the need arise in future. M4(3) is fully wheelchair adaptable or accessible. The proposed development includes the provision of 8 flats (including x2 accessible), 6 bungalows, and 87 houses.

The affordable housing mix has been discussed with the Housing Officer at pre-application and as part of this current application. The layout and clustering of the affordable dwellings as set out in the northern and southern layouts are considered to be well-integrated into the development.

The application is therefore deemed acceptable in terms of a layout and affordable housing offer.

### **Appearance**

An appraisal of the landscape and visual impact of the proposal is provided within the supporting Design and Access Statement. It confirms that the site is viewed in the context of the existing residential development along Preston Down Road, Templer Road and Sandringham Drive. The northern site is viewed in the context of the existing Sutton Seeds nursery in glimpsed views from the footpath to the north. Whilst the southern site is screened from the wider landscape by the East Down Plantation. It is therefore considered that the proposed development will be viewed as a natural extension to the existing settlement edge of Paignton.

In terms of visual impact, the sites are considered capable of accommodating this quantum of development. In terms of the basic layout there is sufficient space around the buildings to provide adequate softening and present and acceptable setting for the development, that would hence not cramp or over-develop site.

The new dwellings will be of a similar scale to existing residential development in the surrounding areas and reflect the local development pattern and how buildings relate to spaces and streets. All dwellings will be generous in size and comply with National Space Standards.

A range of storey heights is provided across the site (including 1, 2 and 2.5 storey) to appropriately accord with the topography of the land; respond to key vistas and to provide focal points in appropriate locations. A number of bungalows are proposed on the eastern edge of the southern field to reflect the existing bungalows of Sandringham Drive.

The scheme will utilise appropriate proportions and compositions of architectural elements to create a contemporary architectural design. Generous window proportions allow future occupiers to take advantage of the views across and out of the site to the wider countryside, whilst providing good levels of daylight for residents.

Careful consideration has been given to control levels of overlooking by orientating windows away from neighbours.

A simple palette of styles and traditional materials will be implemented across the site to maintain consistency. Differing colours of brick and varying combinations of materials will be introduced to create an identifiable and varying character to the development. Where possible, the building materials and products will be locally sourced.

As demonstrated above, the rigorous pre-application process and early engagement has ensured that layout and appearance of the scheme is considered acceptable. A number of representations have been received as part of the regarding these issues. The architectural treatment and scale of development are considered appropriate. Further comments regarding impact on landscape and trees and other matters are dealt with below.

All matters considered the proposed scale, layout, appearance and landscaping, is considered to present a form of development that, on balance, adequately acknowledges and responds to the urban fringe context. For the reasons above the development would be deemed to be well designed, as required by the NPPF, and is considered to accord with the Development Plan design-based policies when read as a whole, notably Policies SS2, SS11, DE1, DE4, NC1 and C4 of the Local Plan, and Policies PNP1, PNP1(a), PNP1(c), PNP19 and PNP24 of the Paignton Neighbourhood Plan.

### **3. Open space and landscaping**

Landscaping is a key component of placemaking and in a rural context is an important influencer of character. The importance of contextual and effective landscaping is highlighted within the NPPF within Chapter 12, Achieving well-designed places, as part of the drive towards delivering visually attractive development that also responds to and is sympathetic to local character (Paragraph 130). The NPPF also makes reference to the important contribution of trees to the character and quality of urban environments (aside benefits of adapting to climate change) and states that decisions should ensure that new streets are tree-lined, that other opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), and that existing trees are retained wherever possible.

At a local level the Development Plan seeks high quality landscaping in Policy DE1 and Policy C4 states that development will not be permitted where it would seriously harm protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. The policy also states 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.

Policy PNP1(c) of the PNP includes relevant references to development proposals, where possible, retaining existing natural features, and furthers that hedgerows should be provided to at least one boundary and also should include tree planting, being encouraged to plant 3 new trees for each dwelling.

The application is supported by a range of landscaping analysis and strategy. The proposed layout aims to connect all parts of the site, linking the proposed housing with the existing woodland areas to the north and south. As discussed previously, the proposed landscape strategy will promote the Building for a Healthy Life initiative through the links between landscaping, health and wellbeing of future occupiers. An informal, public natural play space is proposed within the open space of the southern parcel.

A number of representations have been received concerning the loss of public open space and routes. The site is currently in private ownership. Spaces within the development and new areas of public open space will provide opportunities for informal meetings, dog walking and play. Additionally, a new informal, natural play space is proposed within the open space of the southern parcel. The proposed development would create routes for the public to access both the woods to the north and play facilities to the south. Consequently, the loss of any use of the site will be adequately mitigated in any event.

The landscape strategy responds to the existing features and the site's topography to ensure the existing, retained and improved green infrastructure enhances the biodiversity of the site and connects to the wider context. The strategy includes a soft landscape plan and supporting hard landscaping.

The soft landscaping scheme proposes a variety of features and treatments including a mixture of semi-ornamental and street trees, amenity grass, shrub and herbaceous planting, mixed native hedgerow, wildflower meadow seeding, wetland meadow grass seeding, marginal and wetland planting, native hedge, thorny planting and whip planting.

The scheme would be consistent with the national 'build beautiful' agenda outlined within Section 12 of the NPPF, and would be consistent with Paras 126, 130 and 131, and also be considered acceptable and compliant with Policies DE1 and C4 of the Local Plan and policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

#### **4. Ecology, biodiversity and trees**

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

Policy PNP1 of the PNP seeks to ensure that safe key areas of rural landscape, Local Green Space, and food production are safeguarded and enhanced to ensure an improvement in tourist appeal, enhance biodiversity and community wellbeing.

There are sites designated as Local Nature Reserves (a statutory designation) and County Wildlife (a non-statutory designation) border the site to the north and south. It also lies 125m of a Site of Special Scientific Interest to the north west. It is located within the Landscape Connectivity Zone for Greater Horseshoe bats associated with the South Hams Special Area of Conservation (SAC).

An Environmental Impact Assessment (EIA) Screening Opinion was determined in April 2022 and concluded that a full EIA was not required. Through sufficient mitigation, avoidance and compensation measures, it was considered that there would be no likely significant effects or adverse impacts on the biodiversity value of the site or off-site areas within the development's zone of influence, such as the South Hams SAC. Furthermore, the retention of dark buffers within the development will maintain north-south commuting opportunities for bat species, including Greater Horseshoe bat.

Devon County Council provided a Habitats Regulations Assessment (HRA) Screening of likely significant effect on a European site on behalf of the TDA. An HRA Appropriate Assessment was carried out and it was concluded that the development, (with all avoidance and mitigation measures secured by condition and/or obligation, being implemented in full) would not adversely affect the integrity of South Hams SAC alone or in-combination with other plans or projects. This is subject to the delivery of the Construction Environment Management Plan (CEMP) and the development in accordance with the submitted LEMP.

For clarity the application is supported by:

- Burton Reid Associates (2023) Updated Landscape and Ecology Management Plan
- Burton Reid Associates (2023) Ecological Impact Assessment

- Burton Reid Associates (2022) Bat Activity Report
- Burton Reid Associates (2022) Habitat Reports
- Burton Reid Associates (2022) Biodiversity Net Gain Report
- The Lighting Bee (January 2023) Lighting Impact Assessment
- Updated soft Landscape Plans

The submitted LEMP describes the key proposed management regimes and measures within the identified habitat areas as shown in the Biodiversity Net Gain Post Development Habitats Plan and the soft Landscape Plans.

The Ecological Impact Assessment included baseline ecological data was collated between August 2018 and June 2022. This included a desk study and Preliminary Ecological Appraisal followed by a UK Habitat Classification survey and targeted surveys for protected and notable species including bats, Hazel Dormouse, Badger, Cirl Bunting, breeding and wintering birds, and reptiles.

The statements note that although there is potential for the proposed development to result in additional recreational pressure on the nearby Berry Head to Sharkham Point SSSI and Occombe SSSI, Occombe Farm and Scadson Woods Local Nature Reserve and Occombe Woods Country Wildlife Site, it is considered that financial contribution towards strategic management and monitoring of these sites (or an alternative mechanism) can off-set these impacts in the long-term. Moreover, the nearby SSSI, Local Nature Reserve, and Country Wildlife Site are located in an already heavily pressured area from existing residential development. Torbay Coast and Countryside Trust have provided a mitigation table with a scope of works available on delivery. This matter is dealt with through a suggested condition and within the Section 106 agreement.

It must however be noted that the land parcels forming the proposed development site were removed from the Occombe Farm and Scadson Woods Local Nature Reserve in October 2019.

Devon County Council produced an Appropriate Assessment (AA) for Natural England to assess. It concluded that Devon County Council is able to ascertain that the proposal will not result in adverse effects on the integrity of the South Hams Special Area of Conservation (SAC). Having considered the revised assessment, and the measures proposed to mitigate for all identified adverse effects that could potentially occur as a result of the proposal, Natural England advised that they concur with the assessment conclusions, providing that all mitigation measures specified in the AA are appropriately secured by conditions in any planning permission given. Suitable conditions have been set out below.

The Ecological Impact Assessment and Biodiversity Net Gain Report states that biodiversity net gain requirements will be achieved in accordance with the Local Plan Policy NC1, the NPPF 2021 and NERC Act 2006 through proposed habitat creation and enhancement as demonstrated using Natural England's Biodiversity Metric 3.0 calculation tool. The biodiversity unit baseline (before development) has been calculated as 12.62 habitat units and 14.69 hedgerow units. The post-development score has been calculated under current proposals as 13.89 habitat units, which is an increase in 1.28 units (an increase of 10.11%) and 16.76 hedgerow units (an increase of 14.09%). There will be no net loss in the overall quality of habitats present within the site. It is considered this assessment demonstrates that the development, as proposed, will achieve a measurable 10% Biodiversity Net Gain in accordance with local planning policy and the 2021 NPPF.

Policy C4 of the Local Plan cites that development will not be supported when it would seriously harm either directly or indirectly, protected or veteran trees, subject to off-setting measures.

The application is also supported by:

- An Arboricultural Appraisal
- Tree Appraisal Plan
- Arboricultural Impact Assessment
- Tree Protection Plan
- Arboricultural Method Statement.

The site benefits from existing hedgerows and some mature tree planting. Wherever possible these existing landscape features are retained and have informed the design and layout of the development scheme.

The site also contains a group of six trees protected under individual Tree Preservation Orders (TPOs) along the northern boundary of the southern field. Additionally, a series of TPOs can be found along the eastern boundary of the northern parcel in the rear gardens of properties on Templar Road. All trees with TPOs will be retained on site bar T1 Oak (Reference: 2002.12) which is classed as very low quality (U).

An integrated landscape strategy connects all parts of the site, linking the development proposal with the existing woodland areas to the north and south. The landscape strategy will thereby promote the Building for a Healthy Life initiative through promotion of physical activity and support mental health and wellbeing.

Spaces within the development will provide opportunities for informal meetings, dog walking and play. Additionally, a new informal, natural play space is proposed within the open space of the southern parcel.

The overall landscape strategy responds to the existing landscape features and the site's topography to ensure the existing, retained and improved green infrastructure enhances the biodiversity of the site and connects to the wider context. The strategy is comprised of a soft landscape plan and supporting hard works and boundary plan that have been submitted with the application.

The soft landscape plan proposes a variety of landscape treatments that include a mixture of semi-ornamental and street trees, amenity grass, shrub and herbaceous planting, mixed native hedgerow, wildflower meadow seeding, wetland meadow grass seeding, marginal and wetland planting, native hedge, thorny planting and whip planting.

New landscaping is proposed to provide natural landscape features that will enhance the sense of place in their locale. The landscape strategy seeks to supplement existing trees and hedgerows by adding new planting within the streetscape and areas of public open space. This in turn will help to enhance vistas, create a positive sense of identity and connectivity with the surrounding countryside. Mixed native hedge and tree planting will reinforce wildlife and dark corridors and provide an enhanced buffer to Occombe Valley Woods and surrounding residential development.

The development will enable informal access to surrounding Public Rights of Way and will feature enhanced planting to create an informal green corridor around the site. Informal play and footpath links in the south-eastern corner of the southern site which will benefit from passive surveillance from the proposed dwellings. Plus, there will be an informal footpath link on the northern boundary of the northern parcel by the proposed SuDs pond.



In terms of biodiversity, in-line with Policy NC1 and guidance contained in the NPPF, measures to enhance biodiversity should be duly considered and it is noted that the submitted ecology reports include biodiversity enhancement measures.

Whilst the site is currently no longer in active agricultural use, though the grass is periodically cut, a desk based Agricultural Land Classification (ALC) report has been undertaken by ADAS for the site. Based on the published soil and geological information available, the soils are considered to have predominantly permeable slightly stony fine loamy (clay loam) top soils over slightly or moderately stony permeable fine loamy (clay loam) subsoils. The ALC report identifies the agricultural land to likely be of grade 2 quality (2.8ha), subject to there being no gradient limitation. A small area (0.1ha) of subgrade 3a was also found on site. The report notes site gradients of >7 degrees and 11 degrees are likely to restrict the ALC grade to respectively subgrade 3b on 1.5ha (38%) and grade 4 on 0.1ha (2%) of the site area.

The principal limitation to agricultural use on the grade 2 and subgrade 3a land is soil wetness and the principal limitation on the subgrade 3b and grade 4 land is gradient with a secondary limitation to agricultural use of agi-climatic and soil wetness.

Whilst the development will result in the loss of some very good quality and good to moderate quality land the site is located in a sustainable position adjacent to the existing settlement boundary of Paignton. Furthermore, there is an overriding need for housing in Torbay which in this case cannot be accommodated on lower grade land. It is therefore considered that whilst the proposal will result in the loss of some very good quality and good to moderate quality land it will deliver housing to bolster the overriding need for housing in Torbay in accordance with Local Plan Policy SC4.

In light of the conclusions above, the development is considered aligned with the aims and objectives of Policies NC1 and C4 of the Local Plan, Policy PNP1 of the Paignton Neighbourhood Plan and guidance contained within the NPPF.

## **5. Impact on heritage assets**

NPPF (2021) provides guidance as to when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 199). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 200). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 202).

The application is supported by a Written Scheme of Investigation and the results of an Archaeological Trench Evaluation. A trench evaluation confirmed previous mapping from aerial photography and the geophysical survey that buried archaeology survived on site. Buried remains of two phases of settlement were found, the earlier being prehistoric and relating to a possible enclosure that extended beyond the site boundary to the east.

Multiple ditches found represented an enclosed Romano-British farmstead. One collection of finds comprised a small amount of prehistoric pottery, a piece of worked flint and larger collection of Roman pottery and ceramic tiles, with fragments of glass and iron objects.

The archaeological remains that are present on site are identified of medium significance in accordance with paragraph 194 of the NPPF. AC Archaeology have confirmed that Devon County Council Historic Team will be requesting an open area of excavation and recording of the archaeology with subsequent appropriate reporting as part of mitigation. The DCC Historic Team have confirmed that preservation in situ is not required and therefore the design of the proposal is not prohibited by the archaeological remains.

The fieldwork programme would be carried out ahead of the construction phase as set out in the submitted WSI. Only once the open area of excavation has taken place will the full impact on heritage of the proposed development on the significance of the heritage asset be known.

The submitted archaeological evaluation report (AC Archaeology, February 2022) confirms that the development will involve the removal of an archaeological site of prehistoric but principally Romano-British date. The impact of development upon this archaeological asset should be mitigated by a programme of archaeological work that should fully record the evidence that will otherwise be exposed and destroyed by groundworks, and also make the results publicly available, including through on site or off site interpretation, as appropriate.

The County Archaeologist recommends that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of building recording and archaeological work to be undertaken in mitigation for the change to and loss of heritage assets with historic and archaeological interest. Two pre-commencement conditions are therefore suggested within the conditions schedule.

It is considered that the accompanying heritage reports provide appropriate assessment in accordance with paragraph 194 of the NPPF and the requirements of local plan policy SS10.

## 6. Residential amenity

The Local Plan contains policies to ensure that appropriate residential standards are achieved in residential schemes, including size standards, through Policy DE3, and that development meets the needs of residents and enhances their quality of life, through Policy SS11. The PNP, in Policy PNP 1(d) (Residential Development), presents guidance on supporting elements required for residential units and the NPPF (Para 130) guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

### Future Occupiers

In terms of assessing the quality of the future residential environment it is important to consider the size and quality of the internal living spaces, the levels of outlook and natural lighting afforded key habitable rooms, levels of privacy, along with the quality of outdoor spaces and access to waste, cycle and car parking facilities, which are all integral elements for household developments. The aspiration is to secure good level of amenity for future residents.

The proposal seeks to provide 8 flats (including x2 accessible), 6 bungalows, and 87 houses.

No. of beds	No. of dwellings northern parcel	No. of dwellings southern parcel	Total number of dwellings
4 bed houses	16	17	35
3 bed houses	24	19	41

3 bedroom bungalows	-	6	6
2 bed houses	7	4	11
2 bed flats	2	3	5
1 bed accessible flats	2	1	3
Total	51	50	101

Affordable dwelling mix:

No. of beds	No. of affordable dwellings northern parcel	No. of affordable dwellings southern parcel	Total number of dwellings
4 bed houses	2	4	6
3 bed houses	8	6	14
2 bed houses	3	-	3
2 bed flats	2	2	4
1 bed accessible flats	2	1	3
Total	17	13	30

The development proposes a variety of dwelling types. All are well spaced and provide good natural lighting to key habitable rooms and good outlooks. Internal privacy is offered with adequate back-to-back distances between dwellings or outlooks to landscaped borders. There will be some natural overlooking of gardens, but this is commonplace within residential environments and there are no unacceptable, such as overly dominant, relationships. In terms of the internal living spaces all dwellings meet the national internal living spaces standards that are engrained within the Development Plan (Policy DE3) and support the concept of producing, in the round, a good level of amenity for future occupiers. Each dwelling is afforded adequate amenity space that exceeds the 55sqm expected within the Development Plan.

In terms of ancillary elements of parking, cycle parking and waste storage the following is considered.

Parking for the site is in accordance with local standards. 223 spaces are provided for 101 dwellings representing an average of two spaces per dwelling, with the exception of one space per apartment. The proposed parking arrangement is shown on the submitted drawings and comprise a mixture of garages, on plot parking, small parking courts and roadside parking. An adequate amount of visitor vehicle and cycle parking has been provided to the satisfaction of the Highways Team. Each plot will benefit from one Electric Vehicle Charging Point.

The application is supported by a Waste Management Plan. Each dwelling including houses and apartments will be provided with space to store a 240 litre wheeled bin, two 55 litre recycling boxes and one food caddy. Swept path assessments have been undertaken, which demonstrates the ability of a large Refuse Vehicle entering the site from the main vehicular access points from Preston Down Road, utilising the internal turning heads onto the main spine road and exiting back on to Preston Down Road. SWISCo do not drive onto unadopted highway to collect waste and recycling and therefore where the situation occurs, with private spurs provided on both sites, hardstanding off-street collection areas have been provided within the design with a requirement that residents will have to move their containers to these points on bin collection days and are shown on the plans.

In terms of cycle parking the Development Plan expects dwellings to be afforded with 2 spaces and apartments 1 space. Each dwelling will be constructed with appropriate provision for the parking of at least two bicycles on plot within sheds or in garages and each apartment will be provided with storage for one bicycle.

In terms of 'designing out crime' Policy PNP1(g) of the PNP expects all developments to show how crime and the fear of crime have been considered. In terms of consultee comments, it is noted that the Police Designing Out Crime Officer has raised comments including certain boundary positions and advice on plot security. It is recommended that a planning condition is attached to secure details on how the development responds to Secured by Design.

All these matters combined present good quality living spaces throughout the development. Subject to conditions as suggested the proposed residential environment is considered acceptable for all future users and would accord with Policies SS11, DE1 and DE3 in the Local Plan, PNP1(d) of the PNP, and advice contained within the NPPF regarding creating good quality living environments.

The site does directly border residential properties to the east but due to the layout proposed, the distances and natural separation afforded by landscaping the development will not impact the amenity of adjacent occupiers. Construction impacts will be managed through a Construction Method Statement to be submitted to the Local Planning Authority and approved prior to the commencement of development.

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

## **7. Highways, movement and parking**

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

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

Policy TA2 of the Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided.

The application is supported by a Transport Statement has carried out a detailed assessment of current traffic levels in the locality. It has also assessed the site's accessibility for motor vehicles; pedestrians and cyclists; and public transport connections; and the predicted traffic to be generated by the proposed development of up to 101 dwellings.

Vehicular access to the site will be taken from the creation of two new access junctions located on the northern and southern side of Preston Down Road. Both the proposed access points would take the form of a priority T-junction and access road, designed in accordance with the prescribed design guidance. This has been discussed and agreed with the Local Authority and the Highways Team. As stated in the Transport Assessment, the priority junctions and internal spine roads will provide sufficient service vehicle and emergency access to the development. An amended design has been submitted to the satisfaction of the Council's Highways Team.

The principal pedestrian and cycle access into the proposed development will be via the main site access junctions onto Preston Down Road.

A new section of footway connecting the pedestrian access for each parcel of the site with the existing footway adjacent to the kerb line of Preston Down Road is proposed within the site masterplan.

The internal layout of both the northern and southern proposed development sites consists of two cul-de-sacs that branch out to provide of connected roads, turning points and access to off-road parking spaces. The network of connected roads will facilitate the efficient movement of service vehicles within the site. Refuse collection will be undertaken from the frontage of each property. Where appropriate, three bin collection points have been identified and will be located at convenient points throughout the development for easier refuse access.

An informal pedestrian connection is also proposed from the southern site boundary of the southern parcel to Occombe Valley Woods located directly south and south-west of the development site.

In terms of the provision of parking and cycling facilities Policy TA3 and Appendix F of the Local Plan provides the policy context, where it provides estimated requirements for parking that reflect a balance between ensuring that the levels of car parking generated by development are met on site, with the need to ensure that due consideration is also given to sustainable transport methods. Policy PNP(h) of PNP cites that development should aim to achieve appropriate electric vehicle charging points and networks for walking, cycling and public transport within and beyond the development. It goes on to encourage car free areas, shared streets and squares and secure cycle storage where on-site roads are planned.

As discussed in the section above, parking for the site is in accordance with Local Plan requirements, 223 spaces are provided for 101 dwellings representing an average of two spaces per dwelling, with the exception of one space per apartment. The proposed parking arrangement comprise a mixture of garages, on plot parking, small parking courts and roadside parking. Each plot will benefit from one Electric Vehicle Charging Point, alongside provision for secure cycle storage for two cycle spaces for dwellings and one for flats.

Considering the broad accordance with the Development Plan and advice contained within the NPPF the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1, TA2 and TA3 of The Local Plan, Policy PNP1(h) of the PNP, and guidance contained within the NPPF.

To ensure that other forms of transport are duly promoted a sustainable travel plan has been suggested by conditions with ongoing management to review and improve if the modal shift targets are not being reached.

## **8. Designing out crime**

No objections are raised subject to the use of a condition to secure a scheme of crime prevention measures, such as improved security to gardens. It is recommended that this condition be imposed should planning permission be granted. Subject to the use of this condition, the proposal is in accordance with Policy SS11 of the Local Plan.

### **9. Drainage, flood risk and contamination**

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

The application is supported by a detailed Flood Risk Assessment and Drainage Assessment (FRA and DS) prepared by TDA Engineering Services. The Flood Risk Assessment confirms that a review of the Environment Agency study maps has been undertaken which shows both land parcels to be located within Flood Zone 1 which is assessed as having a less than 1 in 1000 annual probability of river and sea flooding in any year. The proposed residential use is classified as a less vulnerable use which is compatible with a Flood Zone 1 location. There are also no records of flooding on the proposed development area and TDA are not aware of flooding from any other source.

The submitted flood route drawings for exceedance events demonstrate that there will be no significant proposed changes to the site overland flows. Flood exceedance will therefore continue to be directed towards the Hollicombe watercourse for the north site and the Occombe Valley watercourse for the south site. These are significant water features that currently accepts any run-off exceedance from the site in extreme events. The FRA and DS confirms that there is no perceived risk of flooding to the land parcels and or increased risk off site.

As the site is located within Torbay Critical Drainage Area it is necessary to demonstrate a sustainable drainage approach has been followed. Infiltration testing was carried out at several locations across the sites to establish the viability of the use of soakaways for surface water disposal. From a review of the results and in light of the topography changes across both land parcels, TDA concluded that soakaways are not viable for surface water disposal. The next available option is attenuated discharge to a watercourse which is the proposed drainage solution.

The north parcel is taken to the Hollicombe watercourse. The off-site route follows an existing adopted highway drain as shown on the layout drawings. For the south site there is a gravity connection to the Occombe Valley watercourse. Both of these discharge points are as identified by South West Water in their drainage review of the site. Given both sites location within the Torbay Critical Drainage Area the rate of surface water drainage is limited to comply with the "greenfield" run off for the 1 in 10 year event. This is to ensure that there is no increased risk of flooding to adjacent land for all storm events up to the 1 in 100 year with a 40% allowance for climate change.

In terms of surface water management and flood risk the drainage design responds to the results of the infiltration testing and site investigations, which limits the use of soakaways to

serve the development. The Councils Drainage Engineer has reviewed the flood risk assessment and drainage strategy and raises no objections, subject to the provision that surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design. SWW and Environment Agency also have no objection.

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

#### Below ground constraints

There are a range of below ground constraints including an intermediate pressure gas main running west to the south east entrance of the northern field. The layouts have been designed to accommodate the required easements for this feature. There is also a sewer running diagonally through the field serving Torbay Coast and Countryside Trust. There is provision to relocate the sewer subject to certain criteria. There is an illustrative plan showing a possible new route for the pipe, although the route needs to be agreed. The illustrative route can be achieved in line with the proposed layout, or an alternative would be underneath the proposed road. The pipe would then connect into SWW sewer within Preston Down Road. No objections have been received to these works.

#### Contamination

Policy ER3 of the Local Plan provides guidance that development must take into account environmental considerations and appropriate investigations made, and development will need to demonstrate that any contamination can be satisfactorily overcome without risk to health.

A Phase 1 Desk Study Report (October 2019), Geotechnical Investigation and Contamination Report (May 2020) produced by Ruddlesden Geotechnical have identified an absence of contamination. The contamination levels recorded are not potentially harmful to human health for the proposed end user (human resident) or water environment. The development of the site for dwellinghouse development is compatible with adjacent land uses and is not considered to result in any high levels of contamination.

As part of this application submission the details of gas monitoring has been submitted. The Phase 2 report confirms that no further action or specific remedial measures are required on site given the proposed residential land use. A condition has been suggested to control any unexpected contamination and an effective remediation response.

The proposal is considered to be acceptable, having regard to Policy ER1 of the Local Plan, Policies PNP1(i) and PNP15 of the PNP and guidance contained within the NPPF.

### **10. Low carbon development**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 seeks that all major development proposals should make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities. ES1 also states that the retrofit of energy efficiency measures to existing buildings will be encouraged and supported, and that opportunities for reducing carbon emissions associated with energy use will be sought through the development management process as part of the wider conversion/ refurbishment of buildings where planning permission is required.

In terms of the PNP Policy PNP1(f) states that new development should aim to achieve where appropriate and subject to viability: i) the latest developments in sustainable construction and water management technologies that mitigate and adapt to climate change; ii) the use of reclaimed materials and natural finishes; iii) include soft landscaped areas for natural drainage of rain water, and compensate fully for any existing soft area lost to development; iv) on site renewable energy generation to achieve 20% of subsequent in-use requirement wherever possible. Solar arrays will be encouraged where they do not adversely affect residential amenity, a vista of landscape value, or designated conservation area; v) connecting cycleways and footpaths where development involves new road infrastructure.

The NPPF states that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk 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.

The submitted Design and Access Statement includes an Energy Statement section.

#### Building Fabric

- The building fabric will be designed to minimise and reduce energy use in accordance with current building regulations.
- Low energy lighting and appliances will be specified to help reduce energy use.
- Where possible natural low embodied carbon materials will be used such as timber frame structure and timber cladding to help reduce the overall carbon emission used in the construction of the homes.
- Water harvesting and low water use fittings will be used on each plot to help reduce water usage on site.

#### Additional Measures

A number of additional measures are being explored and will be implemented on plots where possible including the following:

- Rainwater butts.
- Solar panels will be fitted to appropriate plots with good south facing roof spaces where possible, in line with the interim building regulations.
- Air Source Heat Pumps to replace gas boilers.
- Tripling glazing.
- Wastewater heat recovery to showers.
- Smart energy metres/hive controls.

The proposal is considered, with appropriate planning conditions, to deliver on the low carbon aspirations of the Development Plan, Policies SS14, ES1 and PNP1(f), and the NPPF.

### **11. Affordable housing**

The application proposes the provision of 30% affordable units, which is the policy compliant level for development of this scale on greenfield sites, occupation type, specifications, and delivery. For clarity, 30% of 101 total units is 30.3% The Local Plan rounds up at 0.5 % therefore 30 affordable dwellings are the minimum that the Council would seek under Policy H2 of the Local Plan.

The affordable housing mix has been discussed with the Housing Officer at pre-application and as part of this current application. The layout and clustering of the affordable dwellings



as set out in the northern and southern layouts are considered to be well-integrated into the development.

The application is therefore deemed acceptable in terms of a layout and affordable housing offer.

## **12. Housing supply**

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

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

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

### Sustainability

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

#### The Economic Role

Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development. Once the development is occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

#### The Social Role

The principle social benefit of the proposed development would be the provision of additional housing, including 30 Affordable Housing units. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance, with the benefit heightened by the inclusion of 30% of the units being Affordable units. 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 development is supported by drainage, landscaping and ecological measures to mitigate impact, as detailed in this report. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### Sustainability Conclusion

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

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

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

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

### **Local Finance Considerations**

#### **CIL**

Not applicable to this development.

#### **Section 106 Agreements**

- 30% affordable housing.
- Sustainable transport.
- Education.
- Public open space.
- Lifelong learning.
- Waste management.
- Biodiversity net gain.
- Recreational impacts.
- Legal fees.
- Monitoring fees.

#### **Highway works:**

The applicant has submitted a Highway Adoption Plan as Appendix B of the Waste Management Plan. The Highway Adoption Plan is considered acceptable and enables the access / egress of refuse vehicles on the adopted highway.

Other highways improvements can be secured via a planning condition attached to any grant of approval to enter into a S278 highway agreement.

#### **EIA/HRA**

EIA: A request for an Environmental Impact Assessment (EIA) Screening Opinion was submitted to Torbay Council in March 2022 on the basis that the proposed development falls within Category 10(b) of Schedule 2 of the EIA Regulations 2017 (an urban development project on a site that exceeds 5 hectares).

Despite falling within Category 10(b) of Schedule 2 of the EIA regulations, the proposal does not exceed the relevant thresholds in that the proposal does not include urban development

which is not dwellinghouse development, is for less than 150 dwellings on a site area less than 5 hectares. Furthermore, having regard to the location, characteristics of the development and potential impacts it is concluded the proposal does not constitute EIA development.

Decision (ref: P/2022/0348) was issued on 08 April 2022, confirming that an EIA is not required.

HRA: An HRA screening has been carried out. It is considered that the development, as proposed, with all avoidance and mitigation measures secured by condition and/or obligation, being implemented in full will not adversely affect the integrity of South Hams SAC alone or in-combination with other plans or projects.

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing. The provision of 30 affordable homes is also a significant material benefit.

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

There are demonstrable public benefits that weigh in favour of the scheme, notably housing provision, including 30 affordable units, informal play equipment, new tree planting and a range of quality soft landscaping and public access to local green infrastructure.

The residential environment for future occupiers is acceptable and there are no unacceptable impacts upon the amenity of adjacent occupiers.

Ecology matters are resolved in terms of protected species, habitats and biodiversity net gain aspirations.

Flood risk will not be increased, subject to the receipt of satisfactory final detailed design information for the surface water management system.

The internal road and footpath network, and its connectivity, is considered acceptable, subject to confirmation that the areas shown without footways present a suitably safe road network.

The rigorous pre-application process and early engagement has ensured that layout and appearance of the scheme is considered acceptable. A number of representations have been received as part of the pre-application engagement and application consultation regarding these issues. However, the architectural treatment and scale of development are considered appropriate.

When considered as a whole the proposed development is deemed to represent sustainable development and is acceptable, having regard to the Local Plan, the PNP, 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, or where for housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Or where any adverse impacts of doing so would significantly and

demonstrably outweigh the benefits, when assessed against the policies in the NPPF when taken as a whole.

There are no impacts on protected areas or assets of particular importance to provide a clear reasoning for refusal when considering the scheme in the round and the public benefits noted.

### **Officer Recommendation**

Approval. Subject to:

- Completion of a satisfactory Section 106 planning agreement and the agreement of any necessary extensions to the statutory determination period to complete this agreement.
- The conditions as outlined, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.
- The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **Pre-commencement conditions**

##### **1. Phasing Plan**

Prior to the commencement of development, a phasing plan shall be submitted to and approved in writing by the Local Planning Authority. The plan shall set out the phases of the development and how the development will be implemented in relation to an agreed timetable of works. The phasing plan shall include:

- i. site excavations,
- ii. building construction,
- iii. provision of car parking for each phase,
- iv. provision of on-site planting for each phase,
- v. landscaping and ecological enhancement,
- vi. road construction and provision of vehicle passing places within the site and.
- vii. active travel provisions.

The development shall be carried out in accordance with approved phasing plan.

#### **Reason**

Reason: To ensure that necessary elements of the scheme are implemented within acceptable parameters and at an appropriate stage, to comply with policies SS2, SS9, NC1 and DE1 of the adopted Torbay Local Plan 2012-2030 and Policies PNP1(a), PNP19 and PNP24 of the Paignton Neighbourhood Plan. These details are required prior to the commencement of development to secure necessary detail for essential elements of the development.

##### **2. Post Investigation Assessment**

The development within the southern parcel of land shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.

#### **Reason**

To comply with Paragraph 205 of the NPPF, which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure information gathered becomes publicly accessible.

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

In accordance with the submitted flood risk and drainage assessment (dated May 2022) and addendum latter (dated October 2022), surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 40% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to installation. To adhere to current best practice and take account of urban creep, the impermeable area of the proposed development must be increased by 10% in surface water drainage calculations. The development hereby approved shall not be occupied or brought into use until the agreed drainage scheme has been provided and it shall be retained and maintained for the lifetime of the development.

#### **Reason**

In the interests of securing a satisfactory drainage scheme prior to commencement of the development that adapts to climate change and manages flood risks on the site and in the vicinity further to Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the National Planning Policy Framework.

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.

### **4. Finished Floor Levels, Datum Levels**

No development shall take place until details of the existing and proposed datum levels, finished ground levels within the site, finished floor levels including buildings and structures, have been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved level details unless otherwise agreed in writing by the Local Planning Authority.

#### **Reason**

In the interests of visual and residential amenity, in accordance with Policies DE1, C5 and DE3 of the Torbay Local Plan 2012-2030.

This needs to be a pre-commencement condition to ensure that the development is constructed in a satisfactory manner from the outset of development.

### **5. Construction Management Plan**

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

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

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

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

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

### **Reason**

To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users, having regard to Policies DE3, NC1 and TA1 of the Torbay Local Plan 2012-2030.

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

### **6. Construction Ecological Environmental Management Plan**

Prior to the commencement of development including ground works or vegetation clearance a Construction Ecological Environmental Management Plan (CEEMP: Biodiversity) concerning the site shall be submitted to and approved in writing by the Local Planning Authority. The CEEMP (Biodiversity) shall include the following:

- a) Risk assessment of potentially damaging construction activities and identification of stages of works.
- b) Identification of "biodiversity protection zones".
- c) Details of working hours; Details of all plant and machinery to be used during site clearance and construction stage, including an inventory of all Non-Road Mobile Machinery (NRMM); Details of temporary lighting used in construction of for security reasons.
- d) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction
- e) The location and timing of sensitive works to avoid harm to biodiversity features.
- f) The times during construction when specialist ecologists need to be present on site to oversee works.
- g) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority.
- h) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.
- i) Use of protective fences, exclusion barriers and warning signs.
- j) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.
- k) Pollution controls to avoid impacts to Occombe SSSI.
- l) Details of lighting restrictions to avoid impacts to bats and other nocturnal wildlife.
- m) Conduct vegetation clearance following methods outlined in EclA report to avoid impacts to reptiles, hedgehogs and nesting birds.

The approved CEEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF and PNP1 of the Paignton Neighbourhood Plan.

These details are required pre-commencement as specified to ensure that biodiversity and protected species are not harmed by building operations or vegetation removal.

### **7. Highway Works**

Prior to commencement of development, a S278 Agreement shall be entered into with the Highway Authority to secure the access works and ancillary works to the highway.

The agreed works shall be delivered in accordance with the Agreement.

#### **Reason**

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

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### **8. Adoptable Streets**

No development relating to the creation of the roads shall be commenced until either the roads are subject to a completed agreement under section 38 Highways Act 1980 or full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the local planning authority. Unless the roads are subject to a completed agreement under section 38 Highways Act 1980 the development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the local planning authority.

#### **Reason**

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

### **9. Management and Maintenance of Roads**

Unless the roads are subject to a completed agreement under section 38 Highways Act 1980 no works shall be carried out for the formation or construction of any road unless the local planning authority has approved a Road Maintenance Plan for that road including the arrangements for either adoption by the highway authority or the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road and refuse collection throughout the lifetime of the development.

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

- (a) Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").
- (b) How the company and the future management and maintenance of the road and refuse collection is to be financed including initial capital investment with subsequent funding.
- (c) The rights for and obligations on the Management Company to manage and maintain the road and collect refuse

- (d) Arrangements for the management and collection of refuse and waste from the dwellings.
- (e) A road management and maintenance and refuse collection schedule.
- (f) How refuse and waste will be managed on site including the location of individual and communal refuse and waste collection facilities and the locations where refuse and waste is to be transferred off-site.
- (g) Confirmation from the relevant waste collection company that they have agreed to collect the refuse and waste from the development in accordance with the approved details.

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

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

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

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

#### **Reason**

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

#### **10. Waste Management Plan**

In the absence of an agreement between the developer and the Council as Highway Authority under Section 38 of the Highways Act 1980 for the adoption of the estate roads prior to the first occupation of the development, a Waste Management Plan indicating recycling/waste collection method shall be submitted to and approved in writing by the Local Planning Authority. Any approved Waste Management Plan shall be implemented in full at the first point of occupation of the development and sustained at all times thereafter to deliver the necessary waste collection and recycling services to serve the development.

#### **Reason**

To ensure satisfactory waste collection services in accordance with Policies W1 and W2 of the Torbay Local Plan 2012-2030.

#### **11. Travel Plan**

The approved Travel Plan ref. no. 3552 by TDA (dated 14 September 2022) shall be implemented in accordance with the timescales specified therein, to include those parts identified as being implemented prior to occupation and following occupation, unless alternative timescales are agreed in writing with the Local Planning Authority. The approved Travel Plan shall be monitored and reviewed in accordance with the agreed Travel Plan targets to the satisfaction of the Local Planning Authority.

#### **Reason**



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

### **12. Parking Provision**

Prior to the first use of each dwelling or apartment, the identified parking hereby approved shall have been provided in full unless a phasing plan for the provision has been submitted and approved pursuant to this condition, including the provision of demarked disabled spaces, demarked visitor spaces, and identified electric charging facilities. These elements shall thereafter be retained as parking facilities for the life of the development.

#### **Reason**

To secure an appropriate form of development in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

### **13. Electric Charging Facilities (dwellings)**

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

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

#### **Reason**

To secure an appropriate form of development in accordance with Policies TA3 and SS14 of the Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan.

### **14. Electric Charging Facilities (apartments)**

Prior to the occupation of the dwellings and apartments hereby approved, a scheme for the insertion of two electrical vehicle charging points (1 per dwelling) and 20% provision for the apartments 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 approved electrical vehicle charging points shall be thereafter available for use, maintained and retained for the lifetime of the development.

#### **Reason**

To secure an appropriate form of development in accordance with Policies TA3 and SS14 of the Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan.

### **15. Cycle Provision (dwellings)**

Prior to the occupation of the dwellings hereby approved details of the proposed bicycle storage facility for two 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**

In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan 2012-2030.

### **16. Cycle Provision (apartments)**

Prior to the occupation of the apartments hereby approved details of the proposed bicycle storage facility for one 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**

In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan 2012-2030.

**17. Implementation of mitigation measures**

All mitigation measures detailed in the Appropriate Assessment section of the submitted Habitat Regulations Assessment (Rev C dated January 2023) to be implemented to avoid impacts to and maintain the integrity of the South Hams Special Area of Conservation (SAC).

**Reason**

In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF and PNP1 of the Paignton Neighbourhood Plan.

**18. Mitigation for recreational impacts**

Mitigation proposals (including costings) for recreational impacts to adjacent Local Nature Reserves (LNRs) and County Wildlife Site (CWS) shall be submitted to and approved in writing by the Local Planning Authority.

**Reason**

In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF and PNP1 of the Paignton Neighbourhood Plan.

**19. In accordance with EIA**

The development hereby approved shall take place in strict accordance with the approved Ecological Impact Assessment, dated January 2023 (BR0599/ECIA Rev B). The Ecological Impact Assessment shall be adhered to and implemented strictly in accordance with the approved details. Specifically, this shall include:

- All proposed seeding, additional shrub and scrub planting.
- The following of all methods to avoid impacts to roosting bats and badgers.
- Vegetation clearance to follow methods to avoid impacts to reptiles, hedgehogs and nesting birds.

**Reason**

In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, and paragraphs 109 and 118 of the NPPF and PNP1 of the Paignton Neighbourhood Plan.

**20. Tree Protection Measures**

Prior to the commencement of any phase of development, the tree protection measures outlined in approved plan 21.3448.1.TPP (1-3) Rev. 1 (dated 1 November 2022) for that phase shall be implemented in full. The approved protection measures shall be maintained in full throughout the construction phase of the development.

**Reason**

In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policies DE1 and C4 of the Torbay Local Plan 2012-2030. These details are required to be implemented prior to

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

#### **21. Arboricultural Method Statement**

The development hereby approved shall be carried out in full accordance with the approved Arboricultural Method Statement DTS21.3488.1.AMS (dated 1 June 2022).

##### **Reason**

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

#### **22. Ecology - Nesting Season**

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

##### **Reason**

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

#### **23. Ecology – Biodiversity Enhancement**

The development hereby approved shall be carried out in accordance with the mitigation measures, recommendations and biodiversity net gain measures set out in the approved LEMP submitted by Burton Reid Associated BR0704/LEMP Rev. C (dated 9 January 2023) and Biodiversity Net Gain Report (BR0599/BNG Rev. B).

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

##### **Reason**

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

#### **24. Hard and Soft Landscaping**

Prior to the commencement of any works hereby permitted, full details of all proposed hard and soft landscaping shall have been submitted to and approved in writing by the Local Planning Authority.

##### **Reason**

In the interests of visual character of the area in accordance with Policies DE1 of the Torbay Local Plan 2012-2030.

#### **25. Soft Landscaping Implementation**

All planting, seeding and turfing comprised in the approved details of landscaping for each phase shall be carried out in the first available planting and seeding season following the completion of the development on that phase, or at such other time as agreed by the Local

Planning Authority in writing. Any trees or plants which within a period of 5 years from the completion of the landscaping die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of similar size and species, unless the Local Planning Authority gives written consent to any variation.

**Reason**

In the interests of the amenities of the area and in accordance with Policies DE1, DE3, SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030.

**26. Hard Landscaping Implementation**

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

**Reason**

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

**27. Landscape and Ecological Management Plan (LEMP)**

The development hereby approved shall be carried out in full accordance with the approved LEMP submitted by Burton Reid Associated BR0704/LEMP Rev. C (dated 9 January 2023).

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

**Reason**

To secure a satisfactory form of development in accordance with Policies DE3, SS8, C4 and NC1 of the Torbay Local Plan 2012-2030 and PNP1 of the Paignton Neighbourhood Plan.

**28. Boundary Treatments / Means of Enclosure**

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

**Reason**

In the interests of design and visual amenity, in accordance with Policy DE1 of the Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan.

**29. Lighting Impact Assessment**

The development hereby approved shall be carried out in full accordance with the approved Lighting Impact Assessment by Lighting Bee Ltd. (dated December 2022).

**Reason**

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

**30. External Lighting**

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

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

**Reason**

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

**31. Detailed Design**

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

1. Samples, physical or digital of all proposed material finishes, including colour code where applicable and source/type,
2. Detailed drawings of all proposed windows, doors, balconies, fascia's and eaves, and section / reveal detail to a scale of between 1:1 and 1:10 and means of opening where applicable.
3. Hedgehog holes to be installed in garden fencing to provide safe passage for hedgehogs.
4. All introduced planting in SUDS basin area to be of native origin.

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

**Reason**

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

**32. Implementation of Refuse Facilities**

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

**Reason**

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

**33. Low Carbon Development**

Prior to the commencement of development in any phase of the build process above finished ground floor level (excluding general groundworks), details of the proposed measures to deliver low carbon development shall be submitted for the approval in writing by the Local Planning Authority. The approved measures shall be fully incorporated within the development prior to its first use and maintained thereafter.

**Reason**

In the interests of sustainable development and in accordance with Policies SS14 and ES1 of the Torbay Local Plan 2012-2030 and the NPPF.

**34. Secured by Design**

Prior to the first use of any phase of the development, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable. Specifically, to ensure the gates to the rear private gardens are lockable from both sides by means of a key.

**Reason**

In the interests of crime prevention in accordance with Policy DE1 of the Torbay Local Plan and Policy PNP1 of the Paignton Neighbourhood Plan.

### **35. Retaining Walls**

Prior to installation details of the external finish of all retaining walls shall be submitted to and approved in writing by the Local Planning Authority.

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

#### **Reason**

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

### **36. Affordable Housing**

At all times not less than 30% of the residential units hereby approved shall be occupied (or where vacant) available for occupation as affordable housing for rent as defined in the Glossary to the NPPF (July 2021). Thereafter the affordable units shall remain as such in perpetuity. The affordable units shall be provided in accordance with details submitted to and agreed by the Council's Affordable Housing Manager and shall be constructed at least in accordance with the minimum quality and design standards set by Homes England.

#### **Reason**

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

### **37. Accessible and Adaptable Homes:**

At least 5% of the dwellings hereby approved shall be built to accessible and adaptable standard as defined in the Council's 'Planning Contributions and Affordable Housing SPD – February 2017'. Prior to development continuing above slab level details of which units will meet this standard and details of how they meet this standard will be submitted to and agreed in writing by the Local Planning Authority. The dwellings shall be maintained to this standard for the lifetime of the development.

#### **Reason**

To ensure an adequate supply of accessible and adaptable homes in the interests of the wellbeing and amenity of future occupiers and in accordance with the requirements of the Council's Planning Contributions and Affordable Housing SPD – February 2017.

### **38. Removal of permitted development rights**

Notwithstanding the provisions of Part 1 [and Part 2] to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any order revoking or re-enacting that Order with or without modification), no development falling into the following categories shall take place unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority:

#### Part 1

- The enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
- Any other alteration to the roof of a dwellinghouse.
- Buildings etc incidental to the enjoyment of a dwellinghouse (outbuildings, sheds etc)
- Hard surfaces incidental to the enjoyment of a dwellinghouse

#### Part 2

- The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure.

- Means of access to a highway.

**Reason**

In interests of visual and local amenity in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy PNP1 of the Paignton Neighbourhood Plan, and the NPPF.

**39. Pedestrian Links and Informal Play Area**

Unless alternative phasing is agreed in writing the following shall be delivered;

- Prior to the first occupation of the development the pedestrian links to the northeast corner (of the northern parcel) and southern edge (of the southern parcel) shall be completed and made available for public use and retained and maintained thereafter.
- Prior to the occupation of the 50<sup>th</sup> dwelling the informal play area to the south of the development shall be completed and made available for public use and retained thereafter.

The approved links and play area shall be implemented in full as detailed above or within a timeline agreed pursuant to this condition and maintained for such purposes thereafter.

Reason: In the interests of amenity and connectivity, in accordance with Policies SS11, DE1 and DE3 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

**40. Contaminated Land - 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 revised scheme shall thereafter be implemented as approved. 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**

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 human health, controlled waters and other off-site receptors and in accordance with the NPPF.

**Informative(s)**

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

Bat informative	The developers and their contractors are reminded of the legal protection afforded to bats and bat roosts under legislation including the Conservation Habitats and Species Regulations 2017 (and as amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019). In the unlikely event that bats are encountered during implementation of this permission it is recommended that works stop, and advice is sought from a suitably qualified, licensed, and experienced ecologist at the earliest possible opportunity.
Nesting birds	The developers are reminded of the legal protection afforded to nesting birds under the Wildlife and Countryside Act 1981 (as amended). In the unlikely event that nesting birds are encountered during implementation of this permission it is recommended that works stop immediately, and do not restart either until the young have fledged or advice is sought from a suitably qualified and experienced ecologist at the earliest possible opportunity.
Badgers	The developers are reminded of the legal protection afforded to badgers and their resting places under the Protection of Badgers Act 1992 (as amended). It is advised that during construction, excavations, or large pipes (>200mm diameter) must be covered at night. Any open excavations will need a means of escape, for example a plank or sloped end, to allow any animals to escape. In the event that badgers, or signs of badgers are unexpectedly encountered during the implementation of this permission it is recommended that works stop until advice is sought from a suitably qualified and experienced ecologist at the earliest opportunity.
Protected Species	Responsibilities of the applicant / developer. All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

**Development Plan Relevant Policies**

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



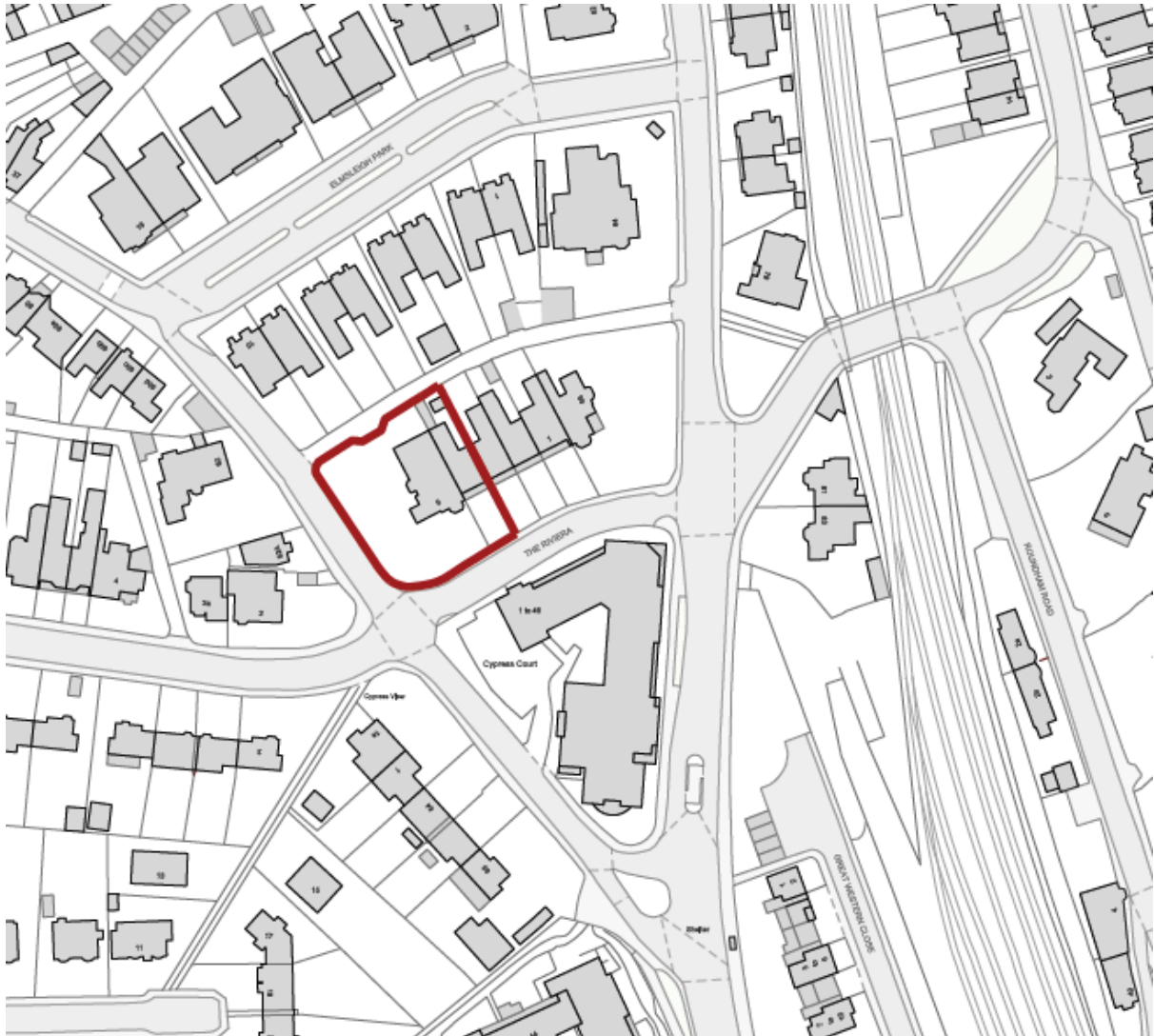
SS12 – Housing  
SS13 – Five year housing land supply  
SS14 - Low carbon development and climate change  
H1 – Applications for new homes  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 – Parking requirements  
C1 – Countryside and the rural economy  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ES1 - Energy  
W1 - Waste management facilities  
W2 – Waste audit for major development and significant waste generating developments  
NC1 - Biodiversity and geodiversity

PNP1 – Area wide  
PNP1(a) - Rural Character Area  
PNP1(c) – Design Principles  
PNP1(d) – Residential Development  
PNP1 (f) – Towards a sustainable low carbon energy efficient economy  
PNP1(g) – Designing out crime  
PNP1(h) – Sustainable transport  
PNP1(i) - Surface Water  
PNP19 – Safeguarding open countryside

## TORBAY COUNCIL

Application Site Address	7 - 9 The Riviera Paignton TQ4 5EX
Proposal	Change of use from a residential care home (Use Class C2) to form 11 supported living accommodation units (Use Class C3b)
Wards	GWR - Goodrington With Roselands
Application Number	P/2023/0028
Applicant	Grosvenor Hill Social Impact Group
Agent	LRM Planning
Date Application Valid	05.01.2023
Decision Due Date	06.04.2023
Extension of Time Date	26/04/2023
26 Week Expiry Date	29.06.2023
Recommendation	<p>Approval: Subject to;</p> <p>The completion of a Section 106 obligation to secure a sustainable development obligation towards the maintenance of waste collection vehicles which would serve the site.</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>

### Location Plan



### **Site Details**

The application site is located on The Riviera, a short residential street found within the southern half of Paignton and immediately to the west of the A379 (Dartmouth Road).

The site is approximately 0.12 hectares in size with the building forming part of a terrace dating from between 1870-1915, that lies at the southernmost point of the Old Paignton Conservation Area. The site is located on the northern side of The Riviera close to the junction with Fisher Street to the west. The properties have been extended and altered over time.

Access to the site is primarily via a private driveway on the southwestern corner of the site, with a secondary entrance for pedestrians and space for the parking of one vehicle further east along The Riviera.

The property is currently in C2 Use Class (Care Home) and was formerly the Levanto Care Home which closed during 2022 due to being found 'inadequate' by the Care Quality Commission.

Surrounding uses is predominantly residential including holiday and retirement accommodation and other care providers.

A number of trees are positioned around the periphery of the site.

### **Detailed Proposals**

Full planning permission is sought to change the use of the building from a care home (Use Class C2) to provide 11 no. self-contained supported living units of accommodation (Use Class C3b) as follows:

- 11 self-contained apartments including personal kitchens and bathrooms
- Internal communal spaces including a communal lounge on the first floor and a communal laundry on the ground floor
- External communal spaces for residents
- External office for staff use
- External enclosed cycle storage
- External refuse store
- 6 parking spaces including 2 electrical charging points

The proposed units will be social rented units and will be managed by Accomplish Group who are a key service provider on the jointly commissioned Torbay Support for Living Framework.

The proposed 11 supported living apartments would be used to accommodate and support local people recovering from serious and enduring mental illness. The provider would have a 24/7 presence on site and the support being provided is contracted by Torbay & South Devon NHS Foundation Trust.

### **Policy Context**

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

#### Development Plan

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

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Healthy Torbay SPD
- Published standing Advice

- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a conservation area, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving or enhancing the character or appearance of that area.

## **Summary of Consultation Responses**

### **Adult Social Care:**

No Objections.

The proposed scheme at 7-9 Riviera is one that the Council's Adult Social Care directorate and Torbay & South Devon NHS Foundation Trust would strongly support.

The developer is working in partnership with Accomplish Care Group, who are a key service provider on the jointly commissioned Torbay Support for Living Framework, and the 11 supported living flats being proposed in this planning application will be used to accommodate and support local people recovering from serious and enduring mental illness. The provider will have a 24/7 presence on site and the support being provided is contracted by Torbay & South Devon NHS Foundation Trust, with ongoing quality assurance carried out by the trust's Quality Assurance team.

As this development is supported by Torbay Council adult social care commissioners and will deliver improved life outcomes for local vulnerable adults and a quantifiable cost benefit to the joint adult social care budget, in line with the local authority / NHS Adult Social Care Market Transformation Blueprint, the Council would not be seeking a S.106 contribution in this case.

### **Building Control:**

None received

### **Community Safety:**

None received

### **Highways:**

None received

### **Strategic Planning:**

None received

### **Drainage:**

No objections on drainage grounds

**Designing out Crime:**

No objections subject to use of an appropriately worded condition to secure CCTV at the premises in order to help the prevention and detection of crime.

**Waste:**

No objections.

Further information was required in order to make a suitable judgement on whether the proposed arrangements will be suitable for the number of units.

Further information addressing these concerns was submitted on 31/03/2023.

**Summary of Representations**

Publication type: Neighbour notification letters were sent on 23<sup>rd</sup> January 2023. A site notice was displayed on 25<sup>th</sup> January 2023.

One comment was received in support of the proposals.

**Relevant Planning History**

- P/2012/0259 - Details of boundary fence and revision to consent application P/2007/0558, showing boundary wall of extension to the north-west elevation set back and alterations to fenestration – Approved 04/05/2012
  
- P/2007/0558 – Alterations and extensions to form 6 bedrooms, relocate 1 bedroom  
and dining room facilities (Nos.7-9) – Approved 15/06/2009.
  
- P/1990/1876 - Alterations And First Floor Extension To Form Access To Bedroom – Approved 05/12/1990
  
- P/1988/0939 – Two storey extension to form additional bedrooms (No.9) – Approved 13/07/1988.
  
- P/1987/1961 – Use as a residential home for the elderly (No.9) – Approved 21/12/1987.
  
- P/1987/0190 – Two storey extension to form owner’s self-contained living accommodation (No.9) – Approved 21/03/1987.

- P/1986/2137 – Erection of detached dwelling for owner, use of existing owner’s flat as a holiday flat (No.9) – Withdrawn 05/02/1987.
- P/1980/0643 – Rooms in roof space (No.7) – Refused 15/05/1980.
- P/1978/3529 – Use as a guest house (No.7) – Approved 07/02/1979.

### **Planning Officer Assessment**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of Development.
2. Land Use
3. Design and Visual Impact.
4. Impact on Heritage Assets.
5. Impact on Residential Amenity.
6. Access, Movement and Parking
7. Ecology and Biodiversity.
8. Drainage and Flood Risk.
9. Waste
10. Designing out Crime
11. Low Carbon Development.

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

The proposal seeks permission for change of use from a care home (Use Class C2) to 11 supported living accommodation units (Use Class C3b).

Local Plan Policy SS13 aims to provide additional housing and maintain a five-year supply of deliverable housing sites. Policy SS11 aims to improve the sustainability of existing communities in Torbay, enhance the quality of life for residents and, especially, to close the gap between the most and least disadvantaged neighbourhoods. Policy H1 seeks to provide a range of homes on allocated and unallocated sites to meet assessed needs and to create mixed, balanced communities with high quality living environments.

The NPPF 2021 (paragraph 11) sets out the presumption in favour of sustainable development. For decision-making this means that where the development plan policies are out-of-date permission should be granted. Unless the impacts of doing so would demonstrably and significantly outweigh the benefits when assessed against the NPPF taken as a whole.

The Council cannot demonstrate a 5-year housing land supply or the required 3-year housing delivery. The site is within the built-up area in a sustainable location and would increase the residential use of the site, providing eleven self-contained units for an identified needs group.

Policy H6 - Housing for people in need of care states that proposals involving the loss of existing care accommodation will be supported where the facilities are not needed, or it does not represent the most appropriate way of delivering care. New sheltered housing (within Use Class C3) is supported through Policy H6 where it is within easy reach of community facilities, shops and public transport.

The site is within the built-up area within easy access to local facilities and public transport, bus stops are within 150m, Paignton Train Station is within 0.65 kilometres, and local amenities and services are within 500 metres of the site.

The Council's Adult Social Care Commissioning Team have confirmed that the proposed development would accommodate and support local people recovering from serious and enduring mental illness, which is considered to be a suitable alternative provision of care in which there is a need for within Torbay.

Therefore, the presumption in favour of development further to paragraph 11 of the NPPF is not outweighed by loss of the C2 use on the site, and the proposal complies with Policies H6 and H1 of the Torbay Local Plan. There are no other Local Plan policies indicating that the proposal is not acceptable in principle.

## **2. Land Use**

The proposals seek the change of use of the building from Use Class C2 – residential care home, to 11 self-contained supported living units of accommodation – Use Class C3b).

Use Class C3b covers up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems.

Supported Living enables people to move on from open residential care or shared support to supported independence, with regular reviews and assessments of their needs. The identified need groups are adults with enduring mental health needs.

The Healthy Torbay SPD highlights the fact that the Council works in partnership with the Torbay and South Devon NHS Foundation Trust to support proposals which deliver and support health and well-being in Torbay.



It is understood that the NHS Trust are working to reduce the number of individuals with enduring mental health conditions living in residential care to live clusters of self-contained supported accommodation where appropriate.

The Council's Adult Social Care Commissioning Team have confirmed that the support being provided is contracted by Torbay & South Devon NHS Foundation Trust, with ongoing quality assurance carried out by the trust's Quality Assurance team.

It is proposed that the building will be managed by Accomplish Group who will be the responsible care provider for the self-contained supported living units. Accomplish Group are a specialist provider in supporting individuals with mental health needs to live independently.

The proposal will provide support workers 24 hours a day, 7 days a week for residents from both Paignton and Torquay with mental health conditions. It is anticipated that there would be 5 members of staff available on site during the day and between 2-3 members of staff during the night.

Further details of the proposed management of the site have been provided and are considered to be acceptable.

An office for staff is proposed to be located independent of the main building within an existing ancillary structure located on the western boundary of the site. The use of this structure specifically for this purpose can be secured through an appropriately worded condition.

Each self-contained unit will have its own kitchen with cooking facilities and own bathroom. The shared lounge and laundry room would provide the residents with opportunities to be reintroduced to social contact.

Because the self-contained units and the shared spaces are interdependent and essential parts of the use, the use for supported living within Use Class C3b needs to be controlled by condition on planning permission and this is recommended. This would ensure the units do not change use through permitted development rights to unrestricted residential occupation.

The site is also in an area where a change in either the operator or occupation or the type of use within Use Class C3 may lead to detrimental effects on the area.

A suitably worded condition is required in order to ensure that the use remains as a supported living facility and that the occupation and operation of the development is controlled, in the interests of residential amenity in the area and to ensure that the operation of the site accords with Policy DE3 of the Torbay Local Plan. Details of the Care Provider and/or the Social Landlord would be submitted to the Local Planning Authority prior to the first use of the development and any variation from the provider of services must therefore have the express approval of the Local Planning Authority. Occupation would also be restricted to residents of Torbay.

The applicant has also confirmed that the 11 units will provide 100% socially rented accommodation. This will provide a clear social benefit in favour of the scheme.

The proposal would help to address the need to provide additional homes in Torbay providing accommodation for a specific need and would not detract from housing delivery. Therefore, subject to the above-mentioned conditions, the proposed change of use is, therefore, acceptable and is considered to comply with the principles of Policies H1, H2 and H6 of the Torbay Local Plan.

### **3. Design and Visual Impact**

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) (Design Principles) of the Paignton Neighbourhood Plan requires development to be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The external appearance of the building would not be altered as only internal alterations are proposed.

Minor external works within the curtilage of the site, involving the formalisation of a refuse storage area and the provision of two electric vehicle charging points are proposed. The appearance of the site in the street scene would not change.

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

### **4. Impact on Heritage Assets**

Policy SS10 states that all heritage assets shall be conserved, proportionate to their importance and that the impact of development will be assessed against whether any alteration or loss is necessary in order to deliver demonstrable public benefits taking into account the significance of the heritage asset.

The building is within the Old Paignton Conservation Area and is recognised as a key building and/or building group of architectural importance. It is considered to have been built between 1870 and 1915 and forms part of a terrace of six properties constructed of roughly coursed breccia blocks with white brick quoins and window dressings.

No external changes are proposed as part of the development, therefore the proposals will have a neutral impact upon the conservation area, the character and appearance of which would be preserved.

The proposals would therefore be in accordance with Policy SS10 of the Torbay Local Plan and the requirements of The Planning (Listed Buildings and Conservation Areas) Act 1990.

## **5. Impact on Residential Amenity**

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

Policy PNP1(c) (Design Principles) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the proposal protect residential amenity in terms of noise, air, or light pollution.

### Future occupants.

Submitted proposed floorplans show the proposed layout which will provide 11no. 1-bed flats, communal areas and sleeping facilities for members of staff.

Each self-contained unit will have its own lounge and kitchen with cooking facilities, bedroom, and bathroom. With regard to the floor areas of the self-contained units, each unit is for one person and meets the Nationally Described Space Standards by providing a minimum of 37sqm Gross Internal Area as also required by Policy DE3.

There are also shared facilities providing a social environment in support of the private spaces: a communal lounge/meeting room and a communal laundry room, totalling 28.97 sqm.

Every habitable room is considered to provide adequate outlook and levels of natural light for its residents. The proposal also retains the existing outdoor amenity space.

Given the sizes of the proposed bedrooms and other living spaces, the placement of windows, and the availability of space within the curtilage for outdoor amenity space, it is considered that the proposed sheltered accommodation would provide residents with an acceptable quality of residential environment.

It is considered appropriate to impose a condition limiting the use to eleven supported living units under Use Class 3(b) with ancillary facilities (lounge/laundry areas and staff sleeping accommodation) of a minimum of 44 sqm and be limited to a maximum of eleven occupants. It is also considered necessary to remove permitted development rights to change the use to an HMO.

### Neighbouring Occupiers.

Given that the proposal involves no new structures, extensions or external alterations, it is considered that the proposed change of use would not result in any unacceptable harm to the amenities of neighbours in terms of their privacy, outlook, or access to natural light. The proposed development does not include any external physical alterations to the building and therefore the existing openings would be utilised and would maintain the same levels of intervisibility as is currently the case.

While it is acknowledged that the proposed sheltered accommodation would involve the presence of staff at night, it is considered that the staff office being located on the western boundary of the property and away from the adjoining terraced property to the east, is such that the proposal would not generate any substantial noise or disturbance to neighbours compared to the existing care home use.

Policy SS11 of the Local Plan states that development proposals will be assessed as to whether they can promote social inclusion and seek to eliminate exclusion based on access to housing, health, education, recreation and other facilities. The proposal would provide needed accommodation within Torbay to people currently in need of support and it is, therefore, considered that it would contribute to a mixed and balanced community within the area and would provide a facility to those disadvantaged within Torbay.

Subject to the above conditions, the proposal is considered to be in accordance with Policies DE3 and SS11 of the Local Plan and PNP1(c) of the Paignton Neighbourhood Plan.

## **6. Access, Movement and Parking**

Policy DE3 Development Amenity of the Local Plan states that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA2 of the Local Plan states 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 TA3 and Appendix F of the Local Plan states the minimum dimensions for parking spaces, including garages. This requires that 1 parking space should be provided per flat and that parking for visitors should also be provided. Appendix F also outlines that parking spaces should be 4.8 metres by 2.4 metres except for when they abut the public footpath and/or public highway and then the spaces should be 5.5 metres by 3.2 metres to prevent vehicles from overhanging and causing an obstruction to the public footway and potentially the public highway.

Policy PNP1 (d) of the Paignton Neighbourhood Plan encourages residential development to include designed cycle space that is covered.

Policy PNP1 (h) requires development to include electric vehicle charging points.

The site is accessed from The Riviera which is a one-way street with a 30mph speed limit. The existing vehicular and pedestrian access to the site shall be maintained as existing.

The site has existing car parking provision to the frontage of No.7 and to the side of No.9, both accessed from The Riviera. Existing parking provision for the site is suitable for 6 vehicles.

The Applicant has confirmed that the residents of the 11 self-contained units would not have access to their own vehicles, but instead the parking provision would be utilised by staff and visitors.

It is noted that the proposed development would be easily accessible by public transport and that the site is in a sustainable location.

Given the former use of the site as a residential care home that included many residents, staff and visitors, the proposed use for supporting living self-contained units is considered to reduce the previous intensification of vehicle movements and parking demand.

Given that residents are unlikely to own cars and the parking spaces would be used by predominantly by support staff and visitors, and the fact that the proposed development is in a sustainable location, the provision of 6 spaces is considered adequate for the proposed use.

Appendix F of the Torbay Local Plan requires electric vehicle charging points to be provided for 20% of flatted accommodation – in this case 2 points. The location of these points have been supplied on Drawing - Proposed layout P-2023-0028-5.

Cycle Storage:

Appendix F of the Torbay Local Plan expects storage space to be provided for at least 1 cycle per flat, therefore, the proposed development should allow provision for the storage of 11 cycles.

The submitted proposed layout also shows a dedicated independent cycle store housed within the curtilage of the site. Details of the proposed cycle storage can be secured by condition, and this is recommended.

Subject to conditions to ensure that the 6 car parking spaces are retained and kept available for use for parking purposes and that two electric vehicle charging points are provided, along with the suggested details of the proposed cycle storage, the proposal is considered acceptable with regards to Policies TA2, TA3 and Appendix F of the Torbay Local Plan and Policies PNP1 (d) and PNP1 (h) of the Paignton Neighbourhood Plan.

## **7. 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 C4 states that development will not be permitted where it would seriously harm, either directly or indirectly, protected trees.

Policy PNP1 (c) of the Paignton Neighbourhood Plan encourages development proposals to retain existing natural features and features of biodiversity value on site, and to enhance biodiversity where possible.

The application has not been accompanied by an ecological survey report. Given the location, use and condition of the building it is not considered that protected species are likely to be affected by the proposal.

However, a precautionary approach should be taken to the with regards to the proposed works and an informative to that effect can be added to the planning decision.

Adjacent to the site, surrounding Cypress Court to the south east are several trees covered under individual tree preservation orders.

As no external alterations are proposed, the proposals would have no impact on these protected trees or any other mature vegetation within or surrounding the site.

The proposal therefore complies with Policy NC1 and Policy C4 of the Local Plan and Policy PNP1 (c) of the Paignton Neighbourhood Plan.

## **8. Drainage and Flood Risk**

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

Policy PNP1(i) requires developments to comply with all relevant drainage and flood risk policy.

The site is located within the Critical Drainage Area and is at high risk from surface water flooding which effects small parts of the periphery of the site. It is accompanied by a Flood Risk Assessment.

The proposal is for the conversion of an existing building and will seek to use the existing foul and surface water connections. Although the proposed use includes sleeping accommodation on the ground floor, this is not materially different from the existing use which also utilised this arrangement.

The proposed development would also not result in an increase in the impermeable area on the site.

The proposals are therefore not considered to present any material changes in terms of flood risk. The Council's Drainage Engineer has also raised no objections to the proposed development.

The proposal is therefore deemed acceptable in terms of its impact on drainage and flood risk including surface water flooding and is considered to be in accordance with Policy ER1 of the Local Plan and Policy and PNP1(i) of the Paignton Neighbourhood Plan.

## **9. Waste**

Policy W1 of the Torbay Local Plan requires as a minimum that all developments make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated by a development.

PNP1 (d) of the Paignton Neighbourhood Plan requires space to be provided for solid waste storage on each curtilage including seagull proof structures a minimum size of 240l.

During the consultation process, the Council's waste consultee requested further information on proposed waste arrangements for the development.

Following this, amended plans showing the proposed layout of the proposed bin storage have been received. The applicant has also confirmed that each residential unit will manage its own waste rather than the use of communal bins. Details of the refuse storage area will be secured by an appropriately worded condition.

It is considered that the details provided show that the site has adequate space within its curtilage to provide for easily accessible waste and recycling bins required for the development.

The proposals therefore conform with the requirements of Policy W1 of the Torbay Local Plan and Policy PNP1 (d) of the Paignton Neighbourhood Plan.

## **10. Designing Out Crime**

Policy S11 of the Torbay Local Plan requires development to help reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict.

Policy PNP1 (g) of the Paignton Neighbourhood Plan requires all developments to show how crime and fear of crime has been taken into account.

The Designing Out Crime Officer has raised no objections to the proposed development subject to the use of a planning condition to install CCTV at the premises.

Therefore, subject to the use of an appropriately worded condition to secure details of a CCTV system at the premises, the proposals are considered to meet the requirements of Policy S11 of the Torbay Local Plan and Policy PNP1 (g) of the Paignton Neighbourhood Plan.

## **11. Low Carbon Development**

Policy SS14 (Low Carbon Development and Adaptation to Climate Change) requires major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials.

Policy ES1 (Energy) 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. 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

Policy PNP1(f) (Towards a Sustainable Low Carbon Energy Efficient Economy) of the Paignton Neighbourhood Plan outlines that new development, where appropriate and subject to viability, should undertake sustainable construction and water management technologies.

It is understood that the proposed conversion of the building will utilise energy efficient materials with the aim to meet a minimum Level C EPC rating.

The proposed development is therefore considered to meet the requirements of Policies SS14 and ES1 of the Torbay Local Plan and PNP1(f) of the Paignton Neighbourhood Plan.

## **Sustainability**

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

### **The Economic Role**

Housing development is recognised as an important driver of economic growth and there would be some minor economic benefits to the construction industry from the proposed development. Once the units were occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services. 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 provision of additional supported accommodation which provides a specialist and vital service for residents of Torbay who are experiencing enduring mental illness. This would provide a clear social benefit which weighs strongly in favour of the development. The proposed development would also provide socially rented units and therefore



the scheme can be classed as providing 100% affordable housing albeit through a specialist use.

### **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 heritage, streetscape, ecology, biodiversity and surface and foul water drainage. These matters have been considered in detail above. The proposed development is in a sustainable location with a range of public transportation links. It is considered to be a low-impact change of use which preserves the character and appearance of the conservation area and the street scene. In respect of the environmental element of sustainability, the balance is considered to be in favour of the development.

### **Sustainability Conclusion**

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

### **Human Rights and Equalities Issues Human Rights Act:**

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

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

### **Local Finance Considerations**

#### **S106/CIL –**

S106:

In accordance with the Council's adopted SPD, where a proposed development would result in a clear, identifiable social good, a flexible approach to planning contributions is encouraged to ensure that the social benefits of the scheme are realised.

In this case, the provision of specialist supported accommodation is considered to provide an identified social benefit.

In addition, due to the similarities of the existing and the proposed change of use, and the fact that this use will be secured through condition, it is considered that there are no additional infrastructure requirements needed to enable the proposed development to be delivered, with the exception of a contribution towards waste collection on the site. This is required as there would be change from private collection to collection from the local authority.

Due to the nature of the proposals and the individual circumstances of the case, a sustainable development payment will therefore only be required to provide a contribution towards waste collection vehicles which would serve the site. This would be at a level of £72 per residential unit and will be required via a legal agreement (unilateral or bilateral). This presents an obligation requirement of £792.

CIL:

Not applicable

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

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

### **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**

The proposal is in accordance with the provisions of the Development Plan and the 'Tilted Balance' adds significant weight in favour of the development in the absence of harm being identified.

The proposal is considered acceptable in principle and would result in clear social benefits by providing a specialist form of supported accommodation to serve the residents of Torbay which would not unduly impact local amenity.

The development is acceptable in terms of access, ecology and flood risk matters. The proposed development is considered to represent sustainable development and is acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, the NPPF, and all other material considerations. The Officer recommendation is therefore one of conditional approval with measures to secure the required sustainable development obligation.

## **Officer Recommendation**

Approval: Subject to;

The completion of a suitably worded S106 Legal obligation to secure a sustainable development obligation of £792.

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

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

## **Draft Conditions:**

### **Use**

The property shall only be used as a Class C3b supported living facility comprising

- a) eleven self-contained flats (in use class C3b and no other use class)
- b) a minimum floorspace of 44sqm of support/shared living areas comprising:
  - communal shared living areas with a minimum floorspace of 28sqm
  - overnight staff accommodation with a maximum floorspace of 17sqm.

No part of the development shall be occupied as non-supported living accommodation. No part of the property shall be used for a purpose falling within Class C4 (House in Multiple Occupation). The use of the facilities specified in subparagraph (b) above shall be ancillary or incidental to the use of the eleven self-contained flats.

Reason: In the interests of residential amenity in the area and to ensure that the use of the site accords with Policies H1, H6 and DE3 of the Torbay Local Plan. Any variation from the use applied for must therefore have the express approval of the Local Planning Authority.

### **Construction Hours**

No construction works or any works including site preparation and clearance works or construction related deliveries into or from the site shall take place other than between the hours of 08.00 to 18.00 on Monday to Friday and 08.00 to 13.00 hours on Saturdays and at no time on Sundays, Bank or Public Holidays unless otherwise agreed in writing by the Local Planning Authority.

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

### **Management Plan**

The development hereby approved shall be occupied in strict accordance with the approved Management Plan received 05 May 2023 at all times, unless an alternative Management Plan is submitted to and agreed in writing by the Local Planning Authority.

Reason: In the interests of providing a service that addresses an identified housing need and in the interests of residential amenity in the area and to ensure the management of the site accords with Policy DE3 of the Torbay Local Plan.

### **Car Parking Spaces**

The 6 car parking spaces on the site, as shown on the site layout plan (Drawing No - P-2023-0028-5) shall be provided for the free use of occupants, staff and visitors to the site prior to its first occupation for the use hereby permitted and maintained such for the lifetime 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.

### **Cycle Storage Details**

Prior to the first occupation of the development details of cycle storage (secure and weatherproof) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with approved details prior to the first occupation of the development and maintained for the lifetime of the development.

Reason: In the interests of reduction of carbon fuel usage and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030

### **Refuse and Recycling**

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 Policy DE1 of the Torbay Local Plan 2012-2030.

## **Electric Charging Facilities**

Prior to the first occupation of the development hereby permitted two electric vehicle charging points (EVCPs) as shown within Drawing No. 'Proposed layout P-2023-0028-5' hereby approved shall be provided and made operational and available for use. Once provided, the facility shall be retained for the life of the development for such purposes.

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

## **Office Use**

The proposed independent structure on the western boundary of the site shown as 'Office' within Drawing No. 'Proposed layout P-2023-0028-5' in the development hereby approved shall be used only as an office for staff in connection with the use of the development as a supported living facility and not as a separate unit or as part of any other residential unit upon the site.

Reason: For the avoidance of doubt and to maintain the amenity of future occupiers further to Policy DE3 of the Torbay Local Plan.2012-2030.

## **Approved Operation**

The supported living facility hereby approved shall:

- a) only serve residents of Torbay and
- b) only be operated by a Care Provider and/or a Social Landlord for the approved use.

Details of the Care Provider and/or the Social Landlord shall be submitted to the Local Planning Authority prior to the first use of the development. Updated details of the care provider and/or the Social Landlord shall be made readily available to the Local Planning Authority should the use cease.

Reason: In the interests of providing a service to address local needs in accordance with Policies H1 and H6 of the Torbay Local Plan. The site is in an area where a change in either the operator or the type of use within Use Class C3 may lead to detrimental effects on the area. In the interests of residential amenity in the area and to ensure that the operation of the site accords with Policy DE3 of the Torbay Local Plan. Any variation from the provider of services must therefore have the express approval of the Local Planning Authority.

## **CCTV**

Prior to the first use of the development hereby approved, full details of the CCTV provision for the site shall have been submitted to and approved in writing by the LPA. The details shall include the siting and the technical specification details of the cameras, direction of view and their external appearance/colour. The approved measures shall be fully installed prior to the first use of the development and shall be permanently retained thereafter.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policy DE1 of the Torbay Local Plan 2012-2030 and Policy PNP1 (g) of the Paignton neighbourhood Plan.

## **Informative(s)**

01. 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.
02. If the presence of protected species is detected during construction of the development, work must stop immediately and a qualified ecologist or Natural England (0300 060 3900) contacted and consulted as to necessary measures and mitigation.

## **Torbay Local Plan**

SS13 - Five Year Housing Land Supply

SS10 – Conservation and the historic environment

SS12 – Housing

SS14 – Low carbon development and adaption to climate change

SDP1 – Paignton

SS11 - Sustainable Communities Strategy

H1LFS - Applications for new homes

H2 – Affordable housing

H6LFS - Housing for people in need of care

C4- Trees, hedgerows and natural landscape features

DE1 – Design

DE2 – Building for Life  
DE5 - Domestic extensions  
DE3 - Development Amenity  
ES1 – Energy  
ER1 - Flood Risk  
ER2 – Water management  
SC1 – Healthy Bay  
TA2 - Development access  
TA3 - Parking requirements  
NC1LFS - Biodiversity and Geodiversity  
W1 – Waste hierarchy

**Paignton Neighbourhood Plan**

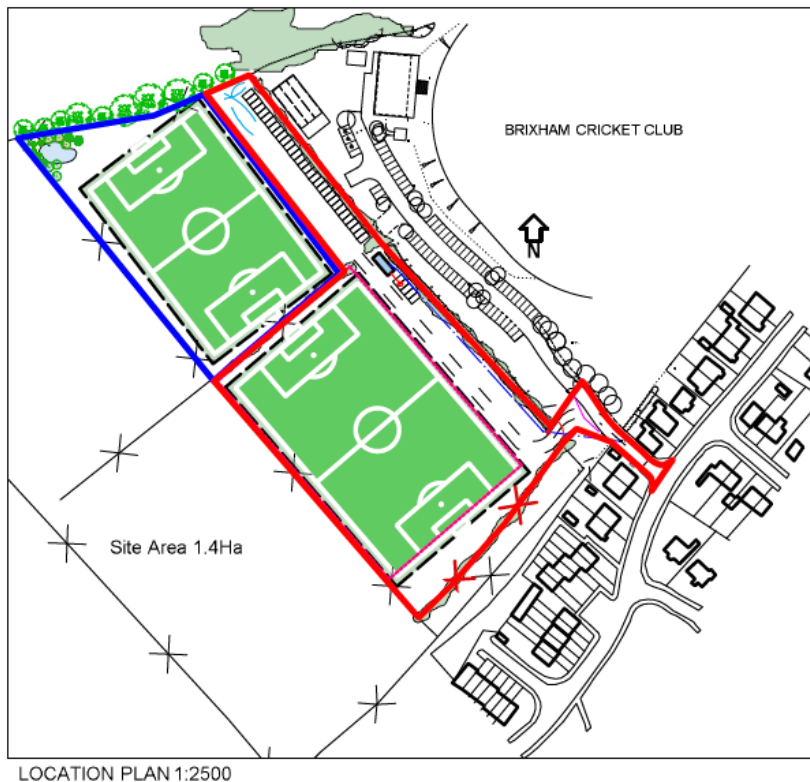
PNP1 (c) – Design Principles  
PNP1 (d) – Residential Development  
PNP1 (f) – Towards a sustainable low carbon energy efficient economy  
PNP1 (g) – Designing out crime  
PNP1 (h) – Sustainable Transport  
PNP1 (i) – Surface Water

## TORBAY COUNCIL

Application Site Address	Site Adjacent To Brixham Cricket Club 83 North Boundary Road Brixham TQ5 8LH
Proposal	Change of use from agricultural land to outdoor football pitch, formation of parking area, changing rooms, boundary fence and associated works. (Part-retrospective).
Application Number	P/2022/0339
Applicant	Mr Shaun Langdon
Agent	Mr Jonathan Ling-Cotley - MTA Chartered Architects Ltd.
Date Application Valid	29/03/2022
Decision Due Date	28/06/2022
Extension of Time Date	24/06/2022
Recommendation	Conditional approval subject to the conditions detailed below and subject to the completion of a Section 106 Agreement to secure community use of the pitch. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director 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 has been referred to Planning Committee due to it being major in nature.
Planning Case Officer	Verity Clark



## **Location Plan:**



## **Site Details**

The site is a field adjacent to Brixham Cricket Club, measuring approximately 0.92 hectare in size. The site was formerly used for agricultural/equine purposes. The site is located within the Long Road South to Berry Head Countryside Zone, Berry Head to Sharkham Undeveloped Coast and the South Devon Area of Outstanding Natural Beauty. The site is also within Churston, Galmpton and Broadsands Minerals Safeguarding Area.

## **Description of Development**

The proposal seeks planning permission for an outdoor football pitch for sport and recreational use. The pitch would accord with the Football Association's standard full size pitch measuring 105m x 68m with an additional 3m run off area.

The pedestrian and vehicular access to the site is via the existing field gate near the south eastern boundary which is accessed via a shared section of road with Brixham Cricket Club, which provides access onto North Boundary Road.

The supporting information states that it is the aim that the proposed pitch will be used for adult football for 2 hours per weeks, walking football for 1 hour per week and youth football for 2 hours per week.

The proposal includes the provision of a new internal access road which skirts around the edge of the lower paddock to the east. A new access is formed through the existing hedge and a linear parking strip predominantly adjacent to the top field (the subject of a concurrent application for a football pitch via P/2020/0480) for a total of approximately 37 cars will be provided. It is understood that this will be surfaced with aggregate. The access/ parking area adjacent to the proposed lower pitch, which is the subject of this application, has already been formed.

The proposed layout plan also includes a pre-fabricated changing room unit which will provide a changing and shower area for users. This will be finished in timber cladding and measures 9.75m x 3.7m with a total height from ground level of approximately 3.1m. The changing room unit will sit to the north east of the proposed football pitch and adjacent to the access gap in the hedge.

The proposal also seeks the addition of metal mesh security fencing and entry gate along the south east boundary adjacent to an existing hedge, with a height of 2.5m finished in a moss green colour.

### **Pre-Application Enquiry**

Not applicable.

### **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. S 85 Countryside and Rights of Way Act 2000 places a duty on local planning authorities to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty. The following development plan policies and material considerations are relevant to this application:

#### Development Plan

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

#### Material Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published standing Advice
- Development in the AONB

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/2020/0480 Change of use from agricultural land to outdoor football pitch for sports and recreational use, formation of parking area and associated works. (Part-retrospective). Concurrent application although previously resolved for approval at the December 2020 planning committee. Whilst the two applications are subject to separate reports, consideration has been given to the impacts of each development in isolation and in combination.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. 10 letters of objection, 1 letter of representation and 74 letters of support have been received.

Concerns raised in objection include:

- Retrospective works
- Noise and disruption
- Other uses and events on the site
- Impact on AONB
- Litter
- Loss of privacy
- Highways impacts
- Impact on character of area
- Alternative locations
- Potential future development
- Trees
- Wildlife
- Health and safety
- House values (not a material consideration)

Comments raised in support include:

- Sport facilities
- Community use
- Opportunities for youth and adults
- Safe facilities
- Health and wellbeing
- Sympathetic to local environment
- Changing rooms and secure grounds are benefits
- Enables all year round use
- Disused and unsightly horse fields
- Proximity to cricket field
- Lack of noise and disturbance
- Limited other grounds
- Employment and education opportunities
- Associated business to local pubs/clubs
- Access and traffic

- Does not cause privacy or overlooking issues
- Tourism

### **Summary of Consultation Responses**

#### **Brixham Peninsula Neighbourhood Forum (Comment received 12/04/2022):**

No objection.

#### **Brixham Peninsula Neighbourhood Forum (Follow up comment received 16/04/2022):**

Broadsands, Churston and Galampton Neighbourhood Forum largely support this application. We are in agreement with the conditions to be added suggested by Brixham Town Council. As this application sits within the AONB we would also want to see additional conditions relating to mitigation for the loss of hedgerows and habitat as well as biodiversity net gain.

#### **Brixham Town Council:**

Brixham Town Council do not object to the change of use but request that should land not be used for sports for a period of two years that the land reverts back to agriculture. Brixham Town council also requests the inclusion of a covenant against any buildings on the land if it is not used as a sports field.

The land is within the AONB, is recognised as a Cirl Bunting breeding area and is on the flight path of the greater Horseshoe Bat.

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

It is recommended that access to the site is secured when not in use to ensure this prevents unauthorised access onto the grounds and prevents events such as unauthorised encampments etc.

It would also be recommended to ensure the doors to the changing room facilities are to a security standard of PAS24: 2016 or equivalent. This will aid in preventing unauthorised access into the changing rooms.

#### **Torbay Council's Environmental Health Officer (Comment received 02/09/2022):**

Having looked at the above application and given the close proximity of nearby residential properties I would recommend the applicant commissions an acoustic report from a qualified acoustic consultant. In short the report should:

- Assess the potential impact of noise from the proposed sports pitch at the nearest residential dwellings; and;
- Where required, identify appropriate measures to mitigate the noise impact from the sports pitch as far as practicable.

I note the use of noise absorbent netting is mentioned but without specific details it is hard for us to comment further at this stage. In short I think an acoustic report to properly assess the issue is the way forward.

**Torbay Council's Environmental Health Officer (Follow up comment received 03/05/2023):**

Further to your recent consultation regarding the above application I can confirm that I have reviewed the acoustic report submitted by Parker Acoustics Ltd on behalf of the applicant, and I would agree with the conclusions. As such I have no objections to this application being approved.

**Torbay Council's Environmental Health Officer (Follow up comments received 03/05/2023 and 09/05/2023):**

Response received following queries about the need for sound absorbing netting:

The acoustic report confirms there should be no adverse impact and as such mitigation will not be necessary.

Response received following queries about the need for a restriction on the hours of use:

I don't believe they have floodlighting so evenings shouldn't be a problem. If an application is forthcoming in the future for flood lighting then this issue could be addressed then.

**Torbay Council's Sport Development Officer (Comment received 22/04/2022):**

I am writing reference the planning application for a second sports pitch at North Boundary Road, Brixham. The site is next to Brixham Cricket Club which is designated as a Public Open Space under the BPNP Policy E4.6. Although the land is not an allocated site in the Local Plan there is general positive support through LP Policy SC1 and SC2.

Torbay's emerging Playing Pitch Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand. North Boundary Road is still identified as important future provision for additional pitches.

North Boundary Road is also identified in Policy SC2.6 of the Local Plan which identifies the fields as an "area of search" for sports facilities in the Churston Area, therefore the area should be protected for sports facilities in some form.

We have been working with Devon Football Association who have produced a current Local Football Facilities Plan (LFFP) for Torbay which clubs have also had the opportunity to contribute to. The LFFP clearly highlights adult male and female football as a development priority for Torbay.

Therefore, the applicant's project supports this and should be supported to support football development identified in the LFFP.

There are currently 2 local authority owned sites for football in Brixham at St Marys Park, Brixham and Furzeham Green. Both of these facilities are available for community use but underutilised. There is also a new pitch at Centry Road, Brixham. Further communication with the applicant has shown that these pitches are public open spaces so are not desirable to the applicant due to public access, dog fouling, parking and limited club development opportunity.

If approved the applicant should follow SE recommendations of an adult pitch with sufficient run off. The recommended pitch for over 18 and Adult (11v11) 100 x 64, (106 x 70m including safety run-off area), therefore there is ample space to provide a safety run off 3m.

No development should take place unless and until:

- a) A detailed assessment of ground conditions of the land proposed for the new/retained/replacement playing field land as shown on drawing number... shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and
- b) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.
- c) a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review.

The club are already working with Devon FA to carry out pitch assessments using Pitch Power and deliver recommendations from the Institute of Grounds Maintenance to manage and maintain their grass pitches. This will fulfil SEs requirements above and give the club the opportunity to apply for funding from the FA and Football Foundation to implement the improvement programme. Brixham Town FA have also been identified by Devon FA as one of the small amount of clubs in the area to become part of their Investment Ready cohort. This means as a club they will receive professional help to ensure the club is ready for investment and shows that Devon FA are in support of the clubs development plans. KE Pring are partnered with Devon FA and working with the club.

**Torbay Council's Sport Development Officer (Follow-up response 15/02/2023):**

I feel that Shaun's letter is a fair justification of need. The club is recognised by the FA to be a growing club and the business plan shows no reason for this not to happen unless the planning application is not accepted. Growing community clubs such as this thrive on community spirit and single pitches in different locations do not support this.

Having 2 pitches on 1 site allows a home ground where teams of all ages, sexes and abilities, supporters, family and friends can come together.

According to the Grounds Management Association:

'Based upon the combination of factors and the data collected through the GMA's Pitch Advisory Service we now know that a properly managed and maintained soil based pitch can sustain 4 hours per week of adult use on average providing it is not used in saturated conditions, similarly a pipe drained pitch should cope with 6 hours per week and one with pipe drainage and sand grooves could sustain more than this. The wide variation in pitch capacity reflects the impact of different levels of maintenance and specific site conditions.'

However youth football and walking football put less pressure on pitches. Therefore I have approached the FA for further comment if the 8 hours of play is realistic to expect.

Torbay's Playing Pitch Strategy recognises John Charles Park as a facility being used for Football in Brixham by Brixham Town FC. and the need for access to changing rooms. It also recognises the need or clarification of the precise pitch layout and size.

Sport has recently lost allocated sports land in the Brixham area at Brokenbury which had been suggested for pitches in the past. With this land now lost to a solar farm it is important to ensure that multi pitch space such as JCP is secured in for the area.

**Torbay Council's Sport Development Officer (Follow-up response 17/04/2023):**

According to the Grounds Management Association 'we now know that a properly managed and maintained soil based pitch can sustain 4 hours per week of adult use on average providing it is not used in saturated conditions, similarly a pipe drained pitch should cope with 6 hours per week and one with pipe drainage and sand grooves could sustain more than this. The wide variation in pitch capacity reflects the impact of different levels of maintenance and specific site conditions.

The FA have confirmed 'the amount of usage on a grass pitch would be affected by the level of maintenance that is carried out on a weekly basis and across a season. They would think the proposed usage would be too much for these pitches to handle of a weekly basis across a season / calendar year.'

	Pitch 1		Pitch 2
Girls & Ladies Football	1 hour per week	Adult Football	2 hours per week
Youth Football	3 hours per week	Walking Football	1 hour per week
BDA Clubs	4 hours per week	Youth Football	2 hours per week
<b>Total</b>	<b>8 Hours</b>	<b>Total</b>	<b>5 Hours Per week</b>

Youth football and walking football put less pressure on pitches and Sean will be able to monitor usage and plan maintenance, and rota and timetable use accordingly. He may have to reduce use of the pitches depending on maintenance and drainage.

**Sport England (initial comment received 14/04/2022):**

The Government, within their Planning Practice Guidance (Open Space, Sports and Recreation Facilities Section) advises Local Planning Authorities to consult Sport England on a wide range of applications. <https://www.gov.uk/guidance/open-space-sports-and-recreation-facilities-public-rightsof-way-and-local-green-space#open-space-sports-and-recreation-facilities>

This application falls within the scope of the above guidance as it relates to the creation of new playing fields.

Sport England assesses this type of application in light of the National Planning Policy Framework (NPPF) and against its own planning objectives, which are Protect - To protect the right opportunities in the right places; Enhance - To enhance opportunities through better use of existing provision; Provide - To provide new opportunities to meet the needs of current and future generations. Further information on the objectives and Sport England's wider planning guidance can be found on its website: <https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport>

**The Proposal**

The proposal is for the change of use from agricultural land to outdoor football pitch. I note the submitted drawings also shows car parking and changing accommodation, I assuming these will subject to a new application.

**Assessment**

I have consulted with the country Football Association and the Football Foundation.

In principle they are supportive as is Sport England of the proposal. However there a fundamental issue on the size of the pitch. The pitch is required to be 100 x64 with a 3m run-off area all round giving a total size of 106 x 70m. Looking at the drawings I am confident this can be achieved. We would therefore ask for a condition to ensure this happens.

The FA/FF also raise the issues about ensuring the pitch is fit for purpose and thereafter maintained.

Finally they have made the following comments which again I support:

Should the project move forward with the planned container options, the applicant would need to speak to the Devon County FA (DCFA) and Football Foundation (FF)



to ensure that the provision is technically compliant. The example shown in the planning application would not be compliant.

By providing new pitches that could help address established playing pitch deficiencies, the proposal would meet objective 3, and therefore Sport England supports this application in principle.

Sport England recommends that a ground conditions assessment is undertaken by a sports turf specialist/agronomist who can recommend a scheme for preparing the playing fields to the required specification. The recommended scheme should then be implemented. Detailed guidance on the issues that require consideration is set out in Sport England's guidance 'Natural Turf for Sport'.

A copy of this guidance can be found at: <https://www.sportengland.org/how-we-can-help/facilities-andplanning/design-and-cost-guidance/outdoor-surfaces>

#### Conclusion

This being the case, Sport England offers its support for this application.

Sport England recommends, based on our assessment, that if the Council is minded to approve the application, the following planning conditions should be imposed.

1. No development shall take place unless and until:

- a) A revised drawing showing the football pitch to have the overall size of 106 x 70m is submitted; and
- b) A detailed assessment of ground conditions of the land proposed for the new playing pitch as indicated 3853.AL.002 Rev A, shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and
- c) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.

The works shall be carried out in accordance with the approved scheme within a timescale to be first approved in writing by the Local Planning Authority after consultation with Sport England.

Reason: To ensure that site surveys are undertaken for new or replacement playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with LP Policy \*\*

2. Prior to the bringing into use of the playing pitch a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance

schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the playing pitch.

Reason: To ensure that new playing pitch is capable of being managed and maintained to deliver a playing pitch which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport (National Planning Policy Framework (NPPF) para 99) and to accord with LP Policy \*\*

If you wish to amend the wording of the recommended condition(s), or use another mechanism in lieu of the conditions, please discuss the details with the undersigned. Sport England does not object to amendments to conditions, provided they achieve the same outcome and we are involved in any amendments.

The absence of an objection to this application, in the context of the Town and Country Planning Act, cannot be taken as formal support or consent from Sport England or any National Governing Body of Sport to any related funding application, or as may be required by virtue of any pre-existing funding agreement.

**Sport England (Follow up comment received 27/04/2023):**

I have consulted with the FA/FF. They are content with the size of the football pitch.

**For Clarity:**

Sport England offers its **support** for this this application, as it is considered to meet Objective 3.

Sport England recommends, based on our assessment, that if the Council is minded to approve the application, the following planning conditions should be imposed.

1. No development shall take place unless and until:

- a) A detailed assessment of ground conditions of the land proposed for the new playing pitch as indicated 3853.AL.002 Rev A, shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and
- b) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.

The works shall be carried out in accordance with the approved scheme within a timescale to be first approved in writing by the Local Planning Authority after consultation with Sport England.

*Reason: To ensure that site surveys are undertaken for new or replacement playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with LP Policy \*\**

2. Prior to the bringing into use of the playing pitch a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the playing pitch.

*Reason: To ensure that new playing pitch is capable of being managed and maintained to deliver a playing pitch which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport (National Planning Policy Framework (NPPF) para 99) and to accord with LP Policy \*\**

If you wish to amend the wording of the recommended condition(s), or use another mechanism in lieu of the conditions, please discuss the details with the undersigned. Sport England does not object to amendments to conditions, provided they achieve the same outcome and we are involved in any amendments.

The absence of an objection to this application, in the context of the Town and Country Planning Act, cannot be taken as formal support or consent from Sport England or any National Governing 2

Body of Sport to any related funding application, or as may be required by virtue of any pre-existing funding agreement.

### **South Devon Area of Outstanding Natural Beauty Office:**

#### Summary

The South Devon AONB Unit objects to the proposed development on the grounds that it would erode and degrade the unspoilt rural character of the AONB by virtue of its visual and aural impact which fails to conserve or enhance the AONB. This is contrary to Policy SS8 of the Torbay Local Plan, Policy E1.3 of the Brixham Peninsula Neighbourhood Plan, NPPF 176 and policies Lan/P1 and Lan/P4 of the AONB Management Plan.

#### Detailed Analysis

##### National Planning Policy Framework

The following paragraphs are relevant to this proposal.

176. "Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues. The

conservation and enhancement of wildlife and cultural heritage are also important considerations in these areas, and should be given great weight in National Parks and the Broads. The scale and extent of development within all these designated areas should be limited, while development within their setting should be sensitively located and designed to avoid or minimise adverse impacts on the designated areas”.

#### Local Planning Policy

The statutory Development Plan comprises the Torbay Local Plan 2012-2030 and the Brixham Peninsula Neighbourhood Plan.

#### Brixham Peninsula Neighbourhood Plan

Policy E1.3 says:

“Development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework and other statutory documents including the AONB Management Plan”.

#### Torbay Local Plan 2012-2030

Policy SS8 Natural environment says:

“All development should have regard to its environmental setting and should positively contribute to the conservation and enhancement of the natural assets and setting of the Bay.

The Council will safeguard, conserve and enhance the valued qualities, features and attributes of sites protected under European legislation and other important natural landscape, including tranquillity, dark night skies, bathing waters, biodiversity and geodiversity within the Bay, commensurate with their importance. This will ensure that:

1. ...
2. Within the Area of Outstanding Natural Beauty (AONB), the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. Planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated;

#### South Devon AONB Management Plan

Areas of Outstanding Natural Beauty have a single statutory purpose - the conservation and enhancement of the natural beauty of an AONB - contained within the Countryside and Rights of Way Act 2000. The South Devon AONB Management plan, required by and prepared under the same act, is a material consideration in determining this application. Amongst other things the plan sets out the policy framework for AONB management together with priorities for action. Where there is a

perceived conflict between policies, the statutory purpose for AONBs overrides following the established Sandford Principle.

Policies of most relevance to this application are considered to be:

Lan/P1 Character The special qualities, distinctive character and key features of the South Devon AONB landscape and South Devon Heritage Coast will be conserved and enhanced

Lan/P3 Landscape Condition Opportunities will be sought to strengthen landscape character by improving the condition of existing landscape features in poor condition and reinstating landscape features identified as missing or fragmented.

Lan/P4 Tranquillity The tranquillity, natural nightscapes and dark skies of the AONB will be enhanced and maintained in a consistent, cross boundary evidence based approach.

Decision-makers should also take account of the following policy:

Plan/P2 Decision-taking Development management decisions will give great weight to the purpose of conserving and enhancing the natural beauty of the South Devon AONB; and support development that is appropriate and proportionate to its setting within or adjacent to the South Devon AONB by seeking to avoid, minimise or as a last resort compensate, for harm to the special qualities and distinctive characteristics of the AONB.

#### South Devon AONB Special Qualities

The special qualities of the South Devon AONB most pertinent to this application are:

- Deeply rural rolling patchwork agricultural landscape.
- Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement.

#### Comments on the Proposed Development

This is a full planning application for a change of use from agricultural land to outdoor football pitch. From Google images it would appear that the application is retrospective.

A previous application was submitted for a (partly retrospective) use of the field to the north of the current application site as playing fields (P/2020/0480). This has a Committee resolution to approve from November 2020 subject to a s106 limiting it to community use. Whilst the applicant says this has been approved, there is no decision letter on the portal so I assume the s106 is yet to be signed. Nonetheless this field has been in use for at least the last 2 years and the applicant is contending that another playing field is needed due to the growth of community participation in football.

The officer's report was very balanced last time, with an acknowledgement that the use of the northern field would cause harm to the AONB. It says "*Having regard to the close proximity of the public footpath, given the use of the site as a football pitch it is very likely that users of the footpath would be aware of noise and activity from the site – shouting, whistle blowing, vehicles entering and exiting the site. This would impact on the rural character and tranquility of the area to an extent. Therefore, the proposed development would fail to conserve or enhance the quiet enjoyment of the AONB. Overall, it is considered that the proposed development would further erode and degrade the unspoilt rural character of the area and the AONB given the adverse visual and aural impact, as the proposed use is not typical of a rural character and therefore is considered to fail to conserve or enhance the AONB*". In the Planning Balance it concludes that "*the proposal would cause a level of harm to the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast, however on balance the proposal addresses a deficit in terms of sports provision, in particular junior football development, and would secure a community use through a legal agreement which is considered to be acceptable*".

The impact on the AONB would be similar with this application, albeit this field is further away from the John Musgrave Heritage Trail. There is also the cumulative impact of the two developments to consider and the visual impact of football related paraphernalia (markings, posts, nets etc.). The starting point for assessing cumulative impacts should be the point of designation, August 1960, since which time this particular part of the AONB has undergone substantive change, in particular the loss of 31ha of open countryside to residential, commercial and holiday park development within the AONB west of Lichfield Rd and Northfields Lane through to North Boundary Rd. This proposal would leave an even more restricted area of open countryside on the western side of Brixham.

In addition, whilst not mentioned in the description of development, the application also includes a metal container on site for the changing facilities. The reasoning given for such a structure is to avoid damaging the archaeology with ground works, but its materials and design are completely inappropriate in an AONB.

#### Duty of regard for the AONB purpose

In considering this application, the Local Planning Authority is reminded of its overriding statutory 'duty of regard' for the purpose of conserving and enhancing the natural beauty of the South Devon AONB required by s85 to The Countryside and Rights of Way Act 2000.

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

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

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

### **1.0 Description of Proposal**

1.1 The proposals comprise of a change of use of an existing green field at 83 North Boundary Road, Brixham. The change of use would see the existing field redeveloped to form a new football pitch, access road, 37 space parking area and other ancillary facilities.

### **2.0 Site History**

2.1 A planning application (P/2020/0480) for the adjacent field to the north of the application site was granted consent on 14th December 2020.

### **3.0 Policy**

3.1 The site on which the proposals are located directly adjacent to Brixham Peninsula Neighbourhood Plan site allocation E4-6 'Brixham Cricket Club'. This land is allocated within the Neighbourhood Plan as a 'Local Green Space Site'.

### **4.0 Traffic Impact**

#### **Trip Generation**

4.1 It is stated within the Framework Travel Plan submitted by the Applicant that 'The number of cars entering and leaving the site will remain the same as it has been in the past as there will not be any additional sessions being added.' As the use of the site is not proposed to be intensified by the proposed development, no further analysis of the impact of traffic to / from the proposed development is required.

### **5.0 Design Considerations**

#### **Vehicular Access**

5.1 As can be seen in drawing number 3853.AL.002 'Proposed Site Layout, Location Plan and Changing Room Details', vehicular access to the site is proposed via the existing access point to Brixham Cricket Club, located on North Boundary Road. The proposals also include the provision of a new internal access road. The internal roads of this site are unadopted and are proposed to be subject to a 5mph speed limit.

5.2 As can be seen in drawing number 3853.AL.002, the proposals include the repositioning of the existing access gates to Brixham Cricket Club, as so the gates are to the north of the proposed football pitch access road. A simple priority junction will be provided on the internal road network, with demonstrated visibility splays of 9m. This level of visibility is in line with Manual for Streets guidance for priority junctions in areas with speed limits of 10mph or less.

5.3 It is stated within the Design and Access Statement submitted by the Applicant that "There is sufficient room on site for vehicles of all size and type, including emergency vehicles to enter, manoeuvre and leave in a forward gear." Swept path analysis has not been provided however to demonstrate this.

5.4 The applicant has not provided details of a refuse strategy. The design of the site indicates the internal highways will remain private and unadopted and therefore the site will be required to arrange its own private refuse collections.

### **Pedestrian Access**

5.5 Details of the pedestrian access have not been provided. Existing footways lead into the site from North Boundary Road, although the proposed Site Layout Drawing shows no further footway provision will be provided. The provision of a shared footway would be beneficial and encourage trips via active travel. It is therefore requested the applicant considers the provision of a shared footway and enhancements to the local network. This would support policies in the Torbay Local Plan and enhance support of the application in demonstrating its sustainable measures.

## **6.0 Parking**

### **Car Parking**

6.1 The Proposed Site Layout (Drawing No. 3853.AL.002) indicates approximately 37 car parking spaces will be provided. A turning head has been provided within the car park to allow vehicles to manoeuvre within the car park without the need to reverse excessive distances.

6.2 It is also noted that the current car parking arrangement does not include a space for a mini-bus / coach. It is requested that space is provided, and swept path analysis be provided to demonstrate the ability of such vehicles to turn in the proposed turning head.

### **Cycle Parking**

6.3 No cycle parking provision has been proposed. It is requested that cycle parking stands are provided in order to encourage active travel and support the application through demonstrating its sustainable measures.

## **7.0 Travel Plan**

7.1 A Framework Travel Plan (FTP), dated January 2022, has been produced by Trace Design to support of the application.

7.2 The Travel Plan has set out the existing walking, cycling and public transport infrastructure in sufficient detail. The existing local highway network has also been described in sufficient detail.

7.3 To establish the existing mode share for travel to the site, the 2011 census method of travel to work has been used. This is acceptable and a baseline survey must be undertaken once the site is occupied. The Travel Plan has not set any mode share targets for five years in the future. It is requested that once the baseline survey results are undertaken, an ambitious reduction in car driver trips is set (approx. 10% reduction).



7.4 The Travel Plan states all visitors and employees will be made aware of the Travel Plan and the responsibilities of the Travel Plan Coordinator (TPC). The costs of the TPC will be funded by the applicant. It is requested that the Implementation Strategy is submitted to Torbay Council that will set out responsibilities and timescales for implementation and monitoring the progress of the initiatives proposed by the Travel Plan.

## **8.0 Conclusion**

8.1 Whilst the Local Highway Authority support the principle of the application. Further information is required before a positive recommendation can be given in respect to highways. This additional information includes the following:

- Further details regarding the infrastructure the proposed development will provide to support travel by means of walking and cycling, including the proposed cycle parking arrangements; and
- Swept path analysis is required to demonstrate the appropriateness of the proposed turning head on site.

### **WSP on behalf of the Local Highway Authority (Follow up comment 23/05/2022):**

I can confirm that the submitted swept path analysis is considered acceptable. I note that our response also requested the following – has any information been submitted regarding this?

- Further details regarding the infrastructure the proposed development will provide to support travel by means of walking and cycling, including the proposed cycle parking arrangements;

### **Devon County Council's County Archaeologist and Historic Environment Manager:**

I refer to the above application. The proposal is sited in an area of known archaeological interest recorded on the Devon & Torbay Historic Environment Record (See:

[https://www.heritagegateway.org.uk/Gateway/Results\\_Single.aspx?uid=MDV13893&resourceID=104](https://www.heritagegateway.org.uk/Gateway/Results_Single.aspx?uid=MDV13893&resourceID=104) ).

Evidence of prehistoric settlement activity has been found across an area, including the proposal site. Finds include Mesolithic, Neolithic and Bronze Age flint tools, Bronze Age metal artefacts and Romano-British pottery. It is probable that groundworks for the creation of the sports pitch (ground preparation, levelling, drainage, access road, car park) will expose and destroy archaeological and artefactual deposits. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

I recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 205 of the National Planning Policy Framework (2021) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

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

Reason

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

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

I would envisage a suitable programme of work taking the form of archaeological fieldwalking, supervised metal detector survey, geophysical survey followed by evaluation trenching or test pitting to inform any further mitigation. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines. The work may lend itself to an appropriately organised and funded community archaeology project.

**Devon County Council's County Archaeologist and Historic Environment Manager (Follow-up Response received via concurrent application P/2020/0480):**

I identified the new road access as likely to involve groundworks. The applicant's response to comments about roads and car parking does not refer to the access road, only to the free draining car park.

Therefore can the applicant:

1. Set out what form the access road will take.
2. Confirm that the car park aggregate will be placed directly onto the existing turf or fallow, with no topsoil strip or levelling of the ground.

I note what the applicant states regarding only re-seeding the existing surface to create the playing surface.

Confirmation – ideally in a format that can ensure compliance - that creation of the pitch, car park and access road would not involve levelling, topsoil strip or intrusive drainage, would obviate the need for archaeological recording.

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

The development proposals will require a Tree Protection Plan (TPP) to identify the trees and hedges to be protected throughout the development.

This will also provide an opportunity to provide and works specifications to the retained trees and hedges in respect of pests and diseases (such as Ash Dieback) and access facilitation works.

Any proposed tree and hedge works should also be referred to the project ecologist for review and comment.

**Devon County Council's Ecologist:**

Acceptable subject to conditions.

**RSPB:**

No response received.

**Environment Agency:**

No response received.

**Key Issues/Material Considerations**

1. Principle of Development
2. Landscape Impact and AONB
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Impact on Ecology and Trees
6. Flood Risk and Drainage
7. Designing Out Crime
8. Heritage

**Planning Officer Assessment**

## **1. Principle of Development**

The proposal is for an outdoor football pitch for sport and recreational use, an associated changing room and access and parking area. Objectors have raised concerns regarding the designations of the site with regard to the Development Plan (South Devon Area of Outstanding Natural Beauty and Undeveloped Coast), also stating it would set a precedent, constitute overdevelopment and alternative sites have not been investigated, with other sites in Brixham been vacant or underutilised. Supporters have stated that the proposed development would provide sport facilities, as well as jobs.

The site is designated as countryside located within the Long Road South to Berry Head under Policy C1 of the Local Plan. Policy C1 of the Local Plan states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting.

Policy C1 goes on to state that outside settlement boundaries, the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment:

1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;
2. Development required for forestry, horticulture or agriculture;
3. Touring caravans and tents;
4. Tourist facilities appropriate to the rural area;
5. Development associated with outdoor sport and recreation appropriate in a rural area;
6. Sensitive conversion, alteration and extension of existing buildings;
7. Essential improvements to the highway network; and
8. Appropriate renewable energy development.

Criterion 5 of policy C1 above could support this proposal but only if it can be demonstrated that the proposal will not adversely affect the rural and landscape character, wildlife habitats, green corridors and historic features. For reasons explained in the 'landscape impact' section below it is considered the proposal would adversely affect the rural and landscape character and therefore is not supported by Policy C1 of the Local Plan.

The site is within the Berry Head to Sharkham Undeveloped Coast which is designated

under Policy C2 of the Local Plan. Policy C2 states the Council and partnership organisations will conserve the character of the undeveloped coast and seek to enhance its distinctive landscape, seascape, biodiversity, geological, recreational and cultural value. Development will not be permitted in the undeveloped coastal area unless proposals satisfy the following requirements:

1. Maintain the unspoilt character of the coastline, coastal landscape and seascape;
2. Maintain or improve public access for recreation; and
3. Provide sensitively designed development, including tourism uses, where there are clear economic or sustainability benefits that cannot be realised in alternative locations.

For reasons set out in the 'landscape impact' section of this report it is considered that the proposed development fails to maintain the unspoilt character of the coastal landscape. As such the proposed development is contrary to Policy C2 of the Local Plan.

Policy SC1 of the Local Plan states that all development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal. The proposed development would contribute to improving the health and well-being of the community, by providing a sport and recreational facility.

Policy SC2 of the Local Plan states that development should provide access to sport, leisure and recreation facilities according to the additional demand it generates and the capacity, condition and location of existing facilities. Where a need is identified for new facilities, they should be provided in appropriate locations, preferably co-located with existing and other planned sports facilities, where they are accessible by a range and choice of transport and comply with other policies in the Local Plan. The policy goes on to state that an assessment of existing provision of such facilities will be required with development proposals proportionate to their scale, allowing the Council to determine whether a contribution is needed towards new facilities or the enhancement of existing provision.

Policy S&L1 of the Brixham Peninsula Neighbourhood Plan states that notwithstanding areas already designated as Local Green Spaces or Public Open Spaces, additional and better quality outdoor playing space is required in the Peninsula. Subject to compliance with the other policies of this Neighbourhood Plan, proposals for developments within and adjacent to settlements (but excluding Settlement Gaps) which provide outdoor pursuits will be encouraged. These pursuits will embrace a range of activities and sports including formal games pitches, tracks, courts, parks (e.g., skateboarding) and facilities, signposted walking routes and "Trim Trails", and more informal "free play" and "free activity" areas. The approval of any new, enhanced or improved sport or leisure facility will be subject to assessment of the design and

impact, amenity and light emission of the proposed development in relation to its setting and other policies in this Plan. Policy S&L1 supports the inclusion of this site and has identified a 27.8 hectare shortfall in Brixham's Outdoor playing area. A planning condition should be employed to prevent artificial lighting in a highly sensitive location, this is also acknowledged in the ecology section of this report.

### **Alternative Sites and 'Need'**

Having regard to the sensitive location of this site within the AONB and Undeveloped Coast it is important to understand the need for this facility.

The application should also be considered in the context of the concurrent application P/2020/0480 which proposes the formation of a football pitch to the north west of the pitch proposed by this current application and adjacent to the main parking area. P/2020/0480 was resolved to be approved at the committee meeting held on the 14<sup>th</sup> December 2020 subject to the signing of a s106 legal agreement to secure the community use of the pitch. The legal agreement has not been completed so in line with the committee's resolution, the application has not been determined.

Since the resolution to approve P/2020/0480, this current planning application; P/2022/0339 has been submitted. Whilst both pitches have been submitted as stand alone planning applications, both football pitches could be constructed resulting in two football pitches across both sites.

It is understood that the facility will be used primarily by Brixham Town Football Club with the intention of providing adult football, walking football and youth football on the proposed pitch and holiday football camps. Changing room facilities are required by the league to allow the use of the pitch for tournaments. It is also proposed to allow access to other community teams and a Community Use Agreement s106 agreement will secure this.

Sport England have confirmed their support for the proposal subject to the addition of planning conditions given the proposal meets their policy objective of to provide new opportunities to meet the needs of current and future generations.

The Sport Development Officer has stated that there are currently two local authority owned sites for football in Brixham at St Marys Park, Brixham and Furzeham Green. Both of these facilities are available for community use but underutilised. There is also a new pitch at Centry Road, Brixham. Further communication with the applicant has shown that these pitches are public open spaces so are not desirable to the applicant due to public access, dog fouling, parking and limited club development opportunity. The allocated sports land in the Brixham area at Brokenbury has been suggested for pitches in the past however this land has now been granted planning permission for a solar farm thereby losing this as a potential alternative location.

The draft 'Torbay Playing Pitch Strategy November 2022' has been produced and consulted on. This indicates that the application site, known as John Charles Park (JCP) is identified as a key site for football that requires access to changing provision. Section T26 of the Playing Pitch Strategy Action Plan identifies JCP as a key site where changing provision is required however the Action Plan does show the need for clarification as to the precise layout and sizing of pitches. The draft Playing Pitch Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand and North Boundary Road is still identified as important for future provision for additional pitches.

North Boundary Road is also identified in Policy SC2.6 of the Local Plan which identifies the fields as an "area of search" for sports facilities in the Churston Area. The Sport Development Officer has noted that they have been working with Devon Football Association who have produced a current Local Football Facilities Plan (LFFP) for Torbay which clubs have also had the opportunity to contribute to. The LFFP clearly highlights adult male and female football as a development priority for Torbay and the proposal supports this aim.

The applicant Mr. Shaun Langdon has provided a justification and use statement which the Sport Development Officer has considered. The Officer concludes that the letter is a fair justification of need. The club is recognised by the FA to be a growing club and the business plan shows no reason for this not to happen unless the planning application is not accepted. Growing community clubs such as this thrive on community spirit and single pitches in different locations do not support this. Having 2 pitches on 1 site allows a home ground where teams of all ages, sexes and abilities, supporters, family and friends can come together.

The Council's Sports Development Officer is therefore satisfied that there is sufficient justification for this standalone football pitch and changing room facility in addition to the football pitch proposed as part of concurrent application P/2020/0480 and both proposals would assist at facilitating football development in accordance with the emerging Playing Pitch Strategy and Policies SC1 and SC2 of the Torbay Local Plan and Policy S&L1 of the Brixham Peninsula Neighbourhood Plan.

## **2. Landscape Impact and AONB**

The site is within the South Devon Area of Outstanding Natural Beauty. Policy SDB3 of the Local Plan states "The Area of Outstanding Natural Beauty around Brixham, including Berry Head National Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes".

Policy E1 of the Brixham Peninsula Neighbourhood Plan states "the internationally

designated Special Area of Conservation (SAC), the nationally designated National Nature Reserve (NNR) or Area of Outstanding Natural Beauty (AONB), and the locally designated Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1) will all be protected". Policy E1 goes on to state that "Development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework and other statutory documents including the AONB Management Plan".

Paragraph 177 of the NPPF sets out a presumption against major development in the AONB. Whether the proposed development would constitute major development in terms of the Area of Outstanding Natural Beauty context, footnote 60 of the NPPF states that the decision maker would need to take into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. The Local Planning Authority considers that the proposed stand alone development is non-major development in the context of the scale and nature of the proposal in this setting and when also considering the development of the further pitch proposed via P/2020/0480, the two proposed pitches combined are not considered to constitute major development for the purposes of paragraphs 176 and 177 of the NPPF given their overall nature, scale and setting.

Paragraph 174 of the NPPF states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside and maintaining the character of the undeveloped coast. Whilst Paragraph 176 of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty.

The site is located north-west of North Boundary Road but the site is not visible from North Boundary Road. The proposal involves the formation of a football pitch including demarcations and goal posts, a changing room, linear parking area and internal access road, security fencing and a wildlife corner. The site was formerly used for agriculture/ equine use. The proposed access and parking area will include laying a permeable aggregate course directly over the existing surface. Objectors have raised concerns that the proposed development is not in keeping with the local area and it would have negative impact on the local area.

In terms of landscape impact it is relevant to consider the visibility of the site from public vantage points given its designations. From site observations, it is apparent that the site will not be visible from North Boundary Road, but the site is visible from other vantage points within the countryside, due to the topography of the surrounding area. There is a well-used footpath linking to the South West Coast Path to the north and north west of the site however the majority of views gained of the proposed



pitch would be obscured by the central boundary hedge. Views of the proposed pitch are likely to be achievable from north west across the existing fields but these would not be close range views and would be viewed against the backdrop of the rear of the dwellings along North Boundary Road. The top of the proposed parking area would be adjacent to the public footpath and therefore would be appreciated at close range. Therefore, it will have varying degrees of visibility depending on which public vantage points it is viewed from. The application is not supported by a Landscape and Visual Impact Assessment which would have helped in the landscape assessment but nevertheless it is considered that the proposed use would detract from its previous rural character and appearance.

The site adjoins Brixham Cricket Club which was approved under planning reference P/2007/1286. The site allocation was considered by the Local Plan Inspector as part of the Torbay Local Plan Inquiry, as Brixham Cricket Club sought a non-specific site allocation. An excerpt from the officer report states: "The Inspector stated that great care needed to be taken in pursuing this proposal especially with regards to the size and location of associated development such as a clubhouse and parking area to ensure that the impact in this sensitive and attractive area is acceptable ... The Inspector considered that subject to careful design and the effective operation of controls available through other policies within the Local Plan, the proposal would not be likely to cause unacceptable harm, nor would it set a precedent for other forms of development in the countryside around Brixham". This makes it clear that the planning permission for Brixham Cricket Club's site should not set a precedent for further sports related development which could lead to further erosion of a sensitive and attractive area.

It is noted that despite the adjacency of the cricket club there is no proposal to share facilities such as the club house or parking areas and gates have been erected by the Cricket Club to control access to their site.

The South Devon Area of Outstanding Natural Beauty office did not respond to the concurrent planning application P/2020/0480 which was resolved for approval in December 2020. A response has however been received for this application. The consultation response raises an objection to the current application stating:

*A previous application was submitted for a (partly retrospective) use of the field to the north of the current application site as playing fields (P/2020/0480). This has a Committee resolution to approve from November 2020 subject to a s106 limiting it to community use. Whilst the applicant says this has been approved, there is no decision letter on the portal so I assume the s106 is yet to be signed. Nonetheless this field has been in use for at least the last 2 years and the applicant is contending that another playing field is needed due to the growth of community participation in football.*

*The officer's report was very balanced last time, with an acknowledgement that the use of the northern field would cause harm to the AONB. It says "Having regard to the close proximity of the public footpath, given the use of the site as a football pitch it is very likely that users of the footpath would be aware of noise and activity from the site – shouting, whistle blowing, vehicles entering and exiting the site. This would impact on the rural character and tranquility of the area to an extent. Therefore, the proposed development would fail to conserve or enhance the quiet enjoyment of the AONB. Overall, it is considered that the proposed development would further erode and degrade the unspoilt rural character of the area and the AONB given the adverse visual and aural impact, as the proposed use is not typical of a rural character and therefore is considered to fail to conserve or enhance the AONB". In the Planning Balance it concludes that "the proposal would cause a level of harm to the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast, however on balance the proposal addresses a deficit in terms of sports provision, in particular junior football development, and would secure a community use through a legal agreement which is considered to be acceptable".*

*The impact on the AONB would be similar with this application, albeit this field is further away from the John Musgrave Heritage Trail. There is also the cumulative impact of the two developments to consider and the visual impact of football related paraphernalia (markings, posts, nets etc.). The starting point for assessing cumulative impacts should be the point of designation, August 1960, since which time this particular part of the AONB has undergone substantive change, in particular the loss of 31ha of open countryside to residential, commercial and holiday park development within the AONB west of Lichfield Rd and Northfields Lane through to North Boundary Rd. This proposal would leave an even more restricted area of open countryside on the western side of Brixham.*

*In addition, whilst not mentioned in the description of development, the application also includes a metal container on site for the changing facilities. The reasoning given for such a structure is to avoid damaging the archaeology with ground works, but its materials and design are completely inappropriate in an AONB.*

The response summarises that the South Devon AONB Unit objects to the proposed development on the grounds that it would erode and degrade the unspoilt rural character of the AONB by virtue of its visual and aural impact which fails to conserve or enhance the AONB. This is contrary to Policy SS8 of the Torbay Local Plan, Policy E1.3 of the Brixham Peninsula Neighbourhood Plan, NPPF 176 and policies Lan/P1 and Lan/P4 of the AONB Management Plan.

The South Devon Area of Outstanding Natural Beauty Management Plan 2019-2024 provides guidance. Page 33 of the Strategy of the AONB Management Plan states that the quiet enjoyment of the AONB by the public will be promoted through recreation, leisure activities and sports that respect other users and the area's natural beauty, special qualities and land management. Page 103 of Annex 1 of the AONB Management Plan states that a recreational development that conserves and enhances the South Devon AONB will provide facilities and amenities which support the quiet enjoyment of the AONB, especially for users of the South West Coast Path national trail.

Having regard to the proximity of the public footpath to the north and north east, given the use of the site as a football pitch it is very likely that users of the footpath would be aware of noise and activity from the site – including shouting and whistle blowing at a longer distance and vehicles entering and manoeuvring within the site at a closer distance. This would impact on the rural character and tranquillity of the area to an extent. There is also the consideration of a cumulative impact from the proposed development with the pitch proposed under concurrent application P/2020/0480 which if both approved would result in a larger area developed for the use of sporting facilities. It is considered that the proposed development would fail to conserve or enhance the quiet enjoyment of the AONB.

The proposal includes the addition of a pre-fabricated changing room unit finished in timber cladding. Originally the changing room unit was to be finished in metal, appearing as a shipping container and was of a greater size. Given the landscape concerns and comments from the South Devon Area of Outstanding Natural Beauty office, a revised plan reducing the size and utilising timber cladding to help assimilate the structure into the area was submitted. These revised plans have resulted in an improvement to the visual appearance of the structure.

Overall, it is considered that the proposed development would further erode and degrade the unspoilt rural character of the area and the AONB given the adverse visual and aural impact, as the proposed use is not typical of a rural character and therefore is considered to fail to conserve or enhance the AONB and is harmful, contrary to policies contained within the Development Plan and the NPPF.

Policy C2 of the Local Plan states that development will not be permitted in the undeveloped coastal area unless proposals maintain the unspoilt character of the coastline, coastal landscape and seascape. The proposal would change the character of the immediate area through the sport being played, the laying out of the pitch, vehicles movements and the siting of the changing room unit. The proposal is not supported by Policy C2 of the Local Plan.

Given the proposal's nature, siting, scale, and design, it is considered that the proposed development would result in harm to the character and visual amenities of

the locality.

It is noted however that the proposal involves little permanent change to the land and should the use cease it could easily revert to its original use. Should planning permission be granted, it is recommended that a planning condition is employed to restore the land to its former agricultural/equine use should the applicant cease to use the land as an outdoor football pitch.

It is considered that the proposed development in terms of impact on the South Devon Area of Outstanding Natural Beauty and Undeveloped Coast would cause harm. In such a case it is necessary to consider whether there are public benefits which would outweigh the harm.

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

Policy DE3 of the Local Plan states that all development should be designed to not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Brixham Peninsula Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 130 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.

Objectors have raised concerns regarding residential amenity, including concerns relating to privacy/overlooking, anti-social behaviour, litter, and noise. The proposed pitch will be sited approximately 20.2m from the rear of the nearest residential garden at its closest point and approximately 34.5m to the rear of the nearest residential dwelling at its closest point.

The Council's Senior Environmental Health Officer was consulted on the application and requested that an acoustic report was provided to assess the potential impact of noise from the proposed sports pitch at the nearest residential dwellings and where required, identify appropriate measures to mitigate the noise impact from the sports pitch as far as practicable.

A noise impact assessment was subsequently provided which concluded that noise due to the proposal will result in no adverse impact/effect and therefore no mitigation measures are required.

The Council's Senior Environmental Health Officer reviewed the contents of the report and agreed with the findings noting that there was no objection to the application being approved. The Officer also confirmed that they did not consider sound absorbing netting to be required, nor did they consider it necessary to limit the hours of use of the pitch given that no external lighting is proposed which would naturally restrict the hours of use.

The proposal also includes the addition of 2.5m high metal mesh fencing along the south east boundary of the site adjacent to an existing hedge. Given the separation distance of the fencing to the nearest residential dwelling's garden; approximately 19.15m, in combination with the open mesh design, the proposed fencing and gate is not considered to result in an overbearing impact or otherwise loss to amenity.

The proposed pitch is not considered to result in a loss of privacy or unacceptable level of overlooking to the rear of the dwellings on North Boundary Road given the separation distances and boundary screening.

Given the siting of the parking area, vehicular access and changing room in relation to the nearest residential dwellings, these elements are not considered to result in an unacceptable impact on neighbour amenity.

Given its siting, scale, and design of the proposals, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours whether on its own or in combination with P/2020/0480. The proposal is considered to accord with Policy DE3 of the Local Plan.

Concerns have been raised by objectors about the use of the field for other temporary activities and uses. Permitted development rights allow certain temporary uses without the need for planning permission. Given the distance of the field to the nearest residential dwelling, uses allowed via permitted development rights for temporary events have the potential to impact on the neighbour amenity. As such a condition is recommended restricting temporary events. This will still allow football related activities and events such as tournaments but will restrict other uses on the site.

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

Paragraph 110 of the NPPF guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; and (c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Paragraph 111 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 would be severe.

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 T1 of the Brixham Peninsula Neighbourhood Plan states that all developments should include safe walking and cycling access. The Policy goes on to state that developments should provide a travel plan proportionate in breadth and detail to the size and complexity of any development proposal to address the impact of travel associated with the development, including information on how the carbon footprint from travel has been minimised and the health and well-being of travellers maximised. All development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The proposal seeks to utilise an access back from the highway boundary on North Boundary Road, along the Brixham Cricket Club drive. Internally within the site access will be obtained from the south east corner of the site from an existing gate with parking facilities for 37 cars formed within a linear parking strip to the north east of the site and the inclusion of a turning area within the north east corner. The parking facilities would serve the proposed football pitch, and the north western pitch proposed under concurrent application P/2020/0480.

WSP on behalf of the Local Highway Authority were consulted on this application. Initial comments requested that additional information should be submitted, including vehicular swept path plan analysis and visibility splays which have been provided. The application is also supported by a travel plan.

WSP have stated that within the travel plan submitted by the applicant, it is noted that 'The number of cars entering and leaving the site will remain the same as it has been in the past as there will not be any additional sessions being added.' As the use of the site is not proposed to be intensified by the proposed development, no further analysis of the impact of traffic to / from the proposed development is required. Approximately 37 car parking spaces will be provided and a turning head has been provided within the car park to allow vehicles to manoeuvre within the car park without the need to reverse excessive distances which has been demonstrated by an acceptable swept path analysis.

WSP have noted that no cycle parking provision has been proposed and it is therefore requested that cycle parking stands are provided in order to encourage active travel and support the application through demonstrating its sustainable measures. This is recommended via planning condition. The Travel Plan submitted with the application has set out the existing walking, cycling and public transport infrastructure in sufficient detail and the existing local highway network has also been described in sufficient detail. The Travel Plan has not set any mode share targets for five years in the future and it is therefore requested that once the baselines survey results are undertaken,

an ambitious reduction in car driver trips is set. A travel plan detailing this modal shift alongside an implementation strategy is therefore recommended to be secured by condition.

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. The submitted proposed plans do not indicate any bin storage, however there is space within the curtilage of the site for such to be sited, and a planning condition requiring the submission of a waste management plan is therefore recommended.

Should planning permission be granted, planning conditions should therefore be employed to secure the parking provision, the travel plan, to provide a storage provision for bicycles, to provide a storage provision for waste and to ensure the employment of a waste management plan.

It is considered that impacts relating to highway matters are acceptable and accord with Policies TA1, TA2 and TA3 of the Local Plan, Policy T1 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans 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 Brixham Peninsula Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms with Policy NC1 of the Local Plan.

The application site is within the Sustenance Zone of the Berry Head SSSI, associated with the South Hams Special Area of Conservation (SAC) with respect to the Greater Horseshoe Bats. The application is supported by a Phase 1 Habitat Survey and Preliminary Ecological Appraisal.

This ecology report considers both the application site field (listed as field 1) and the higher field (listed as field 2) which is the subject of concurrent application P/2020/0480.

The report confirms it would be necessary to remove a short length of bank and hedge at the eastern end of the hedge that divides the two football fields, to allow vehicular access. The grassland in the location of the proposed pitch is cut regularly and it is largely restricted to fineleaved grasses, with annual meadow grass and some cocksfoot grass in disturbed areas. The range of broadleaved herbs is limited to native white clover, creeping buttercups, common daisies, common catsear, with some ribwort plantain and lesser stitchwort. The margins that surround the field are not cut frequently and the vegetation tends to be dominated by rank grass species, like cocksfoot, false oat-grass and Yorkshire fog, with some wood false-brome along the northern border. Those margins that are not cut regularly, support a range of broadleaved herbs. These include hogweed, cow parsley, foetid iris, ragwort, hawkweed, cut-leaved geranium, greater stitchwort, meadow and creeping buttercups, spear thistle, broadleaved dock, lesser trefoil and red clover. Bracken is largely confined to parts of the northern margin. A small area of waste soil was dumped in the extreme north-western end of the field during preparation of the pitches. That area has been colonised by rank grasses, with abundant cocksfoot, false oat-grass and the broadleaved bristly oxtongue. This area would lend itself to the provision of habitat mitigation. The hedge that divides the two fields is in poor condition, having been unmanaged for many years. The eastern end is dominated by overgrown blackthorn, while the remainder of the hedge is made up of ash and field maple, with some hazel, wild privet and dogrose. The whole hedge is 'infested' by ivy, which is growing up into the crowns of some of the trees and large bushes.

The report states that the creation of football pitches within the two fields, both of which are managed as closely-mown amenity grassland, would have no impact of any significance on the population of greater horseshoe bats that are centered in the Berry Head roost. The hedge that divides the two fields lacks connectivity to any hedges to the west, so bats would be unlikely to follow it.

The report concludes that the proposal is considered to have an acceptable impact on all protected species. The report sets out mitigation and habitat enhancement to ensure a biodiversity net gain.

The Devon County Council Ecologist has provided a consultation response on this ecology report. It was confirmed that the proposed development will not lead to the loss, damage, or disturbance to Greater Horseshoe Bat foraging habitat within a sustenance zone. Nor will it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the small scale of the development, largely change of use with minimal habitat alterations and habitats unfavourable for greater horseshoe bats. No lighting is proposed with the development. A short section of hedgerow is to be removed. More favourable commuting habitat lies to the north of the development site, as hedgerows on site lead into the highly urbanised area to the south/east. Commuting habitats will not be negatively impacted. In line with the South



Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), and given the above, there is unlikely to be a likely significant effect on the South Hams SAC. A detailed HRA is not deemed to be required. Bats may use the hedgerows on site as linear features for commuting. Habitats on site are unfavourable for foraging. Commuting/foraging bats are unlikely to be negatively impacted by this development.

The planting of native species hedges inside the existing post and barbed-wire boundary fence with double row of shrubs is deemed suitable and sufficient to enhance the hedgerow habitats on site. The strip of land along the northern boundary of the field is to be planted with a range of native shrubs, flower-rich grassland, and occasional trees. Native wildflower planting along margins of two fields is also proposed and these measures will enhance the site for biodiversity.

Hedge boundaries provide possible dormouse habitat although of a sub-optimal condition and a short length at eastern end of dividing hedge is to be removed. Dormice may be negatively impacted by this development due to the removal of a section of hedgerow however additional hedgerow planting will be beneficial to dormice. These measures will enhance the site for dormice and increase habitat connectivity.

Nesting birds may be negatively impacted by this development due to the removal of a short section of hedgerow. 6 hole and 4 open-fronted nest boxes are to be mounted on trees or posts in the northern hedge of the field and the planting of additional hedgerow will be beneficial for nesting birds. These measures will enhance the site with nesting opportunities for birds.

Overall, the Devon County Council Ecologist confirms that the proposal is acceptable from an ecological standpoint subject to the addition of conditions requiring adherence to the ecology report.

It is recommended that a condition requiring no external lighting is employed to ensure an acceptable impact on protected species, and to limit the natural use of the site from a neighbour amenity perspective.

Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

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

biodiversity role.

The Council's Green Infrastructure Manager has been consulted on the application and is satisfied that with the submission of a Tree Protection Plan which shall identify the trees and hedges to be protected throughout the development, the proposal is considered acceptable and to accord with Policy C4 of the Local Plan. Should planning permission be granted, given an existing section of the internal access road has already been constructed, prior to any further works to form the internal access road and/or parking area taking place, a Tree Protection Plan and an Arboricultural Method Statement shall be submitted for the proposed works.

It is considered that impacts on matters of ecology and trees are acceptable and accord with Policies NC1 and C4 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan, and should planning permission be granted the aforementioned planning conditions should be employed.

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

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. The Council's Drainage Engineer was consulted and has confirmed there is no objection. The Drainage Engineer noted on concurrent application P/2020/0480 that providing the vehicular access and car parking area are constructed using free draining aggregate, there are no objections on drainage grounds to planning permission being granted. Should an alternative material be used then the applicant will need to submit further details to the Local Planning Authority, which would need to be agreed in writing. Should planning permission be granted, subject to the use of a planning condition to secure the material for the vehicular access and parking provision, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

## **7. Designing Out Crime**

Policy SS11 of the Local Plan states that part of the criteria development proposals will be assessed against includes whether the proposal helps to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict.

The Police Designing-Out Crime Officer was consulted on the application and has made recommendations intended to ensure that the proposal would be adequately designed to prevent opportunities for crime and anti-social behaviour. Should planning permission be granted, a planning condition should be employed to secure a scheme

of crime prevention measures. The proposal is considered to accord with Policy SS11 of the Local Plan.

## **8. Heritage**

The proposal is sited in an area of known archaeological interest recorded on the Devon & Torbay Historic Environment Record.

Devon County Council's County Archaeologist and Historic Environment Manager has been consulted on this application and has stated via concurrent application P/2020/0480 that they are satisfied that subject to the employment of a planning condition to ensure compliance that creation of the pitch, car park and access road would not involve levelling, topsoil strip or intrusive drainage, there would be no need for need for archaeological recording.

### **Other Matters**

The site is also within Churston, Galmpton and Broadsands Minerals Safeguarding Area as defined by Policy M3 of the Local Plan. Policy M3 of the Local Plan states that the Council will seek to safeguard important mineral resources and sites. The proposed development does not conflict with this policy.

### **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**

The proposed development will result in modest economic benefit during the limited development activities. It will provide employment for the person(s) providing training courses/football camps at the site.

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

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

#### **The Social Role**

The proposed development will provide an additional sports facility in Brixham aimed at providing football in a controlled and clean environment. This will benefit public health.

In addition the proposed development will be available for use by the wider community as a sports pitch to the benefit of the community.

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

### **The Environmental Role**

The proposed development will have an adverse impact on the rural character of this part of the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast and there is a cumulative impact with the concurrent application P/2020/0480.

The environmental impacts of the proposal weigh against the proposed development.

### **Sustainability Conclusion**

Paragraph 176 of the NPPF and Development Plan policy require that great weight is given to conserving and enhancing landscape and scenic beauty in the AONB. On balance however the social benefits of the provision of an additional sports facility with associated changing room, which will provide a full sized adult pitch aimed at adult football, walking football and youth football for which there is an identified need, and through securing a legal agreement to ensure wider community use, the economic and social benefits of the proposal are considered to outweigh the environmental harm such that the proposal is considered, on a fine balance, to represent sustainable development.

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

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

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

### **Local Finance Considerations**

S106:

The proposal entails the completion of a legal agreement to obtain a Community Use Agreement.

CIL:

The CIL liability for this scheme is Nil.

## **EIA/HRA**

EIA:

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

HRA:

The application site is within a sustenance zone associated with the South Hams SAC. There is no requirement for a Habitat Regulations Assessment in this instance.

## **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the proposal would cause a level of harm to the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast, however on balance the proposal addresses a deficit in terms of sports provision, in particular adult football, and would secure a community use through a legal agreement which is considered to be acceptable.

## **Conclusions and Reasons for Decision**

The proposal is considered on balance to be acceptable as it provides a needed community facility, in an area where there is a deficit of this type of sports provision of the appropriate quality and the proposal can assist at aiding the adult football development provision, however there will be a level of harm on the designated South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast. The proposed development is considered on balance acceptable, having regard to the Torbay Local Plan, the Brixham Peninsula Neighbourhood Plan, and all other material considerations

## **Officer Recommendation**

Conditional approval subject to the conditions detailed below and subject to the completion of a Section 106 Agreement to secure community use of the pitch. Final drafting of conditions and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director of Planning, Housing and Climate Emergency.

## **Conditions**

### **1. Restoration of Land**

Within six months of the site no longer being utilised as an outdoor football pitch for sports and recreational use, the site shall be restored to its former condition, evidence of which should be submitted to and approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and to limit the potential impacts on the South Devon Area of Outstanding Natural Beauty and the Berry Head to Sharkham

Undeveloped Coast, in accordance with Policies C2, SDB3 and SS8 of the Adopted Torbay Local Plan 2012-2030 and Policy E1 of the Neighbourhood Plan of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **2. Ground Conditions**

Prior to the first use of the football pitch hereby approved:

a) A detailed assessment of ground conditions of the land proposed for the new playing field land as shown on the approved plans shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and

b) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.

The works shall be carried out in accordance with the approved scheme prior to the first use of the football pitch.

Reason: To ensure that site surveys are undertaken for new or replacement playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **3. Standards and Methodologies**

The pitch shall be constructed and laid out in accordance with the approved plans and with the standards and methodologies set out in the guidance note "Natural Turf for Sport" (Sport England, 2011), in accordance with a timetable which shall be submitted to and approved in writing by the Local Planning Authority. The timetable shall be submitted to the Local Planning Authority prior to the first use of the football pitch hereby approved.

Reason: To ensure the quality of pitches is satisfactory and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **4. Management and Maintenance Scheme**

Prior to the first use of the football pitch hereby approved, a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved by the Local Planning Authority in consultation with Sport England. The

measures set out in the approved scheme shall be complied with in full for the lifetime of the development.

Reason: To ensure that new facility is capable of being managed and maintained to deliver a facility which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **5. Archaeological Recording**

Should development including the creation of the pitch, car park and vehicular access road involve levelling, topsoil strip or intrusive drainage take place at any time during the life of the use as a sports pitch the site owner and/or operator must submit and secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority prior to the development taking place. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Adopted Torbay Local Plan 2012-2030 and Paragraph 205 of the NPPF, that an appropriate record is made of archaeological evidence that may be affected by the development.

## **6. Alternative Material – Flood Risk**

Should an alternative material other than free draining aggregate be used to secure the means of the vehicular access and parking provision, then full details of surface water management shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of the surface. Once approved, the development shall thereafter be carried out in accordance with the approved details and shall be retained and maintained for the lifetime of the development.

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

## **7. Tree Protection Plan/ Arboricultural Method Statement**

Prior to any further installation of the aggregate for the proposed access and parking provision, an Arboricultural Method Statement and Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The Tree Protection Plan and Arboricultural Method Statement shall include, but not be limited to, a pre-commencement site meeting, issuing of a Tree Protection Plan, frequency of

site visits, written confirmation of site supervision to be made available to the Local Planning Authority and location of services and their impact on the development/retained trees. The development shall thereafter be carried out in accordance with the approved details or any variation as may subsequently be agreed in writing by the Local Planning Authority.

Reason: To protect trees in the interests of visual amenity in accordance with Policies DE1 and C4 of the Adopted Torbay Local Plan 2012-2030.

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

Prior to the first use of the football pitch and/or changing room hereby approved, a scheme of measures for designing-out crime shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be adhered to fully once approved and shall be permanently retained thereafter.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE3 and SS11 of the Adopted Torbay Local Plan 2012-2030.

## **9. External Lighting**

No external lighting shall be installed within the boundary of the application site.

Reason: To safeguard legally protected species, including safeguarding foraging paths for legally protected bats, and in the interests of biodiversity and residential amenity in accordance with Policies NC1 and DE1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **10. Ecology and Biodiversity Net Gain**

The recommendations and mitigation given in section 3 of the 'Phase 1 Habitat Survey & Preliminary Ecological Appraisal' shall be followed and undertaken including the recommended planting of a range of native shrubs and the installation of six hole and four open-fronted nest boxes to be mounted on trees or posts, in the hedge that defines the northern edge of Field 2 (as defined by the report). The hole and nest boxes shall be installed prior to the first use of the football pitch hereby approved and shall be retained thereafter.

Prior to the first use of the football pitch hereby approved, a planting schedule in line with the recommendations of the 'Phase 1 Habitat Survey & Preliminary Ecological Appraisal' shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall



be carried out in the first planting season following first use of the football pitch, and any trees or plants which within a period of 5 years from completion of the approved landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.

Reason: In the interests of biodiversity and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **11. Vegetation Clearance**

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

Reason: In the interests of biodiversity and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **12. Parking Provision**

Prior to the first use of the football pitch hereby approved, the parking spaces and manoeuvring area detailed on the approved plans shall be provided in accordance with the approved details. These elements shall thereafter be retained for the use and 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.

## **13. Travel Plan**

Prior to the first use of the football pitch hereby approved, a Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted information shall set out opportunities for a 30% modal shift, with SMART targets and a monitoring regime, with the achievement of targets being given over a specific timeframe. Once approved, the Travel Plan shall be implemented in full.

Reason: In the interests of road safety and sustainability, and in order to accord with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### **14. Bicycle Storage**

Prior to the first use of the football pitch hereby approved, provision shall be made for the storage of bicycles according to details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### **15. Waste Management Plan**

Prior to the first use of the football pitch hereby approved, a Waste Management Plan shall be adhered to, according to details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once agreed, the Waste Management Plan shall be implemented and retained for the life of the development.

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

#### **16. Removal of PD for means of enclosure**

Notwithstanding the provisions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (and any Order revoking and re-enacting this Order) no means of enclosure including gates, fences or walls shall be provided within or on the boundaries of the site without the prior approval of the Local Planning Authority other than those expressly authorised by this permission.

Reason: In the interest of visual amenity and to minimise impact on the landscape qualities of the AONB in accordance with policies E1 and E2 of the Local Plan.

#### **17. No structures to be stored on the land.**

Other than those expressly authorised by this permission, no stores, containers, plant or equipment shall be stored or kept at the site except for portable WCs, goal posts and goal nets unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity and to minimise impact on the landscape qualities of the AONB in accordance with policies E1 and E2 of the Local Plan.

### **18. No temporary buildings or uses**

Notwithstanding the provisions of Part 4 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (and any Order revoking and re-enacting this Order) no temporary buildings and uses, other than those authorised by this consent, shall take place on the land without the prior approval of the Local Planning Authority.

Reason: In the interest of neighbour amenity and to minimise impact on the landscape qualities of the AONB in accordance with policies DE1, E1 and E2 of the Local Plan.

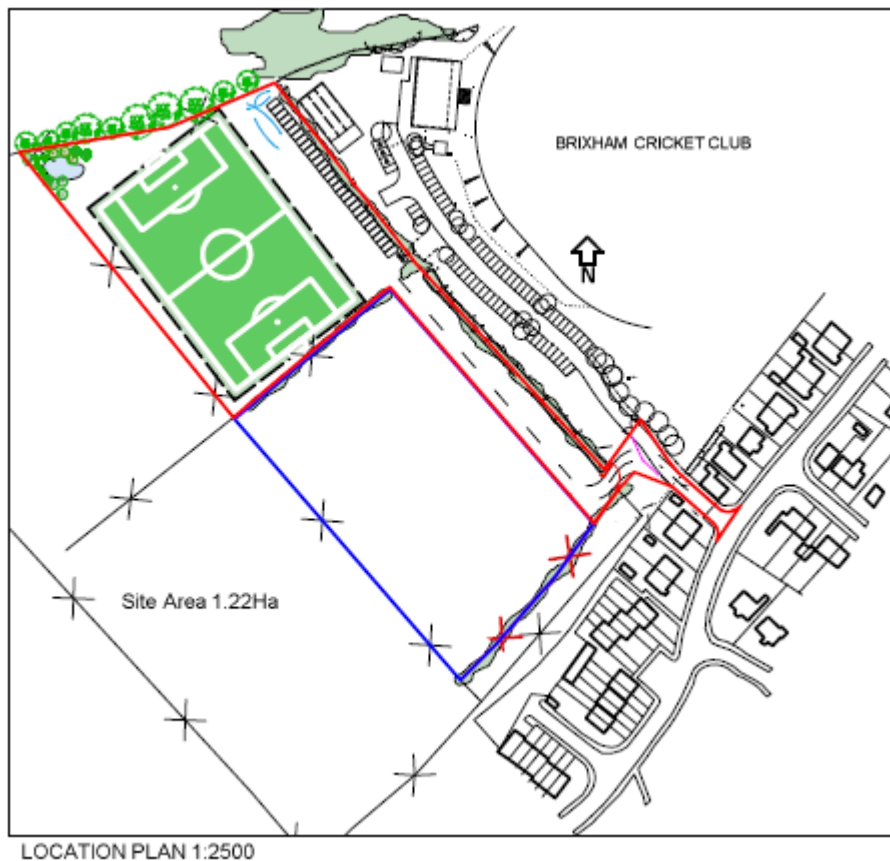
### **Relevant Policies**

C1 – Countryside and the Rural Economy  
C2 – The Coastal Landscape  
C4 – Trees, Hedgerows and Natural Landscape Features  
DE1 – Design  
DE3 – Development Amenity  
ER1 – Flood Risk  
ER2 – Water Management  
M3 – Preserving and Safeguarding of Limestone Resources and Key Local Building Stone  
NC1 – Biodiversity and Geodiversity  
SC1 – Healthy Bay  
SC2 – Sport, Leisure and Recreation  
SDB3 – Brixham Urban Fringe and Area of Outstanding Natural Beauty  
SS3 – Presumption in favour of Sustainable Development  
SS8 – Natural Environment  
TA1 – Transport and Accessibility  
TA2 – Development Access  
TA3 – Parking Requirements  
W1 – Waste Hierarchy  
BH5 – Good Design and the Town and Village Design Statements  
E1 – Landscape Beauty and Protected Areas  
E2 – Settlement Boundaries  
E8 – Internationally and Nationally Important Ecological Sites  
S&L1 – Increase Available Space for Outdoor Sport and Leisure  
T1 – Linking of New Developments to Travel Improvements

## TORBAY COUNCIL

Application Site Address	Site Adjacent To Brixham Cricket Club 83 North Boundary Road Brixham TQ5 8LH
Proposal	Change of use from agricultural land to outdoor football pitch for sports and recreational use, formation of parking area and associated works. (Part-retrospective).
Application Number	P/2020/0480
Applicant	Mr Shaun Langdon
Agent	Mr Jonathan Ling-Cotter - MTA Chartered Architects Ltd.
Date Application Valid	09/07/2020
Decision Due Date	08/10/2020
Extension of Time Date	16/10/2020
Recommendation	Conditional approval subject to the conditions detailed below and subject to the completion of a Section 106 Agreement to secure community use of the pitch. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director 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 has been referred to Planning Committee due to it being major in nature.
Planning Case Officer	Verity Clark

## Updated Location Plan:



## Update Report

This application was resolved to be approved at the committee meeting held on the 14<sup>th</sup> December 2020 subject to the signing of a s106 legal agreement to secure the community use of the pitch. The legal agreement has not been completed so in line with the committee's resolution, the application has not been determined. The Committee is reminded that, as permission has not been granted, whilst having regard to the previous resolution the committee should consider this application afresh.

Since the resolution to approve this application, a further planning application; P/2022/0339 has been submitted and is currently under consideration for the change of use of agricultural land to an outdoor football pitch, the formation of a parking area, changing rooms, boundary fence and associated works. This relates to the paddock area directly to the south east of the current application site, utilising the same vehicular access. Whilst both pitches have been submitted as stand alone planning applications, both football pitches could be constructed resulting in two football pitches across both sites. Consideration has therefore been given to the impacts of each development in isolation and in combination. The Committee should read this report together with the report for P/2022/0339.

The original plans considered for this current application; P/2020/0480 and resolved for approval by the committee, included an access around the lower paddock along the south west of the site cumulating in a parking area for 30 cars in the north west corner of the site and the formation of a centrally located football pitch.

Revised plans have been submitted for this application which have amended the internal access to the proposed football pitch. This will result in internal access being obtained adjacent to the north east hedge line with parking for 30 cars and portable toilets located to the east of the proposed pitch. To facilitate this revised access, a new opening within the existing central dividing hedge is proposed. The area previously proposed for parking will feature a 'nature corner'. The size and general location of the proposed football pitch will remain as previously proposed.

The changes to the layout are as a result of the submission of P/2022/0339 for the proposed lower pitch. The original plans, notably the vehicular access around the lower paddock area, would not allow for the implementation of the proposed lower pitch. As such the layout for the current application has been amended.

Given the change to the layout and red line site area, re-consultation was undertaken and the item is returned to committee to consider the amendment.

### **Relevant Planning History**

P/2022/0339 Change of use from agricultural land to outdoor football pitch for sports and recreational use, formation of parking area, changing rooms and associated works. (Part-retrospective). Concurrent application.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Following the re-consultation, the application has received in total 8 letters of objection and 4 letters of support.

#### **Concerns raised in objection include:**

- Alternative sports sites
- Not in keeping with the local area
- Impact on local area
- Sets precedent
- Overdevelopment
- Privacy/overlooking
- Designations in Development Plan – Area of Outstanding Natural Beauty
- Residential amenity
- Noise
- Trees and wildlife
- Traffic and access
- Use for events

- Rubbish
- Anti social behaviour
- Requirement for further development

Comments raised in support include:

- Provides sports facilities
- It provides jobs

**Summary of Consultation Responses**

Following the re-consultation of the application the following additional consultation comments have been received (original consultation comments are detailed within the original committee report below the update report):

**Sport England:**

Sport England comments are made in our response dated 6 August 2020 (below). The Football Foundation (FF) on behalf of The FA advise that the new pitch being installed needs to meet the following requirements for natural turf pitches:

- **Design** - A qualified and suitably experienced sports turf consultant, agronomist, soil scientist or land drainage engineer must be employed to carry out a feasibility study, design and specification of the Natural Turf Pitches.
- **Construction** –The construction of Natural Turf Pitches should be project managed and/or signed off by the same registered agronomist or sports turf consultant that produced the design. The pitches should be constructed by a specialist pitch contractor and not a general civil engineering contractor.
- **Quality** – Pitches should pass a PQS assessment to a ‘Good’ standard for football as defined by the Grounds Management Association (GMA) Pitch Grading Framework before they are used. The assessment should be carried out, by the site owner/operator/maintainer via the Football Foundation’s PitchPower app. The on-going quality of the pitch/es should then be tracked using the PitchPower app twice a year. Please follow this link to PitchPower <https://footballfoundation.org.uk/pitchpower/how-it-works>

Additionally, the plans now provided show a 90 x 60m pitch with a 3m run off, this is not an FA recommended size pitch for adult football. All pitch sizes should comply with either of the following FA recommended pitch sizes.

- Youth U15 and U16 (11v11) 91m x 55m (97m x 61m including safety run-off area)
- Over 18 and Adult (11v11) 100m x 64m, (106m x 70m including safety run-off area)

The FF on behalf of The FA is supportive of the proposal for a new pitch in the Brixham area but it is not clear if the 90m x 60m pitch size is inclusive or exclusive of the 3m

safety run-off area. Do the hatch markings which represent the total pitch footprint mean that the total area including the 3m safety run-off area is 96m x 66m leaving a playing area of 90m x 60m. If so, this does not meet the FA recommended pitch sizes as noted, the FF does not wish to object to this application as it is clear a larger pitch wouldn't fit while maintaining a safety run off area. The FF would like to see plans of the new design which specifically demonstrates both the pitch size and the safety run off areas.

**WSP on behalf of the Local Highway Authority (comment made on application P/2022/0339 detailing parking and turning area now detailed as part of this application):**

### **1.0 Description of Proposal**

1.1 The proposals comprise of a change of use of an existing green field at 83 North Boundary Road, Brixham. The change of use would see the existing field redeveloped to form a new football pitch, access road, 37 space parking area and other ancillary facilities.

### **2.0 Site History**

2.1 A planning application (P/2020/0480) for the adjacent field to the north of the application site was granted consent on 14th December 2020.

### **3.0 Policy**

3.1 The site on which the proposals are located directly adjacent to Brixham Peninsula Neighbourhood Plan site allocation E4-6 'Brixham Cricket Club'. This land is allocated within the Neighbourhood Plan as a 'Local Green Space Site'.

### **4.0 Traffic Impact**

#### **Trip Generation**

4.1 It is stated within the Framework Travel Plan submitted by the Applicant that 'The number of cars entering and leaving the site will remain the same as it has been in the past as there will not be any additional sessions being added.' As the use of the site is not proposed to be intensified by the proposed development, no further analysis of the impact of traffic to / from the proposed development is required.

### **5.0 Design Considerations**

#### **Vehicular Access**

5.1 As can be seen in drawing number 3853.AL.002 'Proposed Site Layout, Location Plan and Changing Room Details', vehicular access to the site is proposed via the existing access point to Brixham Cricket Club, located on North Boundary Road. The proposals also include the provision of a new internal access road. The internal roads of this site are unadopted and are proposed to be subject to a 5mph speed limit.



5.2 As can be seen in drawing number 3853.AL.002, the proposals include the repositioning of the existing access gates to Brixham Cricket Club, as so the gates are to the north of the proposed football pitch access road. A simple priority junction will be provided on the internal road network, with demonstrated visibility splays of 9m. This level of visibility is in line with Manual for Streets guidance for priority junctions in areas with speed limits of 10mph or less.

5.3 It is stated within the Design and Access Statement submitted by the Applicant that "There is sufficient room on site for vehicles of all size and type, including emergency vehicles to enter, manoeuvre and leave in a forward gear." Swept path analysis has not been provided however to demonstrate this.

5.4 The applicant has not provided details of a refuse strategy. The design of the site indicates the internal highways will remain private and unadopted and therefore the site will be required to arrange its own private refuse collections.

5.5 Details of the pedestrian access have not been provided. Existing footways lead into the site from North Boundary Road, although the proposed Site Layout Drawing shows no further footway provision will be provided. The provision of a shared footway would be beneficial and encourage trips via active travel. It is therefore requested the applicant considers the provision of a shared footway and enhancements to the local network This would support policies in the Torbay Local Plan and enhance support of the application in demonstrating its sustainable measures.

## **6.0 Parking**

### **Car Parking**

6.1 The Proposed Site Layout (Drawing No. 3853.AL.002) indicates approximately 37 car parking spaces will be provided. A turning head has been provided within the car park to allow vehicles to manoeuvre within the car park without the need to reverse excessive distances.

6.2 It is also noted that the current car parking arrangement does not include a space for a mini-bus / coach. It is requested that space is provided, and swept path analysis be provided to demonstrate the ability of such vehicles to turn in the proposed turning head.

### **Cycle Parking**

6.3 No cycle parking provision has been proposed. It is requested that cycle parking stands are provided in order to encourage active travel and support the application through demonstrating its sustainable measures.

## **7.0 Travel Plan**

7.1 A Framework Travel Plan (FTP), dated January 2022, has been produced by Trace Design to support of the application.

7.2 The Travel Plan has set out the existing walking, cycling and public transport infrastructure in sufficient detail. The existing local highway network has also been described in sufficient detail.

7.3 To establish the existing mode share for travel to the site, the 2011 census method of travel to work has been used. This is acceptable and a baseline survey must be undertaken once the site is occupied. The Travel Plan has not set any mode share targets for five years in the future. It is requested that once the baselines survey results are undertaken, an ambitious reduction in car driver trips is set (approx. 10% reduction).

7.4 The Travel Plan states all visitors and employees will be made aware of the Travel Plan and the responsibilities of the Travel Plan Coordinator (TPC). The costs of the TPC will be funded by the applicant. It is requested that the Implementation Strategy is submitted to Torbay Council that will set out responsibilities and timescales for implementation and monitoring the progress of the initiatives proposed by the Travel Plan.

## **8.0 Conclusion**

8.1 Whilst the Local Highway Authority support the principle of the application. Further information is required before a positive recommendation can be given in respect to highways. This additional information includes the following:

- Further details regarding the infrastructure the proposed development will provide to support travel by means of walking and cycling, including the proposed cycle parking arrangements; and
- Swept path analysis is required to demonstrate the appropriateness of the proposed turning head on site.

Following the submission of a swept path analysis the Highways Engineer confirmed the swept path analysis was acceptable.

### **DCC Ecology (comment made on application P/2022/0339 in respect of the ecology report which covers both sites):**

No objection, subject to conditions.

### **Officer Consideration of Changes:**

The original committee report reproduced below details the officer considerations of the original scheme. The following analysis is made in respect of the proposed changes to the proposal which should be read in conjunction with the original committee report as matters which have not been impacted by the changes have not been commented on further.

## **1. Principle of Development**

Since the resolution to approve the application, the draft 'Torbay Playing Pitch Strategy November 2022' has been produced and consulted on. This indicates that the application site, known as John Charles Park (JCP) is identified as a key site for football that requires access to changing provision. Section T26 of the Playing Pitch Strategy Action Plan identifies JCP as a key site where changing provision is required however the Action Plan does show the need for clarification as to the precise layout and sizing of pitches. The draft Playing Pitch Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand and North Boundary Road is still identified as important for future provision for additional pitches.

The Sport Development Officer via concurrent application P/2022/0339 has noted that Torbay's emerging Playing Pitch Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand. North Boundary Road is still identified as important future provision for additional pitches. Sport has recently lost allocated sports land in the Brixham area at Brokenbury which had been suggested for pitches in the past. With this land now lost to a solar farm it is important to ensure that multi pitch space such as JCP is secured for the area.

North Boundary Road is identified in Policy SC2.6 of the Local Plan which identifies the fields as an "area of search" for sports facilities in the Churston Area. The Sport Development Officer has noted that they have been working with Devon Football Association who have produced a current Local Football Facilities Plan (LFFP) for Torbay which clubs have also had the opportunity to contribute to. The LFFP clearly highlights adult male and female football as a development priority for Torbay and the proposal supports this aim with the proposed use of the pitch for female football in addition to youth football and club football.

The applicant Mr. Shaun Langdon has provided a justification and use statement which the Sport Development Officer has considered via concurrent application P/2022/0339. The Officer concludes that the letter is a fair justification of need. The club is recognised by the FA to be a growing club and the business plan shows no reason for this not to happen unless the planning application is not accepted. Growing community clubs such as this thrive on community spirit and single pitches in different locations do not support this. Having 2 pitches on 1 site allows a home ground where teams of all ages, sexes and abilities, supporters, family and friends can come together.

The Council's Sports Development Officer is satisfied that there is sufficient justification for this standalone football pitch in addition to the football pitch proposed as part of concurrent application P/2022/0339 and both proposals would assist at facilitating football development in accordance with the emerging Playing Pitch

Strategy and Policies SC1 and SC2 of the Torbay Local Plan and Policy S&L1 of the Brixham Peninsula Neighbourhood Plan.

## **2. Design, Visual Appearance and Landscape Impact**

Via concurrent application P/2022/0339, The South Devon AONB Manager raised an objection summarising that the *South Devon AONB Unit objects to the proposed development on the grounds that it would erode and degrade the unspoilt rural character of the AONB by virtue of its visual and aural impact which fails to conserve or enhance the AONB. This is contrary to Policy SS8 of the Torbay Local Plan, Policy E1.3 of the Brixham Peninsula Neighbourhood Plan, NPPF 176 and policies Lan/P1 and Lan/P4 of the AONB Management Plan.*

No response was received from the AONB Unit for the current application at the time of the committee meeting held in December 2020 when the resolution to approve was made. The AONB Unit were re-consulted on this current application and have not provided a response. The original committee report for this application concluded that *the proposed development in terms of impact on the South Devon Area of Outstanding Natural Beauty and Undeveloped Coast would cause harm. In such a case it is necessary to consider whether there are public benefits which would outweigh the harm.*

Paragraph 177 of the NPPF sets out a presumption against major development in the AONB. Whether the proposed development would constitute major development in terms of the Area of Outstanding Natural Beauty context, footnote 60 of the NPPF states that the decision maker would need to take into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. The Local Planning Authority considers that the proposed stand alone development is non-major development in the context of the scale and nature of the proposal in this setting and when also considering the development of the further pitch proposed via P/2022/0339, the two proposed pitches combined are not considered to constitute major development for the purposes of paragraphs 176 and 177 of the NPPF given their nature, scale and setting.

The revised site layout is still considered to result in harm to the South Devon Area of Outstanding Natural Beauty and Undeveloped Coast in terms of the impact on the rural character and tranquillity. The revised access and parking layout is however considered to be an improvement to the overall layout previously considered acceptable, given the parking area will be sited next to an existing hedgerow which is adjacent to the parking and spectator facilities in the adjacent Cricket Club site. The removal of the parking area from the north west corner of the site and its replacement with a nature corner is considered to improve the layout previously considered acceptable as this area of the site is particularly sensitive given its proximity to the public footpath to the north and north west. Whilst the revised layout will result in a

new opening within the central dividing hedge, this is located to the eastern extent of this hedge, is small in size and is close to the side boundary and therefore appears as a minor break if viewed from public vantage points.

Overall, the proposal would still change the character of the immediate area through the sport being played, the laying out of the pitch, access and parking and the associated vehicle movements. Given the proposal's nature, siting, scale, and design, it is considered that the proposed development would result in harm to the character and visual amenities of the locality contrary to Policies SDB3, SS8, C1 and C2 of the Torbay Local Plan and Policy E1 of the Brixham Peninsula Neighbourhood Plan.

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

The revised layout is not considered to have any additional impact on neighbour amenity than the previous layout which was considered acceptable and in accordance with Policy DE3 of the Torbay Local Plan. This is also the case when considering the development of the further pitch proposed via P/2022/0339 and the two proposed pitches combined.

Concerns have been raised by objectors about the use of the field for other temporary activities and uses. Permitted development rights allow certain temporary uses without the need for planning permission. Given the distance of the field to the nearest residential dwelling, uses allowed via permitted development rights, in addition to the proposed use of the field for outdoor sport and recreation are considered to be acceptable and it is not considered reasonable to restrict the use of the field.

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

The proposal includes a revised internal access layout with parking facilities for 30 cars within a linear parking strip to the north east of the site and the inclusion of a turning area within the north east corner. The number of proposed parking spaces has not altered from the previously accepted arrangement and it is considered that the parking arrangement now proposed has greater functionality given all spaces are accessible at all times, unlike the previous layout.

The Local Highway Authority has confirmed that the layout, turning head and swept path information is acceptable via the concurrent application.

The access and visibility arrangements to the highway have not altered as a result of the revised layout and as such are still considered to be acceptable.

It is therefore considered that impacts relating to highway matters are acceptable and accord with Policies TA1, TA2 and TA3 of the Torbay Local Plan, Policy T1 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

A phase 1 habitat survey and preliminary ecological appraisal has been submitted to supplement the previously submitted ecology report. This report considers both the application site field (listed as field 2) and the lower field (listed as field 1) which is the subject of concurrent application P/2022/0339.

The report confirms it would be necessary to remove a short length of bank and hedge at the eastern end of the hedge that divides the two football fields, to allow vehicular access. The sward in the application site field has been sown comparatively recently and the species composition would appear to be dominated by a ryegrass cultivar that has been bred to provide a resistant sports turf. The habitat value of the grassland in this field is very limited. The narrow margins that surround the field are not cut as frequently and the vegetation tends to be dominated by rank grass species, like cocksfoot, false oat-grass and Yorkshire fog, with some wood false-brome and bracken along the northern border. A small area of waste soil was dumped in the extreme north-western end of the field during preparation of the pitches. That area has been colonised by rank grasses, with abundant cocksfoot, false oat-grass and the broadleaved bristly oxtongue. This area would lend itself to the provision of habitat mitigation. The hedge that divides the two fields is in poor condition, having been unmanaged for many years. The eastern end is dominated by overgrown blackthorn, while the remainder of the hedge is made up of ash and field maple, with some hazel, wild privet and dogrose. The whole hedge is 'infested' by ivy, which is growing up into the crowns of some of the trees and large bushes.

The report concludes that the creation of football pitches within the two fields, both of which are managed as closely-mown amenity grassland, would have no impact of any significance on the population of greater horseshoe bats that are centered in the Berry Head roost. The hedge that divides the two fields lacks connectivity to any hedges to the west, so bats would be unlikely to follow it.

As the previous ecology report concluded, the report concludes that the proposal is considered to have an acceptable impact on all protected species. The report sets out mitigation and habitat enhancement to ensure a biodiversity net gain.

The Devon County Council Ecologist has provided a consultation response on this ecology report as part of concurrent application P/2022/0339. It was confirmed that the proposed development will not lead to the loss, damage, or disturbance to Greater Horseshoe Bat foraging habitat within a sustenance zone. Nor will it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the small scale of the development, largely change of use with minimal habitat alterations and habitats unfavourable for greater horseshoe bats. No lighting is proposed with the development. A short section of hedgerow is to be removed. More favourable commuting habitat lies to the north of the development site, as hedgerows on site lead into the highly urbanised area to the south/east. Commuting habitats will not be negatively impacted. In line with the South Hams SAC Habitats Regulations

Assessment Guidance document (DCC et al.,2019), and given the above, there is unlikely to be a likely significant effect on the South Hams SAC. A detailed HRA is not deemed to be required. Bats may use the hedgerows on site as linear features for commuting. Habitats on site are unfavourable for foraging. Commuting/foraging bats are unlikely to be negatively impacted by this development.

The planting of native species hedges inside the existing post and barbed-wire boundary fence with double row of shrubs is deemed suitable and sufficient to enhance the hedgerow habitats on site. The strip of land along the northern boundary of the field is to be planted with a range of native shrubs, flower-rich grassland, and occasional trees. Native wildflower planting along margins of two fields is also proposed and these measures will enhance the site for biodiversity.

Hedge boundaries provide possible dormouse habitat although of a sub-optimal condition and a short length at eastern end of dividing hedge is to be removed. Dormice may be negatively impacted by this development due to the removal of a section of hedgerow however additional hedgerow planting will be beneficial to dormice. These measures will enhance the site for dormice and increase habitat connectivity.

Nesting birds may be negatively impacted by this development due to the removal of a short section of hedgerow. 6 hole and 4 open-fronted nest boxes are to be mounted on trees or posts in the northern hedge of the field and the planting of additional hedgerow will be beneficial for nesting birds. These measures will enhance the site with nesting opportunities for birds.

Overall, the Devon County Council Ecologist confirms that the proposal is acceptable from an ecological standpoint subject to the addition of conditions requiring adherence to the ecology report and the requirement of the submission of details of any external lighting.

Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

The original proposal included the formation of a parking area adjacent to the northern boundary of the field which includes five trees and one tree group. As the revised layout will still result in parking facilities adjacent to the northern boundary in addition to development adjacent to the eastern hedgerow, a planning condition requiring the submission of a tree protection plan is still recommended to ensure that trees and hedges are protected throughout the development. With the addition of this condition the revised layout is considered to accord with Policy C4 of the Torbay Local Plan.

**Officer recommendation**

S 85 Countryside and Rights of Way Act 2000 places a duty on local planning authorities to have regard to the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty (AONB). Paragraph 176 of the NPPF and Local Plan policies SS8 and SDB3 require that great weight is given to conserving and enhancing landscape and scenic beauty in the AONB. On balance however the social benefits of the provision of an additional sports facility aimed at youth and female football for which there is an identified need and through securing a legal agreement to ensure wider community use, the economic and social benefits of the proposal are considered to outweigh the environmental harm such that the proposal is considered, on a fine balance, to represent sustainable development. The amendments to the proposed layout are considered to result in an enhanced scheme to that previously presented to the committee and which was resolved to be approved.

The recommendation is that of approval subject to;

- The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;
- The completion of a s106 agreement to secure the community use of the site;
- 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.

### **Revised recommended conditions:**

Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director of Planning, Housing and Climate Change.

#### **1. Restoration of Land**

Within six months of the site no longer being utilised as an outdoor football pitch for sports and recreational use, the site shall be restored to its former condition, evidence of which should be submitted to and approved in writing by the Local Planning Authority.

Reason: For the avoidance of doubt and to limit the potential impacts on the South Devon Area of Outstanding Natural Beauty and the Berry Head to Sharkham Undeveloped Coast, in accordance with Policies C2, SDB3 and SS8 of the Adopted Torbay Local Plan 2012-2030 and Policy E1 of the Neighbourhood Plan of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.



## **2. Ground Conditions**

Within one month of the date of this permission:

a) A detailed assessment of ground conditions of the land proposed for the new playing field land as shown on the approved plans shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and

b) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.

The works shall be carried out in accordance with the approved scheme within a timescale to be first approved in writing by the Local Planning Authority after consultation with Sport England.

The use of the site as a football pitch shall cease if the works have not been carried out in accordance with the approved details within 12 months of the date of this permission or within such longer period as shall be approved by the local planning authority.

Reason: To ensure that site surveys are undertaken for new or replacement playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **3. Standards and Methodologies**

The pitch shall be constructed and laid out in accordance with the approved plans and with the standards and methodologies set out in the guidance note "Natural Turf for Sport" (Sport England, 2011), in accordance with a timetable to be submitted to and agreed with the Local Planning Authority. The timetable shall be submitted to the Local Planning Authority within one month of the date of the permission hereby granted.

The use of the site as a football pitch shall cease if the pitch has not been laid out in accordance with the approved details within 12 months of the date of this permission or within such longer period as shall be approved by the local planning authority.

Reason: To ensure the quality of pitches is satisfactory and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### **4. Management and Maintenance Scheme**

Within three months of the date of this permission, a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to the Local Planning Authority for approval including consultation with Sport England. The measures set out in the approved scheme shall be complied with in full for the lifetime of the development.

The use of the site as a football pitch shall cease if the Management and Maintenance Scheme has not been approved by the local planning authority within 12 months of the date of this permission or within such longer period as shall be approved by the local planning authority.

Reason: To ensure that new facility is capable of being managed and maintained to deliver a facility which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport and to accord with Policy S&L1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and Paragraph 97 of the NPPF.

#### **5. Archaeological Recording**

Should development including the creation of the pitch, car park and vehicular access road involve levelling, topsoil strip or intrusive drainage take place at any time during the life of the use as a sports pitch the site owner and/or operator must submit and secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority prior to the development taking place. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Adopted Torbay Local Plan 2012-2030 and Paragraph 199 of the NPPF, that an appropriate record is made of archaeological evidence that may be affected by the development.

#### **6. Alternative Material – Flood Risk**

Should an alternative material other than free draining aggregate be used to secure the means of the vehicular access and parking provision, then full details of surface water management shall be submitted to and approved in writing by the Local Planning Authority prior to the installation of the surface. Once approved, the development shall thereafter be carried out in accordance with the approved details and shall be retained and maintained for the lifetime of the development.

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

## **7. Tree Protection Plan/ Arboricultural Method Statement**

Prior to any further installation of the aggregate for the proposed access and parking provision, an Arboricultural Method Statement and Tree Protection Plan shall be submitted to and approved in writing by the Local Planning Authority. The Tree Protection Plan and Arboricultural Method Statement shall include, but not be limited to, a pre-commencement site meeting, issuing of a Tree Protection Plan, frequency of site visits, written confirmation of site supervision to be made available to the Local Planning Authority and location of services and their impact on the development/retained trees. The development shall thereafter be carried out in accordance with the approved details or any variation as may subsequently be agreed in writing by the Local Planning Authority.

Reason: To protect trees in the interests of visual amenity in accordance with Policies DE1 and C4 of the Adopted Torbay Local Plan 2012-2030.

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

Within three months of the date of this permission, a scheme of measures for designing-out crime shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be adhered to fully once approved and shall be permanently retained thereafter.

Reason: In the interests of amenity and preventing opportunities for criminal activity, in accordance with Policies DE3 and SS11 of the Adopted Torbay Local Plan 2012-2030.

## **9. 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 safeguard legally protected species, including safeguarding foraging paths for legally protected bats, and in the interests of biodiversity and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the

Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **10. Ecology and Biodiversity Net Gain**

The recommendations and mitigation given in section 3 of the 'Phase 1 Habitat Survey & Preliminary Ecological Appraisal' shall be followed and undertaken including the recommended planting of a range of native shrubs and the installation of six hole and four open-fronted nest boxes to be mounted on trees or posts, in the hedge that defines the northern edge of Field 2 (as defined by the report). The hole and nest boxes shall be installed within 3 months of the date of this decision and shall be retained thereafter.

Within 3 months of the date of this decision, a planting schedule in line with the recommendations of the 'Phase 1 Habitat Survey & Preliminary Ecological Appraisal' shall be submitted to the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the approval of the planting schedule, and any trees or plants which within a period of 5 years from completion of the approved landscaping scheme die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The use of the site as a football pitch shall cease if the works set out in this condition have not been carried out within 12 months of the date of this decision or within such longer period as shall be approved by the local planning authority.

Reason: In the interests of biodiversity and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **11. Vegetation Clearance**

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

Reason: In the interests of biodiversity and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **12. Parking Provision**

Within three months of the date of this permission, the parking spaces and manoeuvring area detailed on the approved plans shall be provided in accordance with the approved details. These elements shall thereafter be retained for the use and the life of the development. The use of the site as a football pitch shall cease if the parking spaces and manoeuvring area has not been provided in accordance with the approved details within 3 months of the date of this permission.

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

## **13. Travel Plan**

Within three months of the date of this permission, a Travel Plan shall be submitted to the Local Planning Authority. The submitted information shall set out opportunities for a 30% modal shift, with SMART targets and a monitoring regime, with the achievement of targets being given over a specific timeframe. Once approved, the Travel Plan shall be implemented in full. The use of the site as a football pitch shall cease if a Travel Plan has not been approved by the local planning authority within 6 months of the date of this permission.

Reason: In the interests of road safety and sustainability, and in order to accord with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **14. Bicycle Storage**

Within three months of the date of this permission, provision shall be made for the storage of bicycles according to details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development. The use of the football pitch shall cease if the bicycle storage has not been provided in accordance with the approved details within 3 months of the date of this permission.

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 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## **15. Waste Management Plan**

Within three months of the date of this permission, a Waste Management Plan shall be adhered to, according to details which shall previously have been submitted to and

approved in writing by the Local Planning Authority. The use of the site as a football pitch shall cease if the Waste Management Plan has not been approved by the local planning authority within 6 months of the date of this permission. Once agreed, the Waste Management Plan shall be implemented and retained for the life of the development.

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

#### **16. Removal of PD for means of enclosure**

Notwithstanding the provisions of Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (and any Order revoking and re-enacting this Order) no means of enclosure including gates, fences or walls shall be provided within or on the boundaries of the site without the prior approval of the Local Planning Authority other than those expressly authorised by this permission.

Reason: In the interest of visual amenity and to minimise impact on the landscape qualities of the AONB in accordance with policies E1 and E2 of the Local Plan.

#### **17. No structures to be stored on the land.**

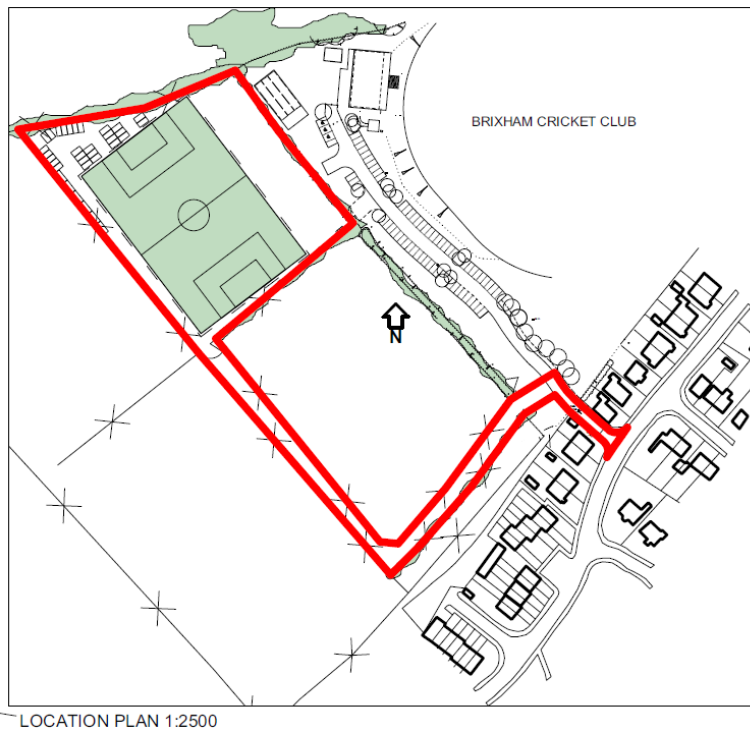
Other than those expressly authorised by this permission, no stores, containers, plant or equipment shall be stored or kept at the site except for portable WCs, goal posts and goal nets unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interest of visual amenity and to minimise impact on the landscape qualities of the AONB in accordance with policies E1 and E2 of the Local Plan.

## Original Committee Report

Application Site Address	Site Adjacent To Brixham Cricket Club 83 North Boundary Road Brixham TQ5 8LH
Proposal	Outdoor football pitch for sports and recreational use. (Retrospective).
Application Number	P/2020/0480
Applicant	Mr Shaun Langdon
Agent	Mr Jonathan Ling-Cotter - MTA Chartered Architects Ltd.
Date Application Valid	09/07/2020
Decision Due Date	08/10/2020
Extension of Time Date	16/10/2020
Recommendation	Conditional approval subject to the conditions detailed below and subject to the completion of a Section 106 Agreement to secure community use of the pitch. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to it being major in nature.
Planning Case Officer	Emily Elliott

## **Location Plan:**



## **Site Details**

The site is a field adjacent to Brixham Cricket Club, measuring approximately 1.2 hectares in size. The site was formerly used for agricultural purposes. The site is located within the Long Road South to Berry Head Countryside Zone, Berry Head to Sharkham Undeveloped Coast and the South Devon Area of Outstanding Natural Beauty. The site is also within Churston, Galmpton and Broadsands Minerals Safeguarding Area.

## **Description of Development**

The proposal seeks planning permission for an outdoor football pitch for sport and recreational use. The pitch can be used as to the Football Association's standard 90 metres by 60 metres football pitch, as well as an Under 15/16s (91 metres by 55 metres) and Under 13/14s (82 metres by 50 metres) football pitch.

The pedestrian and vehicular access to the site is via the field gate near the southern boundary of Brixham Cricket Club, which leads around a paddock and into the field.

The supporting information states that in the winter months (October-March), the site will not be used through the week except for in school holidays when children's football camps will be running and the site will operate on weekends during such months for youth and adult football training and matches. During the summer months (April-September), the site will be in more use with more football camps, community based leagues and so forth. The site will principally be used for youth football.



The proposal includes the provision of a new access road which skirts around the edge of the paddock to the south and runs along the western site boundary. It is understood that this will be surfaced with aggregate. A parking area for approx. 34 cars is proposed in the north west corner of the site; this area will also be surfaced with aggregate

The proposed layout plans show a row of portable toilets in the south east corner of the field. The design and access statement refers to a small shed for store equipment but this is not shown on any plan and no details have been submitted, as such it does not form part of these proposals.

This application is part-retrospective as it is already being used as a football pitch.

The applicant has agreed to enter into a Section 106 Agreement to secure a Community Use Agreement for the site.

### **Pre-Application Enquiry**

Not applicable.

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

#### Material Considerations

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

### **Relevant Planning History**

No previous relevant planning history relating to the site.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. 5 letters of objection, 1 letter of representation and 2 letters of support have been received.

Concerns raised in objection include:

- Alternative sports sites
- Not in keeping with the local area
- Impact on local area
- Sets precedent
- Overdevelopment
- Privacy/overlooking
- Designations in Development Plan – Area of Outstanding Natural Beauty
- Residential amenity
- Noise
- Trees and wildlife
- Traffic and access

Comments raised in support include:

- Provides sports facilities
- It provides jobs

### **Summary of Consultation Responses**

#### **Brixham Peninsula Neighbourhood Forum:**

No objection.

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

Having reviewed the application there appears to be no detail with regard to the proposed boundary treatment for the facility. To clearly define that the space is owned and to do all that is reasonable in preventing unwanted intrusion or the potential for anti-social gatherings when the facility is not in use, it is recommended that a suitable perimeter fencing and lockable gates are considered.

Any gates in the perimeter fencing must match the same height and robust construction as the adjoining fencing. The gates should have anti-lift hinges and designed so they are non-climbable.

It is noted that a 'small shed to store sports equipment' is proposed. The shed must be robust with a fit for purpose locking mechanism.

It is noted that the pitch is not intended to be used after dark as such lighting is likely not to be required but should this change any lighting should be vandal resistant and installed considerately so as not to impact on near-by residents.

Consideration should be given as to how maintenance and service vehicles will access the playing fields whilst preventing unwanted vehicular access. Suitable access and turning for emergency vehicles as close to the pitch as possible should be factored in.

The portable toilet/s should also be capable of being secured when the facility is not in use.

It is vital that the on-site parking provision is generous and well-designed to prevent off-site parking, as this could have a negative impact on quality of life issues for nearby residents.

The above is submitted in accordance with the Brixham Peninsula Neighbourhood Plan, which states under Policy BH5.5 'the design of new development and altered buildings **or areas** in the following categories should adequately take into account the safety and security of the users of the facilities and that of neighbouring residents;

1. New neighbourhood or district community facilities
2. Proposals incorporating significant off street car parking provisions

The justification of policy BH5 at 4.12 states "Designing out crime" has been a function of the planning process since The Crime and Disorder Act 1998 established that the responsibility of reducing crime does not fall solely on the police. That concept extends to designing out opportunities for crime, fear of crime, antisocial and unacceptable behaviour and conflict in the built environment.

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

No objection.

**Torbay Council's Sport Development Officer:**

The Torbay Playing Pitch Strategy suggests that between 2014-2021 there will be an increase of 6 additional mini soccer teams (3 match equivalent sessions per week). The population of children between 10-15 and adults 16+ will remain similar, which will not increase the number of teams. The PPS highlights the need 'more age appropriate pitches are required in Brixham' and if all youth teams were to play on correct size pitches there would be a need of 1 x 9v9 pitch and 2 x mini soccer pitches (7v7). It is noted that this PPS strategy is near the end of its life span and data is likely to be dated. However Torbay's emerging Resetting Sports Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand. North Boundary Road is still identified as important future provision for additional pitches.

North Boundary Road is also identified in Policy SC2.6 of the Local Plan which identifies the fields as an "area of search" for sports facilities in the Churston Area. This does not specify football pitches and therefore the area should be protected for sports facilities in some form. There is demand from other sports for additional sports facilities.

There are currently 2 local authority owned sites for football in Brixham at St Marys Park Brixham and Furzeham Green. Both of these facilities are available for community use but underutilised. There is also a new pitch at Centry Road, Brixham. This site is used by Brixham AFC who I understand have shown interest in the proposed pitch at the North Boundary Road and will therefore leave another pitch under used. South Devon College have also developed a new 3G pitch in the local area and utilised by the community.

Before the application for a new facility at North Boundary Road is approved investigation by the applicant into use of the current stock of underutilised facilities (St Marys Park and Furzeham Green) should be made. The club may want to look into leasing these facilities in order to apply for external funding to improve them to a standard to meet their needs if not already met. Also enquiry into why the football club are leaving their current facility at Centry Road should be made.

**Torbay Council's Sport Development Officer (Follow-up response 03/12/2020):**

The Torbay Playing Pitch Strategy 2014-2021 is now out of date and therefore we are working on producing a new Resetting Sport Strategy, however it is still at the consultation stage.

We have also been working with Devon Football Association who have produced a current Local Football Facilities Plan (LFFP) for Torbay which clubs have also had the opportunity to contribute to. We are still awaiting the final version as a few minor alterations needed to be made. The LFFP clearly highlights youth football as a development priority for Torbay. Therefore, the applicant's project supports this and maybe should be supported to support junior football development identified in the LFFP but not a full size pitch.

Further communication with the applicant has shown that both St Marys and Furzeham pitches are both public open spaces so are not desirable to the applicant due to public access, dog fouling, parking and limited development opportunity. The pitch at Centry Road, Brixham now also remains unused. This site also has access issues as it can only be used for part of the year so is not fit for the purpose of the applicant.

**Sport England:**

Sport England – Role and Policy

The Government, within their Planning Practice Guidance (Open Space, Sports and Recreation Facilities Section) advises Local Planning Authorities to consult Sport England on a wide range of applications. <https://www.gov.uk/guidance/open-space-sports-and-recreation-facilities-publicrights-of-way-and-local-green-space#open-space-sports-and-recreation-facilities>.

This application falls within the scope of the above guidance as it relates to the creation of new playing fields.

Sport England assesses this type of application in light of the National Planning Policy Framework (NPPF) and against its own planning objectives, which are 1. Protect - To protect the right opportunities in the right places; 2. Enhance - To enhance opportunities through better use of existing provision; 3. Provide - To provide new opportunities to meet the needs of current and future generations. Further information on the objectives and Sport England's wider planning guidance can be found on its website:

<https://www.sportengland.org/how-we-can-help/facilities-and-planning/planning-for-sport>

### The Proposal and Assessment against Sport England's Objectives and the NPPF

By providing new pitches that could help address established playing pitch deficiencies, the proposal would meet objective 3, and therefore Sport England supports this application in principle.

Sport England recommends that a ground conditions assessment is undertaken by a sports turf specialist/agronomist who can recommend a scheme for preparing the playing fields to the required specification. The recommended scheme should then be implemented. Detailed guidance on the issues that require consideration is set out in Sport England's guidance 'Natural Turf for Sport'.

We note a football pitch 90 x 60m in a tight location with an indication it might struggle to also provide adequate 3m run offs around the pitch. This is not the recommended playing pitch size – see below comments from the NGB for football. The recommended pitch for over 18 and Adult (11v11) 100 x 64, (106 x 70m including safety run-off area).

The Football Foundation on behalf of The FA and Devon FA advise that the applicants suggests that this pitch will be used for formal and informal provision for both adult and youth players.

The Torbay Playing Pitch Strategy suggests that between 2014-2021 there will be an increase of 6 additional mini soccer teams (3 match equivalent sessions per week). The population of children between 10-15 and adults 16+ will remain similar, which will not increase the number of teams.

The PPS highlights the need 'more age appropriate pitches are required in Brixham' and if all youth teams were to play on correct size pitches there would be a need of 1 x 9v9 pitch and 2 x mini soccer pitches (7v7). It is noted that this PPS strategy is near the end of its life span and data is likely to be dated.

The grass pitch dimensions within this application are shown as 90m by 60m, which doesn't meet any FA recommended pitch requirements. It is also difficult to determine

if this includes run-offs. Below are the recommended pitch dimensions for football that we would expect to see:

- Mini-Soccer U7 and U8 (5v5) 37 x 27m (43 x 33m including safety run-off area)
- Mini-Soccer U9 and U10 (7v7) 55 x 37m (61 x 43m including safety run-off area)
- Youth U11 and U12 (9v9) 73 x 46m (79 x 52m including safety run-off area)
- Youth U13 and U14 (11v11) 82 x 50m (88 x 56m including safety run-off area)
- Youth U15 and U16 (11v11) 91 x 55m (97 x 61m including safety run-off area)
- Youth U17 and U18 (11v11) 100 x 64m (106 x 70m including safety run-off area)
- Over 18 and Adult (11v11) 100 x 64, (106 x 70m including safety run-off area)

The application suggests this site would be used for an adult 11v11 team. We would require clarity on whether this could fit.

As car parking is situated north of the proposed playing field the following considerations should be taken on board in relation to run-offs:

- A minimum safety run off 3m must be provided.
- Run off areas must be free from obstructions and of the same surface as the playing area.
- The site operator must undertake a risk assessment to ensure the run off area are safe and do not pose a risk of injury to a player or spectator.

No information has been provided on maintenance of the site, though it is assumed that this would be the responsibility of the football club, if so it's strongly advised that the club/site receive a pitch improvement visit from the GMA for guidance and support in relation to ongoing maintenance.

The Football Foundation on behalf of The FA and Devon FA are principally supportive though require additional information on proposed pitch dimensions for adult football at this site.

The ECB have liaised with Brixham Cricket Club they (and in turn the ECB) have no comments to add to this application.

### Conclusion

This being the case, Sport England offers its support for this application, as it is considered to meet Objective PROVIDE as set out above. The applicant should review the comments above and perhaps provide an amended plan showing an adult playing pitch to the recommended pitch size.

Sport England recommends, based on our assessment, that if the Council is minded to approve the application, the following planning conditions should be imposed.

1. No development shall take place unless and until:

a) A detailed assessment of ground conditions of the land proposed for the new/retained/replacement playing field land as shown on drawing number... shall be undertaken (including drainage and topography) to identify constraints which could affect playing field quality; and

b) Based on the results of this assessment to be carried out pursuant to (a) above of this condition, a detailed scheme to ensure that the playing fields will be provided to an acceptable quality (including appropriate drainage where necessary) shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England.

The works shall be carried out in accordance with the approved scheme within a timescale to be first approved in writing by the Local Planning Authority after consultation with Sport England.

Reason: To ensure that site surveys are undertaken for new or replacement playing fields and that any ground condition constraints can be and are mitigated to ensure provision of an adequate quality playing field and to accord with LP Policy \*\*.

2. The playing field/s and pitch/es shall be constructed and laid out in accordance with the [planning application \*, Section \* and Drawing No. \*\*] and with the standards and methodologies set out in the guidance note "Natural Turf for Sport" (Sport England, 2011), and shall be made available for use before first use or occupation [or other specified timeframe] of the development [or specified part of the development/] hereby permitted.

Reason: To ensure the quality of pitches is satisfactory and they are available for use before development (or agreed timescale) and to accord with LP Policy \*\*.

3. Prior to the bringing into use of the [named sports facility) a Management and Maintenance Scheme for the facility including management responsibilities, a maintenance schedule and a mechanism for review shall be submitted to and approved in writing by the Local Planning Authority after consultation with Sport England. The measures set out in the approved scheme shall be complied with in full, with effect from commencement of use of the [named sports facility].

Reason: To ensure that new facility/ies is capable of being managed and maintained to deliver a [facility] which is fit for purpose, sustainable and to ensure sufficient benefit of the development to sport (National Planning Policy Framework (NPPF) para 97) and to accord with LP Policy \*\*.

4. No development shall commence [or such other timescale] until a community use scheme has been submitted to and approved in writing by the Local Planning Authority [after consultation with Sport England]. The scheme shall apply to

[describe facilities] and shall include details of pricing policy, hours of use, access by users/non-members, management responsibilities, a mechanism for review and a programme for implementation. The approved scheme shall be implemented upon the start of use of the development [or other agreed timescale] and shall be complied with for the duration of the use of the development.

Reason: To secure well managed safe community access to the sports facility, to ensure sufficient benefit to the development of sport and to accord with LP Policy \*\*.

If you wish to amend the wording of the recommended condition(s), or use another mechanism in lieu of the condition(s), please discuss the details with the undersigned. Sport England does not object to amendments to conditions, provided they achieve the same outcome and we are involved in any amendments.

The absence of an objection to this application, in the context of the Town and Country Planning Act, cannot be taken as formal support or consent from Sport England or any National Governing Body of Sport to any related funding application, or as may be required by virtue of any pre-existing funding agreement.

**South Devon Area of Outstanding Natural Beauty Office:**

No response received.

**Torbay Council's Drainage Engineer:**

I have now reviewed the latest information that has been submitted and I can confirm that providing the vehicular access and car parking area are constructed using free draining aggregate I have no objections on drainage grounds to planning permission being granted. Obviously, if the proposed material changes from free draining aggregate the developer will have to submit further details for approval and this may include the requirement for infiltration testing.

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

Car Park Layout:

The applicant's vehicle swept path drawing has demonstrated that a car can safely turn in the car park and two cars can pass on the site access road.

The applicant has not demonstrated a mini-van turning on site, but it is noted that the car swept path analysis indicates there is likely to sufficient space to accommodate this manoeuvre without overrunning adjacent parking bays.

The applicant has not demonstrated that a fire tender can access and egress the site in forward gear by turning on site. It is unlikely that this would be possible in a dedicated space without a significant reduction in parking spaces.



The site layout is likely able to accommodate a fire tender arriving and tending to an emergency. Whilst the fire tender is unlikely to be able to turn on-site between parking bays, given the very rare need for a fire tender to attend site it is not considered unreasonable to require the vehicle to undertake a convoluted turn manoeuvre of visitors to the site move their cars once the emergency has been dealt with.

Access:

The submitted plans do not make it clear what configuration the proposed access junction will take, but the proposed access is located back from the highway boundary and is not within highway land. The proposed configuration appears to give priority to visitors to the proposed development rather than the cricket club, although it is acknowledged in practice the junction is likely to be unmarked with no perceived priority resulting in low vehicle speeds. The shown visibility splays do not reflect the proposed junction configuration.

The applicant has demonstrated visibility splays of 9m from the site's junction with the cricket club access. Manual for Streets Table 7.1 indicates this is suitable for a 10mph vehicle speed. However, based on satellite imagery observations it is likely that greater visibility can be achieved, particularly in the primary direction.

The applicant was required to consider the provision of a shared foot/cycleway on the site access road to enable pedestrian and cycle trips to the site. The submitted plans do not demonstrate any further infrastructure for pedestrians or cyclists such as detailing of what surface will be used on the access road, nor has any document justifying this been submitted.

It is understood the applicant is proposed "grass reinforced mess" as a surface treatment. It is likely that more permanent surfacing would result in a significant change in the semi-rural nature of the area and may present landscaping concerns.

Given the low volume of vehicles (and pedestrians and cyclists), the currently proposed layout is considered to offer reasonable and proportionate pedestrian and cycle infrastructure.

Conclusion:

The Highway Authority raises no objection to the proposed development.

**Devon County Council's County Archaeologist and Historic Environment Manager (Initial Response):**

The proposal is sited in an area of known archaeological interest recorded on the Devon & Torbay Historic Environment Record (See: [https://www.heritagegateway.org.uk/Gateway/Results\\_Single.aspx?uid=MDV13893&resourceID=104](https://www.heritagegateway.org.uk/Gateway/Results_Single.aspx?uid=MDV13893&resourceID=104)). Evidence of prehistoric settlement activity has been found across an area, including the proposal site. Finds include Mesolithic, Neolithic and Bronze

Age flint tools, Bronze Age metal artefacts and Romano-British pottery. It is probable that groundworks for the creation of the sports pitch (ground preparation, levelling, drainage, access road, car park) will expose and destroy archaeological and artefactual deposits. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

I recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2019) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

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

Reason

*'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2019), that an appropriate record is made of archaeological evidence that may be affected by the development'*

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

I would envisage a suitable programme of work taking the form of a supervised metal detector survey followed by archaeological supervision and monitoring of consented groundworks and the recording of any features or finds that are observed. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.

I will be happy to discuss this further with you, the applicant or their agent. The Historic Environment Team can also provide the applicant with advice of the scope of the works required, as well as contact details for archaeological contractors who would be able to undertake this work. Provision of detailed advice to non-householder developers may incur a charge. For further information on the historic environment and planning, and our charging schedule please refer the applicant to: <https://new.devon.gov.uk/historicenvironment/development-management/>.

**Devon County Council's County Archaeologist and Historic Environment Manager (Follow-up Response):**

I identified the new road access as likely to involve groundworks. The applicant's response to comments about roads and car parking does not refer to the access road, only to the free draining car park.

Therefore can the applicant:

1. Set out what form the access road will take.
2. Confirm that the car park aggregate will be placed directly onto the existing turf or fallow, with no topsoil strip or levelling of the ground.

I note what the applicant states regarding only re-seeding the existing surface to create the playing surface.

Confirmation – ideally in a format that can ensure compliance - that creation of the pitch, car park and access road would not involve levelling, topsoil strip or intrusive drainage, would obviate the need for archaeological recording.

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

In essence the report shows that the Root Protection Areas of the trees are likely to be impacted to some extent by the proposals and a brief outline on how to mitigate for any damage has been proposed. The report suggests that conditions be applied I am satisfied that this can be achieved through the process of using conditions.

Please can we have pre-commencement conditions for a tree protection plan and arboricultural method statement, to be approved prior to the commencement of the works for the installation of the access road and parking area.

**Torbay Council's Senior Strategic Planning Officer:**

Since the site falls within the AONB (CZ, Undeveloped Coast and Mineral Safeguarding Area) and the GHB Sustenance Zone, Whilst the Phase 1 Ecology report indicates otherwise, I think, the new GHB SAC Guidance would indicated an HRA screening and in all probability an AA will be required. I note that the pitches are not currently intended to be used after dark, however, any external, including that lighting from car headlights and buffers along hedge lines still needs to be considered?

From an AONB and SH SAC perspective, it would be appropriate to consider what alternative sites, with lesser designations, particularly the allocated site SC2.6 at Brokenbury, have been considered.

Again, I note the comments in the Phase I report relating to the lack of cirl bunting evidence on 18<sup>th</sup> May and lack of appropriate farming practice this year. However, it may be helpful to consult RSPB in the context of The Cirl Bunting Guidance Note dated October 2017 (jointly produced by Torbay Council, TDC, DCC and the RSPB). AN extract of the breeding and wintering areas are shown below. This is the Guidance DCC web link:

<https://devoncc.sharepoint.com/sites/PublicDocs/Environment/Environment/Forms/AllItems.aspx?id=%2Fsites%2FPublicDocs%2FEnvironment%2FEnvironment%2FWildlife%20planning%20guidance%2FCirl%20Development%20Guidance%20October%202017%2Epdf&parent=%2Fsites%2FPublicDo>

The AONB unit will comment further with regard to the impact on the AONB and the AONB Management Plan; Brixham Urban Fringe Study (<https://www.torbay.gov.uk/media/8198/sd93.pdf>) - Compartment 20 p69 to p70 and the Torbay Landscape Character Areas Assessment 2011 ([Part 1](#)) and ([Part 2](#))

In terms of the Brixham Peninsula Neighbourhood Plan (BPNP) (<https://www.torbay.gov.uk/media/12960/1-neighbourhood-plan-june19.pdf>), Policies E1: Landscape beauty and protected areas, E2: Settlement boundaries, Policy S&L1: Increase available space for outdoor sport and leisure and the adjacent Policy E4.6 : Local Green Space are most pertinent and the Churston Village Design Statement : <https://www.torbay.gov.uk/media/12966/7-churston-village-design-statement.pdf>

Colleagues in the Highways Team or WSP will comments further in relation to the Travel Plan /Transport Statement/D&AS. Local Plan Policies TA1, TA2 and TA3 refer and BPNP Policy T1: Linking of new developments to travel improvements.

**Devon County Council's Ecologist (Biodiversity):**

No objection subject to conditions relating to artificial lighting and development and wildlife enhancement measures as per the submitted ecology reports.

**Devon County Council's Ecologist (HRA):**

No requirement for a Habitat Regulations Assessment in this instance.

**RSPB:**

No response received.

**Key Issues/Material Considerations**

1. Principle of Development
2. Impact on Residential Amenity
3. Impact on Highway Safety
4. Impact on Ecology and Trees
5. Flood Risk and Drainage
6. Designing Out Crime
7. Heritage

## **Planning Officer Assessment**

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

The proposal is for an outdoor football pitch for sport and recreational use. Objectors have raised concerns regarding the designations of the site with regard to the Development Plan (South Devon Area of Outstanding Natural Beauty and Undeveloped Coast), also stating it would set a precedent, constitute overdevelopment and alternative sites have not been investigated, with other sites in Brixham been vacant or underutilised. Supporters have stated that the proposed development would provide sport facilities, as well as jobs.

The site is designated as countryside located within the Long Road South to Berry Head under Policy C1 of the Local Plan. Policy C1 of the Local Plan states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting.

Policy C1 goes on to state that outside settlement boundaries, the following forms of development may be permitted, provided that the rural and landscape character, wildlife habitats, green corridors and historic features are not adversely affected and necessary mitigation measures are carried out to minimise any harm to the environment:

1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;
2. Development required for forestry, horticulture or agriculture;
3. Touring caravans and tents;
4. Tourist facilities appropriate to the rural area;
5. Development associated with outdoor sport and recreation appropriate in a rural area;
6. Sensitive conversion, alteration and extension of existing buildings;
7. Essential improvements to the highway network; and
8. Appropriate renewable energy development.

Criterion 5 of policy C1 above could support this proposal but only if it can be demonstrated that the proposal will not adversely affect the rural and landscape character, wildlife habitats, green corridors and historic features. For reasons explained in the 'landscape' section below it is considered the proposal would adversely affect the rural and landscape character and therefore is not supported by Policy C1 of the Local Plan.

The site is within the Berry Head to Sharkham Undeveloped Coast which is designated under Policy C2 of the Local Plan. Policy C2 states the Council and partnership organisations will conserve the character of the undeveloped coast and seek to enhance its distinctive landscape, seascape, biodiversity, geological, recreational and cultural value. Development will not be permitted in the undeveloped coastal area unless proposals satisfy the following requirements:

1. Maintain the unspoilt character of the coastline, coastal landscape and seascape;
2. Maintain or improve public access for recreation; and
3. Provide sensitively designed development, including tourism uses, where there are clear economic or sustainability benefits that cannot be realised in alternative locations.

For reasons set out in the 'landscape' section of this report it is considered that the proposed development fails to maintain the unspoilt character of the coastal landscape. As such the proposed development is contrary to Policy C2 of the Local Plan.

Policy SC1 of the Local Plan states that all development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal. The proposed development would contribute to improving the health and well-being of the community, by providing a sport and recreational facility.

Policy SC2 of the Local Plan states that development should provide access to sport, leisure and recreation facilities according to the additional demand it generates and the capacity, condition and location of existing facilities. Where a need is identified for new facilities, they should be provided in appropriate locations, preferably co-located with existing and other planned sports facilities, where they are accessible by a range and choice of transport and comply with other policies in the Local Plan. The policy goes on to state that an assessment of existing provision of such facilities will be required with development proposals proportionate to their scale, allowing the Council to determine whether a contribution is needed towards new facilities or the enhancement of existing provision.

Policy S&L1 of the Brixham Peninsula Neighbourhood Plan states that notwithstanding areas already designated as Local Green Spaces or Public Open Spaces, additional

and better quality outdoor playing space is required in the Peninsula. Subject to compliance with the other policies of this Neighbourhood Plan, proposals for developments within and adjacent to settlements (but excluding Settlement Gaps) which provide outdoor pursuits will be encouraged. These pursuits will embrace a range of activities and sports including formal games pitches, tracks, courts, parks (e.g., skateboarding) and facilities, signposted walking routes and “Trim Trails”, and more informal “free play” and “free activity” areas. The approval of any new, enhanced or improved sport or leisure facility will be subject to assessment of the design and impact, amenity and light emission of the proposed development in relation to its setting and other policies in this Plan. Policy S&L1 supports the inclusion of this site and has identified a 27.8 hectare shortfall in Brixham’s Outdoor playing area. A planning condition should be employed to prevent artificial lighting in a highly sensitive location, this is also acknowledged in the ecology section of this report.

### **Alternative Sites**

Having regard to the sensitive location of this site within the AONB and Undeveloped Coast it is important to understand the need for this facility. It is understood that the facility will be used primarily by the newly formed Brixham Town Football Club with the intention of providing mainly youth football including training sessions and holiday football camps. It is also proposed to allow access to other community teams and a Community Use Agreement entered into.

Within Brixham there are a number of existing football pitches including local authority run pitches at Furzeham and St Mary’s, a recently approved pitch with parking and access to changing facilities at Centry Road (but not available in the summer) and Brixham Academy also has pitches it rents out. There is also the pitch and facilities at Brixham AFC.

The Council’s Sport Development Officer has been consulted on this application. The Torbay Playing Pitch Strategy suggests that between 2014-2021 there will be an increase of 6 additional mini soccer teams (3 match equivalent sessions per week). The population of children between 10-15 and adults 16+ will remain similar, which will not increase the number of teams. Torbay’s emerging Resetting Sports Strategy reiterates the need to protect identified space for sport and leisure facilities in order to keep up with demand. North Boundary Road is still identified as important future provision for additional pitches. North Boundary Road is also identified in Policy SC2.6 of the Local Plan which identifies the fields as an “area of search” for sports facilities in the Churston Area, but does not specify football pitches.

The Council’s Sport Development Officer has stated that there are currently two local authority owned sites for football in Brixham at St Marys Park and Furzeham Green. Both of these facilities are available for community use but underutilised. There is also a new pitch at Centry Road, Brixham, as well as South Devon College have also

developed a new 3G pitch in the local area. The Officer has been working with Devon Football Association to produce a current Local Football Facilities Plan for Torbay, which clubs have also had the opportunity to contribute to. The document clearly highlights youth football as a development priority for Torbay. Therefore, the proposed development would assist in providing junior football development as identified in the Local Football Facilities Plan.

The applicant was asked to provide a statement to justify the need for this additional facility and responded as follows:

*“With regard to alternative sites, by its very nature an area of this size is going to be on the periphery of a development area and ultimately a reuse of land likely to be agricultural, and very likely to be within the AONB. That in itself will mean any alternative site will encounter the same level of scrutiny as this one and so the suggestion of finding one is somewhat circular. The existing landowner has offered a redundant paddock for the benefit of the community and its adjacency to another sporting facility is a good fit both in functionality and planning impact. This is the judgment you should be making – that in terms of forward planning the alliance of cricket, golf and football in one region is strategically sound”.*

This statement did not address the matter of why alternative facilities in Brixham, identified as being under-utilised, were not suitable for the applicant.

The Community Sports Development Officer has recently followed up with the applicant and has been advised that both St Marys Park and Furzeham Green pitches are both public open spaces so are not desirable to the applicant due to public access, dog fouling, parking and limited development opportunity. The new pitch at Centry Road now also remains unused. This site also has access issues as it can only be used for part of the year so is not fit for the purpose of the applicant.

The Council’s Sports Development Officer is satisfied that there is sufficient justification for this site and the proposal assists at facilitating junior football development.

### **Landscape/AONB Impacts**

The site is within the South Devon Area of Outstanding Natural Beauty. Policy SDB3 of the Local Plan states “The Area of Outstanding Natural Beauty around Brixham, including Berry Head National Nature Reserve, St. Mary’s Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes”.

Policy E1 of the Brixham Peninsula Neighbourhood Plan states “the internationally designated Special Area of Conservation (SAC), the nationally designated National



Nature Reserve (NNR) or Area of Outstanding Natural Beauty (AONB), and the locally designated Undeveloped Coast (Local Plan Policy C2) or Countryside Area (Local Plan Policy C1) will all be protected". Policy E1 goes on to state that "Development within or impacting on the AONB must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty and must comply with the requirements of the National Planning Policy Framework and other statutory documents including the AONB Management Plan".

Para 172 [now 177] of the NPPF sets out a presumption against major development in the AONB. Whether the proposed development would constitute major development in terms of the Area of Outstanding Natural Beauty context, footnote 55 [now 60] of the NPPF states that the decision maker would need to take into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined. The Local Planning Authority considers that the proposed development is non-major development in the context of the scale and nature of the proposal in this setting.

Paragraph 170 [now 174] of the NPPF states that decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside and maintaining the character of the undeveloped coast. Whilst Paragraph 172 [now 176] of the NPPF states that great weight should be given to conserving and enhancing landscape and scenic beauty in Areas of Outstanding Natural Beauty.

The site is located north-west of North Boundary Road but the site is not visible from North Boundary Road. The proposal involves a main football pitch including demarcations and goal posts, an area for training, portable water closets, a parking area and access road. There is an expressed desire to provide a storage facility on site although this does form part of this application. The site was formerly used for agriculture. At present, the site has no storage facilities and paraphernalia associated with the use is left alongside the football pitch and around the site. The proposed access and parking area will include laying a permeable aggregate course directly over the existing surface. Objectors have raised concerns that the proposed development is not in keeping with the local area and it would have negative impact on the local area.

The supporting information states that in the winter months (October-March), the site will not be used through the week except for in school holidays when children's football camps will be running and the site will operate on weekends during winter months for youth and adult football matches. During the summer months (April-September), the site will be in more use with football camps, community based leagues and so forth. In terms of landscape impact it is relevant to consider the visibility of the site from public vantage points given its designations. From site observations, it is apparent that the site will not be visible from North Boundary Road, but the site is visible from other

vantage points within the countryside, due to the topography of the surrounding area. The site lies in close proximity to a well-used footpath linking to the to the South West Coast Path. Therefore, it will have varying degrees of visibility depending on which public vantage points it is viewed from. The application is not supported by a Landscape and Visual Impact Assessment which would have helped in the landscape assessment but nevertheless it is considered that the proposed use would detract from its previous rural character and appearance.

The site adjoins Brixham Cricket Club which was approved under planning reference P/2007/1286. The site allocation was considered by the Local Plan Inspector as part of the Torbay Local Plan Inquiry, as Brixham Cricket Club sought a non-specific site allocation. An excerpt from the officer report states: "The Inspector stated that great care needed to be taken in pursuing this proposal especially with regards to the size and location of associated development such as a clubhouse and parking area to ensure that the impact in this sensitive and attractive area is acceptable ... The Inspector considered that subject to careful design and the effective operation of controls available through other policies within the Local Plan, the proposal would not be likely to cause unacceptable harm, nor would it set a precedent for other forms of development in the countryside around Brixham". This makes it clear that the planning permission for Brixham Cricket Club's site should not set a precedent for further sports related development which could lead to further erosion of a sensitive and attractive area.

It is noted that despite the adjacency of the cricket club there is no proposal to share facilities such as the club house or parking areas and recently gates have been erected by the Cricket Club to control access to their site.

The South Devon Area of Outstanding Natural Beauty office has failed to respond to the consultation request, however the South Devon Area of Outstanding Natural Beauty Management Plan 2019-2024 provides guidance. Page 33 of the Strategy of the AONB Management Plan states that the quiet enjoyment of the AONB by the public will be promoted through recreation, leisure activities and sports that respect other users and the area's natural beauty, special qualities and land management. Page 103 of Annex 1 of the AONB Management Plan states that a recreational development that conserves and enhances the South Devon AONB will provide facilities and amenities which support the quiet enjoyment of the AONB, especially for users of the South West Coast Path national trail.

Having regard to the close proximity of the public footpath, given the use of the site as a football pitch it is very likely that users of the footpath would be aware of noise and activity from the site – shouting, whistle blowing, vehicles entering and exiting the site. This would impact on the rural character and tranquillity of the area to an extent. Therefore, the proposed development would fail to conserve or enhance the quiet enjoyment of the AONB. Overall, it is considered that the proposed development would

further erode and degrade the unspoilt rural character of the area and the AONB given the adverse visual and aural impact, as the proposed use is not typical of a rural character and therefore is considered to fail to conserve or enhance the AONB and is harmful, contrary to policies contained within the Development Plan and the NPPF.

Policy C2 of the Local Plan states that development will not be permitted in the undeveloped coastal area unless proposals maintain the unspoilt character of the coastline, coastal landscape and seascape. The proposal would change the character of the immediate area through the sport being played, the laying out of the pitch, vehicles movements and the siting of portable water closets. The proposal is not supported by Policy C2 of the Local Plan.

Given the proposal's nature, siting, scale, and design, it is considered that the proposed development would result in harm to the character and visual amenities of the locality.

It is noted however that the proposal involves little permanent change to the land and should the use cease it could easily revert to its original use. Should planning permission be granted, it is recommended that a planning condition is employed to restore the land to its former agricultural use should the applicant cease to use the land as an outdoor football pitch.

It is considered that the proposed development in terms of impact on the South Devon Area of Outstanding Natural Beauty and Undeveloped Coast would cause harm. In such a case it is necessary to consider whether there are public benefits which would outweigh the harm.

## **2. Impact on Residential Amenity**

Policy DE3 of the Local Plan states that all development should be designed to not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Brixham Peninsula Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 127 [now 130] 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.

Objectors have raised concerns regarding residential amenity, privacy/overlooking and noise. The proposed development is some 145 metres from the nearest residential curtilages. The Council's Senior Environmental Health Officer has been consulted on this application and raises no objections. The site is located adjacent to Brixham Cricket Club which also provides sporting facilities. Given its siting, scale, and design of the proposals, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours.

The proposal is considered to accord with Policy DE3 of the Local Plan.

### **3. Impact on Highway Safety**

Para. 108 [now 110] of the NPPF guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; and (c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree. Para. 109 [now 111] 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 would be severe.

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 T1 of the Brixham Peninsula Neighbourhood Plan states that all developments should include safe walking and cycling access. The Policy goes on to state that developments should provide a travel plan proportionate in breadth and detail to the size and complexity of any development proposal to address the impact of travel associated with the development, including information on how the carbon footprint from travel has been minimised and the health and well-being of travellers maximised. All development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

Objectors have raised concerns regarding traffic and access. The proposal seeks to utilise an access back from the highway boundary on North Boundary Road, along the Brixham Cricket Club drive that would skirt a paddock before entering the site. WSP on behalf of the Local Highway Authority were consulted on this application, initial comments requested that additional information should be submitted, including vehicular swept path plan analysis and visibility splays. The application is also supported by a Travel Plan.

Upon receipt of the requested documents, WSP have stated that the analysis has demonstrated that a car can safely turn in the car park and two cars can pass on the site access road. The applicant has not demonstrated a mini-van turning on site nor a fire tender, however it is noted that the car swept path analysis indicates there is likely to sufficient space to accommodate this manoeuvre without overrunning adjacent parking bays. In terms of the proposed access, WSP acknowledges that in practice

the junction from the Cricket Club drive to the paddock is likely to be unmarked with no perceived priority resulting in low vehicle speeds. The applicant has demonstrated adequate visibility splays from the site's junction given the low vehicle speeds in this area. The applicant was also required to consider the provision of a shared foot/cycleway on the site access road to enable pedestrian and cycle trips to the site. The submitted plans do not demonstrate any further infrastructure for pedestrians or cyclists. Given the proposed layout, it is considered to offer reasonable and proportionate pedestrian and cycle infrastructure. Therefore, the Local Highway Authority raises no objection to the proposed development.

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. The submitted proposed plans do not indicate any bin storage, however there is space within the curtilage of the site for such to be sited, along with a Waste Management Plan to be sought. Should planning permission be granted, planning conditions should be employed to secure the parking provision, the Travel Plan, to provide a storage provision for bicycles, to provide a storage provision for waste and to ensure the employment of a Waste Management Plan.

It is considered that impacts relating to highway matters are acceptable and accord with Policies TA1, TA2 and TA3 of the Local Plan, Policy T1 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans 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 Brixham Peninsula Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms with Policy NC1 of the Local Plan.

The application site is within the Sustainance Zone of the Berry Head SSSI, associated with the South Hams Special Area of Conservation (SAC) with respect to the Greater Horseshoe Bats. The application is supported by a Phase 1 Habitat Survey and Preliminary Ecological Appraisal. Objectors have raised concerns regarding the impacts on wildlife. Natural England, the RSPB, and Devon County Council's Ecologist have been consulted on this application. A Habitat Regulations Assessment (HRA)

screening was undertaken and it was concluded by Devon County Council's Ecologist that there was no requirement for a HRA in this instance.

The supporting ecological reports state that the grassland to be lost to the development does not provide suitable Greater Horseshoe Bat foraging habitat. The grassland is maintained through mechanical mowing. The grassland onsite offers negligible foraging opportunities for Greater Horseshoe Bats due to its amenity nature and species poor composition. No bat surveys were provided with this application, however the Ecologist considers that the impacts can be assessed without such work. The proposal does not include any lighting, therefore there will be no impacts to potential Greater Horseshoe Bats commuting habitats, either through direct loss of linear features, or through indirect impacts associated with artificial lighting. A planning condition should be employed if permission is granted to ensure that no artificial lighting is erected. The Ecologist has concluded that there is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required. The grassland has limited ecological value given its maintenance, as per the supporting reports a 3 metre strip next to the eastern site boundary should be planted with a range of native shrubs should planning permission be granted.

The site falls within a Cirl Bunting Consultation Zone and there is a 2016 record of a Cirl Bunting territory which extends into the northern part of the site. By reviewing aerial photography and the ecology report, the Ecologist is satisfied that the site has been used for arable cultivation in the past. However, this cultivation has stopped, and the current amenity grassland habitat present onsite provides negligible foraging opportunities for Cirl Bunting. All potential nesting habitat for Cirl Bunting will be retained and no mitigation is required due to the lack of impact.

Should planning permission be granted, planning conditions should be employed to ensure that no artificial lighting is erected and that the development and wildlife measures as per the Phase 1 Habitat Survey and Preliminary Ecological Appraisal are undertaken, including the 3 metre strip of native shrubs along the eastern site boundary. Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

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

Objectors have raised concerns regarding vegetation. The application is supported by

an Arboricultural Impact Assessment, which shows that the Root Protection Areas of the trees are likely to be impacted to some extent by the proposal and a brief outline on how to mitigate for any damage has been proposed. The Council's Senior Tree and Landscape Officer has been consulted on the application and is satisfied that with the submission of a Tree Protection Plan and an Arboricultural Method Statement prior to the commencement of works for the installation of the access road and parking area, the proposal is considered acceptable and to accord with Policy C4 of the Local Plan. Should planning permission be granted, planning conditions should be employed to secure both a Tree Protection Plan and an Arboricultural Method Statement.

It is considered that impacts on matters of ecology and trees are acceptable and accord with Policies NC1 and C4 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan, and should planning permission be granted the aforementioned planning conditions should be employed.

### **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 site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. The Council's Drainage Engineer was consulted and has stated that providing the vehicular access and car parking area are constructed using free draining aggregate, there are no objections on drainage grounds to planning permission being granted. Should an alternative material be used then the applicant will need to submit further details to the Local Planning Authority, which would need to be agreed in writing. Should planning permission be granted, subject to the use of a planning condition to secure the material for the vehicular access and parking provision, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

### **6. Designing Out Crime**

Policy SS11 of the Local Plan states that part of the criteria development proposals will be assessed against includes whether the proposal helps to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict.

The Police Designing-Out Crime Officer was consulted on the application and has made recommendations intended to ensure that the proposal would be adequately designed to prevent opportunities for crime and anti-social behaviour. Should planning permission be granted, a planning condition should be employed to secure a scheme of crime prevention measures. The proposal is considered to accord with Policy SS11 of the Local Plan.

## **7. Heritage**

The proposal is sited in an area of known archaeological interest recorded on the Devon & Torbay Historic Environment Record.

Devon County Council's County Archaeologist and Historic Environment Manager has been consulted on this application and has stated that they are satisfied that subject to the employment of a planning condition to ensure compliance that creation of the pitch, car park and access road would not involve levelling, topsoil strip or intrusive drainage, there would be no need for need for archaeological recording

### **Other Matters**

The site is also within Churston, Galmpton and Broadsands Minerals Safeguarding Area as defined by Policy M3 of the Local Plan. Policy M3 of the Local Plan states that the Council will seek to safeguard important mineral resources and sites. The proposed development does not conflict with this policy.

### **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**

The proposed development will result in modest economic benefit during the limited development activities. It will provide employment for the person(s) providing youth training courses/football camps at the site.

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

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

#### **The Social Role**

The proposed development will provide an additional sports facility in Brixham aimed at providing youth football in a controlled and clean environment. This will benefit public health.

In addition the proposed development will be available for use by the wider community as a sports pitch to the benefit of the community.

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

#### **The Environmental Role**

The proposed development will have an adverse impact on the rural character of this



part of the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast.

The environmental impacts of the proposal weigh against the proposed development.

### **Sustainability Conclusion**

Para 172 [now 176] of the NPPF and Development Plan policy require that great weight is given to conserving and enhancing landscape and scenic beauty in the AONB. On balance however the social benefits of the provision of an additional sports facility aimed at youth football for which there is an identified need and through securing a legal agreement to ensure wider community use, the economic and social benefits of the proposal are considered to outweigh the environmental harm such that the proposal is considered, on a fine balance, to represent sustainable development.

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

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

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

### **Local Finance Considerations**

S106:

The proposal entails the completion of a legal agreement to obtain a Community Use Agreement.

CIL:

The CIL liability for this scheme is Nil.

### **EIA/HRA**

EIA:

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

HRA:

The application site is within a sustenance zone associated with the South Hams SAC. There is no requirement for a Habitat Regulations Assessment in this instance.

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the proposal would cause a level of harm to the South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast, however on balance the proposal addresses a deficit in terms of sports provision, in particular junior football development, and would secure a community use through a legal agreement which is considered to be acceptable.

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

The proposal is considered on balance to be acceptable as it provides a needed community facility, in an area where there is a deficit of this type of sports provision of the appropriate quality and the proposal can assist at aiding the junior football development provision, however there will be a level of harm on the designated South Devon Area of Outstanding Natural Beauty and the Undeveloped Coast. The proposed development is considered on balance acceptable, having regard to the Torbay Local Plan, the Brixham Peninsula Neighbourhood Plan, and all other material considerations

### **Officer Recommendation**

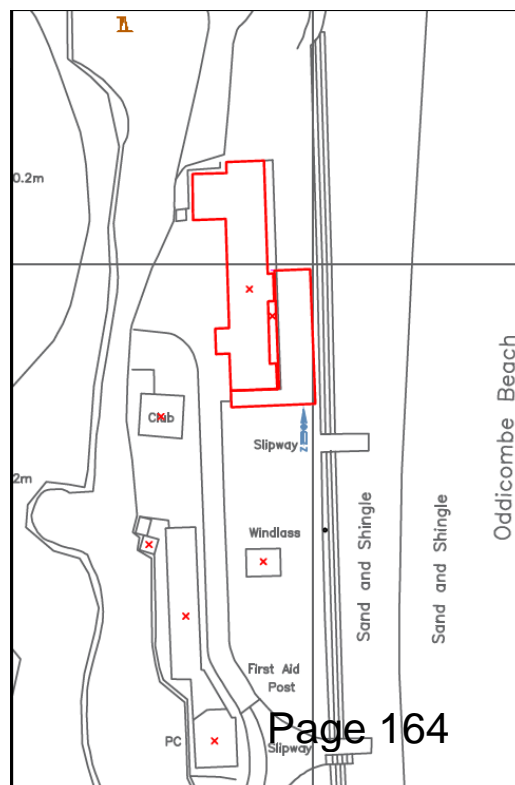
Conditional approval subject to the recommended conditions. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director of Planning, Housing and Climate Change.

### **Relevant Policies**

C1 – Countryside and the Rural Economy  
C2 – The Coastal Landscape  
C4 – Trees, Hedgerows and Natural Landscape Features  
DE1 – Design  
DE3 – Development Amenity  
ER1 – Flood Risk  
ER2 – Water Management  
M3 – Preserving and Safeguarding of Limestone Resources and Key Local Building Stone  
NC1 – Biodiversity and Geodiversity  
SC1 – Healthy Bay  
SC2 – Sport, Leisure and Recreation  
SDB3 – Brixham Urban Fringe and Area of Outstanding Natural Beauty  
SS3 – Presumption in favour of Sustainable Development  
SS8 – Natural Environment

TA1 – Transport and Accessibility  
TA2 – Development Access  
TA3 – Parking Requirements  
W1 – Waste Hierarchy  
BH5 – Good Design and the Town and Village Design Statements  
E1 – Landscape Beauty and Protected Areas  
E2 – Settlement Boundaries  
E8 – Internationally and Nationally Important Ecological Sites  
S&L1 – Increase Available Space for Outdoor Sport and Leisure  
T1 – Linking of New Developments to Travel Improvements

Application Site Address	Café, Oddicombe Beach, Torquay, TQ1 3NZ
Proposal	Construction of gazebo. (Part Retrospective.)
Application Number	P/2023/0205
Applicant	Mr Mark Buck
Agent	McKenna Architectural Design
Date Application Valid	01.03.2023
Decision Due Date	04.05.2023
Extension of Time Date	Requested from agent
Recommendation	<p>Approval, Subject to;</p> <p>The receipt of a Site Specific Flood Risk Assessment that demonstrates that the development is safe from all risks of flooding, to the satisfaction of officers.</p> <p>Conditions as detailed.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	<p>The application has been referred to Planning Committee because it is on land owned by Torbay Council, is a retrospective addition to the existing Cafe, and the application has received objections from members of the public, the Council's constitution requires that the application be referred to the Planning Committee for determination.</p>
Planning Case Officer	Katie Greer



## **Site Details**

### **Description**

The application site sits to the north of the Babbacombe Downs Road and to the west of the sea and is approximately 187 square metres in size. The site is a retail unit that exists as a Café called Three Degrees West, which includes an outside seating area on the public promenade. The site is accessed from Oddicombe Beach Hill. Three Degrees West is a cafe and restaurant located in the Babbacombe area. The cafe is situated at the bottom of Oddicombe Beach Hill on Oddicombe Beach and has been operating for the past eight years and is owned and operated by Oddicombe Beach Resort TLD.

The cafe is located on the ground floor of a building and has outdoor seating on the promenade/terrace to the front overlooking the beach and sea. The surrounding area is a popular tourist destination, with a mix of residential properties, hotels, and other cafes and restaurants in the vicinity.

The site is located within Flood Zones 2&3 and is sited within the Undeveloped Coast, Countryside Zone, Coastal Change Management Area and the Core Tourism Area. The site is also next to the SSSI, the Torbay Marine SAC and Marine Conservation Zone.

### **Description of Development**

The application seeks permission for the construction of a retrospective gazebo on the public promenade to cover the seating area to the front of the business.

The Gazebo is finished in aluminium, being a white powder coated structure bolted to existing concrete. The roof will be aluminium, also white powder coated, with a pivot sliding frame.

### **Relevant Planning Policy Context**

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

#### **Development Plan**

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan (PNP)

#### **Material Considerations**

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

### **Relevant Planning History**

None.

### **Summary of Representations**

11 letters of support have been received. Comments raised include:

- It provides facilities

- Makes tourist facilities better
- Provides/retains jobs

2 objections have been received. The summary of concerns is as follows.

- Impact on Local Area
- Over development
- Not in keeping with Local Area
- Privacy/overlooking
- Sets precedent
- Traffic and Access

## **Summary of Consultation Responses**

### **Torquay Neighbourhood Forum**

No comments.

### **Community Safety Officer:**

No objections.

### **Drainage Officer:**

The applicant has correctly identified that the proposed development lies within a flood zone. The Environment Agency flood zone maps confirm that this development lies within Flood Zone 3.

Where sites are identified within Flood Zone 3 the developer is expected to submit a site specific flood risk assessment. The flood risk assessment must demonstrate that the development will be safe from all sources of flooding without increasing flood risk elsewhere and where possible will reduce flood risk overall. Within the site specific flood risk assessment I would have expected to see the sources and predicted depth of flooding being identified, the proposed finished floor levels for the ground floor, details of safe access and egress routes, details about what to do in an emergency including safe refuges, details of flood mitigation measures being proposed including an emergency flood plan and confirmation that the owners will be signed up to the Environment Agency's coastal flood warning system.

The only submitted flood risk assessment is the simple tick sheet which is not valid within Flood Zone 3 as it fails to address the points highlighted above.

With regards to surface water drainage as the proposal is for the construction of a gazebo over an area that is already impermeable. I can confirm that there is no requirement to attenuate the surface water run-off from the gazebo.

Before this planning application is approved the developer must submit a site specific flood risk assessment to address the points highlighted above.

### **Highway Authority:**

With respect to the application, it appears that customer seating is already placed and utilised in the area where the proposed Gazebo is to be.

Therefore, the Local Highway Authority would raise no objection to this becoming covered seating

### **Devon County Council Ecologist:**

No impact on the SSSI, the Torbay Marine SAC or Marine Conservation Zone, as the proposed development is on the existing hard standing, and there has been no change to the lease, meaning no increase to the capacity of the restaurant.

The only concern I would like to raise is that section 3 and 8 of the Design and Access Statement by McKenna Architectural Design states the gazebo will incorporate integrated lighting, of which I cannot see any further detail in any documents or design drawings. Details of the lighting would need to be specified.

## **Planning Officer Assessment**

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

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

The proposal is for the construction of a part retrospective gazebo, to create a covered outdoor seating area along the public promenade of Oddicombe Beach. The site is designated within the Flood Zones 2&3, the Undeveloped Coast, Countryside Zone, Coastal Change Management Area and the Core Tourism Area. The site is also next to the SSSI, the Torbay Marine SAC and Marine Conservation Zone. Policy C2 Coastal Landscape of the Torbay Local Plan states that on the undeveloped coast: The Council and partnership organisations will conserve the character of the undeveloped coast and seek to enhance its distinctive landscape, seascape, biodiversity, geological, recreational and cultural value. Development will not be permitted in the undeveloped coastal area unless proposals satisfy the following requirements:

1. *Maintain the unspoilt character of the coastline, coastal landscape and seascape;*
2. *Maintain or improve public access for recreation; and*
3. *Provide sensitively designed development, including tourism uses, where there are clear economic or sustainability benefits that cannot be realised in alternative locations.*

*Development outside the undeveloped coast which may harm the intrinsic character of the area will be assessed with regard to visual impact.*

*In the developed areas of coast, development will be permitted where it provides benefit to Torbay's economy and does not unacceptably harm the landscape character and appearance of natural, historic or geological assets.*

The proposal seeks a covered extension to an existing cafe building to improve the existing facilities. Policy C1 allows for sensitive extensions of existing buildings, tourist facilities appropriate to the rural area and development associated with outdoor sport and recreation. It is considered that the proposal would accord with these forms of development which are considered to be acceptable in principle within the countryside area. In respect of the undeveloped coast designation, given the proposal relates to an existing building and is small scale it is considered reasonable in this case to also consider the criteria given under 'the developed coast'. It is considered that the expansion and improvement of the existing facilities on the site and the provision of additional tourism uses would benefit the economy.

Consideration of the impact on the landscape character and appearance will be analysed in detail later in the report.

As the proposal is considered to comply with Policy C1 of the Local Plan, Policy E3 of the Neighbourhood Plan is considered to be adhered to. This is on the consideration of principle; other material planning considerations will be detailed later in the report.

The site is also located within a Coastal Change Management Area where Policy C3 of the Local Plan notes that the Council will support measures that are compatible with or actively support coastal change management. Given the proposal relates to an existing building and use which directly links to users of Oddicombe beach, providing the proposal does not adversely affect the natural and historic environment of the area, including geodiversity, maritime archaeology, marine ecology and the integrity of sites protected under European legislation, the principle of this form of development within this designation is considered acceptable.

Policy TO1.1 states Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Tourist facilities and accommodation will be improved and modernised, and new tourism facilities provided, in order to attract new visitors, particularly overnight visitors, and increase overall spend. Growth sectors, such as sustainable tourism, will be actively encouraged.

The Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

*1. Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions, subject to other Policies in this Plan. In particular proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark will be encouraged;*

The principle of the development is therefore considered to be acceptable and in accordance with Policies C2, C3 and TO1 of the Local Plan.

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

Paragraph 126 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design and government guidance on design'. Policy DE1 Design of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy DE5 of the Local Plan states that extensions to domestic dwellings should not dominate or have other adverse effects on the character or appearance of the original dwelling or any neighbouring dwellings or on the street scene in general.

At ground floor level the existing building features an indoor restaurant seating area with associated kitchen, storage area and toilets. Existing bifold doors serve the restaurant with an outdoor seating area accessed externally on the public promenade. The northern section of the building is also used for tourist centre and museum.

The application seeks the regularisation of the retrospective gazebo covering the outdoor seating area on the eastern promenade elevation, which includes retractable side panels and integrated lighting and heating. The proposed gazebo will not be increasing the footprint of the existing outdoor seating area.



It is considered that the proposal will not appear as an overly dominant feature or result in an overbearing impact on the users of the promenade given the small nature of the proposed areas, which will utilise lightweight materials such as retractable side panels to reduce their dominance and allow views in and through the site. Whilst a section of the promenade will be permanently used for the restaurant, it is considered that the important views and vistas of the area and promenade will be retained given the lightweight nature of the development at the front of the site and the proposal will not result in the closure of gaps between urban areas.

Clarity has been sought on the purpose and form of “roller shutter blinds” detailed to the sides to the submitted drawings. Members will be updated on this matters including any proposed amendment to the recommendation and/or conditions following any response.

The proposal is, subject to adequate comfort on the purpose and form of the side roller shutter blinds, considered to be of a suitable size, scale and visual appearance.

The proposal is therefore considered to accord with Policies DE1 and DE5 of the Local Plan and Policy TH8 the Torquay Neighbourhood Plan and the guidance contained within the NPPF.

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

Policy DE3 requires all development to provide a good level of amenity for users and the surrounding uses in terms of noise, nuisance, and air pollution.

Concerns have been expressed by objectors to the potential restricted access to the promenade the gazebo will make and the design of the gazebo. Highways have been consulted on the application and they have no objections to the proposal. The gazebo will leave an area of 1.7m-2m between the gazebo and the edge of the promenade leading to the beach steps. This is considered an acceptable distance to allow public access through each end of the promenade.

As such the proposal is considered to be acceptable with regard to amenity in accordance with Policy DE3 of the Local Plan.

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

Policies TA1 and TA2 of the Local Plan promote sustainable locations for new developments and require adequate accessibility and safety to meet the needs of the development. Policy TA3 of the Local Plan seeks car and cycle parking standards to be met.

Concerns have been raised about the narrowing of the promenade and the ability of emergency service vehicles to access the site. The Highways Department have confirmed they have no objection to the proposal. Whilst the gazebo will formalise a section of the promenade for restaurant use, the seating area is currently retrospective and occupied by tables in association with the restaurant, thereby resulting in little change for pedestrian users of the promenade.

The proposal is considered to comply with Policy TA1, TA2 and TA3 of the Local Plan and The Torquay Neighbourhood Plan.

### **5. Ecology and Biodiversity**

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

Devon County Council have been consulted on the application in regard to the impact the proposal may have on the SSSI, the Torbay Marine SAC or Marine Conservation Zone. They have confirmed that the development would have no impact as the proposed development is

on the existing hard standing, and there has been no change to the lease, meaning no increase to the capacity of the restaurant.

A concern was raised in regard to the integrated lighting on the gazebo, as no specification has been provided, a condition is recommended for the details of any lighting to be installed within the proposed development to be submitted for agreement with the LPA prior to implementation.

The proposal therefore complies with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.

## **6. Flood risk and Drainage**

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

The site is located within the Critical Drainage Area and Flood Zones 2&3. The application is accompanied by a site specific flood risk assessment.

With regards to surface water drainage as the proposal is for the construction of a gazebo over an area that is already impermeable there is no requirement to attenuate the surface water run-off from the gazebo. There is no additional flood risk from the development.

In terms of the developments own flood risk from sources of flooding it has not been demonstrated that the development will be safe from all sources of flooding. The Council's Drainage Engineer has cited that the current flood risk assessment is inadequate, having failed to identify sources and predicted depth of flooding, the proposed finished floor levels for the ground floor, details of safe access and egress routes, details about what to do in an emergency including safe refuges, details of flood mitigation measures being proposed including an emergency flood plan and confirmation that the owners will be signed up to the Environment Agency's coastal flood warning system. These matters have been raised with the applicant and a revised flood risk assessment is to be submitted.

Subject to the receipt of a revised flood risk assessment that addressed the matters raised above the development is acceptable on flood risk grounds.

The sequential test is not required in this instance, in line with footnote 56 of the NPPF which states that the sequential test is not required for small non-residential extensions (with a footprint of less than 250m<sup>2</sup>) and change of use; except for change of use to a caravan, camping or chalet site, or to a mobile home or park home site.

Subject to the matters above being adequately resolved, and the imposition of any necessary planning condition to secure any highlighted management/measures, the proposal is considered to be in accordance with Policy ER1 and ER2 of the Local Plan.

## **7. Sustainability**

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

The proposal is in a sustainable location where customers do not need to, but can, drive to access it. Alternative, low carbon means of transport are available to the site. The proposal addresses Policies SS14 and ES1 of the Local Plan.

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

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

### **Local Finance Considerations**

#### **CIL**

Not applicable to this development.

#### **S106**

Not Applicable to this application.

### **EIA/HRA**

EIA:

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

### **Planning Balance**

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

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

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

### **Officer Recommendation**

Approval, subject to:

The receipt of a Site Specific Flood Risk Assessment that demonstrates that the development is safe from all risks of flooding, to the satisfaction of officers.

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

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

## **CONDITIONS**

### **Lighting**

No internal or external lighting shall be installed or utilised except in accordance with a scheme and details approved beforehand by the LPA. For the avoidance of doubt no lighting which has already been installed within the development shall be switched on unless it forms part of the approved scheme.

The proposal therefore complies with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.