



Friday, 30 November 2018

## **DEVELOPMENT MANAGEMENT COMMITTEE**

A meeting of **Development Management Committee** will be held on

**Monday, 10 December 2018**

commencing at **2.00 pm**

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

### **Members of the Committee**

Councillor Kingscote (Chairman)

Councillor Barnby

Councillor Lewis (B)

Councillor Lewis (C)

Councillor Morey

Councillor Pentney

Councillor Winfield

Liberal Democrat Vacancy

Councillor Manning

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For information relating to this meeting or to request a copy in another format or language please contact:

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**01803 207087**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk)

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# DEVELOPMENT MANAGEMENT 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 12 November 2018.

(Pages 4 - 5)

3. **Declarations of Interests**

(a) To receive declarations of non pecuniary interests in respect of items on this agenda

**For reference:** Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda

**For reference:** Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

**(Please Note:** If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

4. **Urgent Items**

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

5. **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.

6. **Astoria Court, Belle Vue Road, Paignton (P/2018/0184)**

To consider a revised application in respect of the this application.

(Pages 6 - 27)



**7. Claylands Cross, Brixham Road, Paignton (P/2018/0700)**

(Pages 28 - 54)

To consider a Hybrid application for:

- (i) Full application for service road, with Phase 1 building and associated car parking and loading yard.
- (ii) Outline application for Phase 2 building and associated car parking and loading yard with all matters reserved except for access.

Includes two industrial units totalling 10,788 sqm. Phase 1 unit for B2 (general industrial) use; Phase 2 unit for B8 (storage/distribution), B2 (general industrial), or B1 (business) use.



## Minutes of the Development Management Committee

12 November 2018

-: Present :-

Councillor Kingscote (Chairman)

Councillors Barnby, Bye, Ellery, Manning, Pentney, Tolchard and Winfield

(Also in attendance: Councillors Amil, Brooks and Mills)

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### 19. Apologies for absence

It was reported that, in accordance with the wishes of the Conservative Group and Independent Group, the membership of the Committee had been amended for this meeting by including Councillors Bye and Ellery instead of Councillors Lewis (B) and Morey respectively.

### 20. Minutes

The Minutes of the meeting of the Development Management Committee held on 8 October 2018 were confirmed as a correct record and signed by the Chairman.

### 21. Park Hotel, 22-25 Esplanade Road, Paignton (P/2018/0804)

The Committee considered an application for demolition of existing hotel and formation of 161-bedroom hotel with ancillary facilities.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Martin Rogers and Tim Godfrey addressed the Committee in support of the application.

Resolved:

Approved subject to:

- (i) the completion of a Section 106 Agreement to secure contributions towards flood mitigation;
- (ii) the resolution of any material matters which arise during the additional public consultation;
- (iii) the approval of outstanding transport/highways information; and
- (iv) the final drafting of conditions, including those set out in the submitted report, being delegated to the Executive Head for Assets and Business Services.

**22. Astoria court, 5 Belle Vue Road , Paignton (P/2018/0184)**

The Committee considered an application for the conversion of existing building to form 5 houses and 5 apartments, including: demolition of existing extensions, erection of two-storey and first-floor extensions, installation of three new dormers, and formation of pitched roof over existing flat roofed outbuilding.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Nichola Burley addressed the Committee in support of the application.

Resolved:

That the application be deferred for further negotiations with the applicant.

**23. The Anchorage, Headland Road, Torquay (P/2018/0348)**

The Committee considered an application for a replacement dwelling (variation of condition P1 of original planning permission P/2015/0986) - to raise roof height, extend area enclosed by glazed balustrade above rear garden level accommodation and installation of 4 air conditioning units and a flue to the rear of the garage/cinema room on the side (west) elevation.

Prior to the meeting, Members of the Development Management Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Nick Jackson addressed the Committee in support of the application. In accordance with Standing Order B4.1 Councillor Amil addressed the Committee.

Resolved:

That:

- (i) the increased height of the development be approved;
- (i) that the layout of the glass balustrade on the roof terrace be reinstated to its original approved position; and
- (ii) that condition 4 of the submitted report is implemented and that the external plant and equipment is screened due to the negative visual impact on neighbouring properties.

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Chairman

**Application Number**

P/2018/0184

**Site Address**

Astoria Court  
5 Belle Vue Road  
Paignton  
TQ4 6ES

**Case Officer**

Mr Robert Brigden

**Ward**

Roundham With Hyde

**Update**

Members resolved, on the 12<sup>th</sup> November, 2018, to defer planning application P/2018/0184 to enable officers to negotiate amendments to the scheme, with a view to overcoming the previously identified concerns. The original committee report is detailed below in italics.

The original report raised concerns about the proposal's impact on the character of the area, and the standard of accommodation to be provided. Officers have subsequently entered into dialogue with the applicants and have agreed the following amendments:

- Unit 2 - An area of private amenity space to be provided at the front of this unit. This is requested in order to prevent conflict immediately outside its NE facing windows, thereby reducing the potential for loss of privacy and disturbance from the adjoining communal area, and also to provide an enhanced private amenity space.
- Units 2 & 3 – Additional means of enclosure to be provided between the rear amenity spaces serving Units 2 and 3. This is requested to prevent disturbance and conflict in the use of these private amenity spaces.
- Unit 3 – Additional boundary treatment along the access path to Unit 10 to provide a stand-off from the rear windows of Unit 3. This is requested in order to limit disturbance and overlooking to Unit 3.
- Adjustment of the pathway and steps leading to Units 3 and 10 to improve their usability.
- Unit 7 – Obscure glaze first and second floor windows to its elevation facing the rear amenity space of Unit 2. This would provide a more private amenity space at the rear for unit 2.
- Unit 8 – Alter the gable roof feature on the rear 2-storey extension to a hipped roof; provide additional screening along the boundary with the

amenity space of Unit 2. The alteration of the gable roof to a hip on the 2 storey rear extension would provide a less dominant structure, and the additional screening would reduce inter-visibility from the entrance to Unit 8 to the bedroom window and amenity area of Unit 2.

- Unit 9 – Alter the gable roof feature on the rear 2-storey extension to a hipped roof; alter gable on the end elevation of the building to provide a hipped roof. The alterations would make the proposed conversion more subservient to the original building and diminish the proposal's impact on the character of the conservation area.
- Unit 10 – Obscure-glaze the ground and first-floor windows facing the Unit 3 amenity space. This would overcome concerns with regards to loss of amenity and inter-visibility between the windows of Unit 10 and the amenity area of Unit 3.
- A correction is required to the description previously provided in that the proposal would involve a mixture of demolition and conversion of the existing structures at the site.

Amended plans have now been received to secure the above changes. Taken together, these amendments are considered to have sufficiently raised the quality of the proposed development to a point that a recommendation for approval can now be made. The updated recommendation and additional assessment, which supplements the assessment detailed in the original committee report, are provided below.

Given the revised recommendation, it is considered necessary to advertise the proposal as a Departure from the Local Plan. This is because the proposal would not be fully compliant with the requirements of Policies DE1 and TO2, which seek the removal of later additions from original buildings under certain circumstances. This matter is discussed further below.

### **Updated Recommendation**

That planning permission be granted subject to the conditions detailed below; and the completion of a further period of public consultation, with the final drafting of conditions and addressing any material matters that might arise from the consultation exercise being delegated to the Executive Head for Assets and Business Services.

### **Updated Assessment**

#### **Consultee Advice**

The Council's Senior Historic Environment Officer continues to object to the

proposal on the grounds previously raised concerning its impact on the character of the conservation area.

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

Policy H1 of the Torbay Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed.

The historic use of the building is as holiday apartments with owner's accommodation. The site is located outside a Core Tourism Investment Area. Policy TO2 (Change of use of tourism accommodation and facilities) states that the change of use of holiday accommodation or facilities outside Core Tourism Investment Areas will be permitted where:

*1. The holiday character of the area and range of facilities and accommodation are not undermined; and*

*2. One or more of the following apply: the site is of limited significance in terms of its holiday setting, views and relationship with tourism facilities; or it can be demonstrated that there is no reasonable prospect of the site being used for tourism or related purposes, or; the redevelopment or change of use will bring regeneration or other benefits that outweigh the loss of holiday accommodation or facilities.*

It is considered that the proposed conversion from holiday accommodation to residential use would not significantly undermine the holiday character of the area or the range of holiday facilities. It is also considered that the proposal would bring other benefits, such as the provision of housing to help address the shortfall in the Council's 5 year housing land supply. Visually-speaking, the proposal would help to improve the existing situation by replacing unsightly extensions with what are considered to be superior additions. In these respects, the proposal is considered to be acceptable in principle.

Policy TO2 also requires that where a change of use away from tourism is permitted, there will be a requirement to restore buildings or land to their original historic form by the removal of unsightly features, signage, clutter and extensions relating to the holiday accommodation use. Additionally, a high priority will be given to restoring the character and appearance of buildings within conservation areas. Policy DE1 also states that, where appropriate, the removal of unsightly additions will be sought when considering the conversion of existing buildings.

Overall, the proposal would not result in a reduction in additions to the original building, and in this respect, the proposal would be contrary to Policies DE1 and TO2 of the Local Plan. On balance, however, and in this particular case, it is

considered that this harm is outweighed by other material considerations, namely:

1. The proposal would result in what is considered to be a significant improvement to the design of the original building's existing later additions, along with enhancements to the original building itself, and therefore a visual improvement compared to the existing situation;
2. The improved additions would be located towards the eastern side of the site, set well back from the public highway and well screened by the original building and large neighbouring buildings. The original, key building would continue to form the main element visible from the public highway and would benefit from enhancements benefitting its historic character;
3. To the extent that the proposal would result in harm to the character of the conservation area – by reason of the retention of later additions to the key building – this harm is considered to be very limited considering the proposed improvements to the existing structures and their siting;
4. Overall, the proposal would result in what is considered to be a spacious and reasonably well designed development, providing all of the required amenities, services, and parking spaces, along with dwellings that easily exceed the requirements for internal living space. As such, the proposal would contribute good quality residential accommodation to help address the shortfall in the Council's 5 year housing land supply.

## **2. Visual impact**

Policy SS10 of the Torbay Local Plan 2012-2030 states that developments within the conservation area should preserve or enhance its character; this is in compliance with the NPPF. Indeed Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.

Policy DE1 states that development should be well designed, respecting and enhancing Torbay's special qualities and the character of the natural built environment including areas and building of historic interest.

The proposal would involve amending and improving a number of unsympathetic extensions to the original building and the restoration of the period detail of the property with the porch to the entrance of the building being reinstated to its original width. The materials proposed in the external finishes are in keeping with the original property. Unsympathetic windows are to be replaced with windows appropriate to the character of the original property and wider conservation area.

Following negotiation between planning officers and the applicant, a revised scheme has been received. It is considered that it would result in significant improvements to the design of the original building's later additions, along with enhancements to the original building itself, and therefore a visual improvement

compared to the existing situation. The additions would be located towards the eastern side of the site, set well back from the public highway and well screened by the original building and large neighbouring buildings. The original, key building would continue to form the main element visible from the public highway and enhancements to it would improve the contribution it makes to the character of the conservation area. As such, it is considered that the proposal would result in only limited harm to the character of the conservation area. To the extent that it would result in less-than-substantial-harm to its character, it would be of a limited nature and outweighed by public benefits in the form of what is considered to be the provision of a high quality residential development contributing to the Council's current housing shortfall.

Given the proposal's siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality. The identified harm to the conservation area is, in this instance, considered to be very limited and justified by public benefits. The proposal is considered to be in accordance with Policies DE1 and SS10 of the Local Plan, and the guidance contained in the NPPF. This is subject to the use of conditions to secure adequate arrangements in relation to boundary treatment, cladding materials, refuse and bicycle storage, enhancements to the original building, and landscaping.

### **3. Amenity**

Policy DE3 (Development amenity) of the Torbay Local Plan details that all development should be designed to provide a good level of amenity for future residents or occupiers and should not duly impact upon the amenity of neighbouring and surrounding uses.

Given its siting, scale, and design, it is considered that the proposed development would have an acceptable impact on the amenities of neighbouring occupiers.

Units 4, 5, and 6 would not be served by private amenity spaces, however, there is considered to be sufficient communal amenity space to serve these units, particularly given the proximity of the site to publicly accessible open spaces, including beaches. Following negotiation between planning officers and the applicant, the scheme has been revised and the previously identified concerns in relation to the standard of accommodation to be provided have been addressed. The proposed dwellings would exceed the Council's requirements in terms of internal living spaces; would provide adequate private and communal spaces to serve the proposed dwellings; and each of the units would benefit from an acceptable standard of general amenity in terms of their outlook, access to natural light, and privacy.

To ensure an adequate standard of amenity for the proposal's future occupiers, conditions are recommended to secure acceptable arrangements in relation to

refuse storage, landscaping, boundary treatment, the use of obscure glazing, and the provision of a privacy screen between Unit 8 and the rear garden area of Unit 2.

Subject to the use of these conditions, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

#### **4. Other Considerations**

In all other respects, the proposal was previously considered to be acceptable, in some cases subject to the use of conditions. Planning conditions are recommended below and these reflect both this updated assessment, and the assessment previously undertaken.

#### **CIL**

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

#### **Conclusions**

Whilst the proposal would, to some extent, be contrary to the requirements of Policies DE1 and TO2, the specific circumstances of this particular site and proposal are such that, on balance, it is considered that the identified harm is outweighed by other material considerations. As explained earlier in this report:

1. The proposal would result in visual enhancements to the existing additions to the original building;
2. These additions are well screened from public vantage points and the proposed enhancements in relation to the key building, which is the most prominent building at the site, would improve the contribution it makes to the conservation area;
3. Given the siting and design of the proposal, the less than substantial harm identified is considered to be limited in this case;
4. The proposal would provide what is considered to be a reasonably good quality development that would contribute ten dwellings to help address the Council's current housing shortfall.

As such, the proposal is recommended for approval, as per the recommendations detailed earlier in this report.

## **Conditions**

### **Materials**

No development shall take place until details of the proposed cladding materials (walls and roofs) and openings have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

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

### **Boundary Treatment**

Prior to the first occupation of the development hereby permitted, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed boundary 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 Adopted Torbay Local Plan 2012-2030.

### **Landscaping**

No development shall take place until details of all proposed hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within four weeks of the development being brought into use, and shall be retained for the life of the development.

Reason:

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

### **Refuse Storage**

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

Reason:

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

#### *Key Building*

No development shall take place until details of the proposed openings, roof and wall materials, and other modifications and improvements to the key building (the original building) have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in full prior to the occupation of the first unit to be completed within the key building, and shall be retained thereafter.

Reason:

To protect the character of the conservation area, in accordance with Policy SS10 of the Local Plan.

#### *Construction Method Statement*

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

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason:

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

External Lighting

No development shall take place until a scheme of external lighting has been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include a lighting assessment with measures to prevent light-spill into the surrounding area and harm to protected species. The development shall be undertaken in accordance with the approved scheme and shall be retained as such for the life of the development.

Reason:

In the interests of amenity/biodiversity and in accordance with Policies DE3 and NC1 of the Adopted Torbay Local Plan 2012-2030.

Parking and Manoeuvring Areas

The dwellings hereby approved shall not be occupied or brought into use until the parking spaces and manoeuvring areas detailed on the approved plans have been provided. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

Reason:

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

Bicycle Storage

Prior to the first occupation of the development hereby permitted, a scheme of bicycle storage shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason:

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

### Permitted Development

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no enlargements, improvements or other alteration shall take place to the proposed house(s) within the application site, and no outbuildings or other means of enclosures shall be erected within the associated garden areas, with the exception of one ancillary structure each up to 10 cubic metres in volume, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason:

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

### Obscure Glazing

All of the obscure-glazed windows detailed on the approved plans shall be installed as such prior to the first occupation of the associated dwellings, and then retained as such for the life of the development. The obscure glazing shall meet or exceed Pilkington Level 4, or equivalent, and shall be fixed shut or limited to openings of no more than 100mm.

Reason:

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

### Privacy Screen

Prior to the first occupation of Unit 8, details of a privacy screen to be erected along the boundary between Unit 8 and the rear amenity space of Unit 2 shall be submitted to the Local Authority for its approval in writing. The approved privacy screen shall be installed prior to the first occupation of Unit 8 and thereafter be retained indefinitely.

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

### Tree Protection

All works associated with the development hereby approved are to be carried out in accordance with Tree Protection Plan 04979 TPP.

Reason:

In the interests of tree protection, biodiversity and wider visual amenity and to

accord with Policy C4 of the Torbay Local Plan.

*Bird Breeding Season*

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

Reason:

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

*Flood Risk*

The building shall not be occupied until the surface water drainage detailed on plan reference 02617E-500 revision D (received 20.09.2018) & approved hydraulic design have been completed in accordance with the submitted plans. The surface water drainage system as detailed on these plans shall then be continually maintained thereafter.

Reason: As Torbay is designated as a Critical Drainage Area and to ensure that the development does not increase flood risk elsewhere in accordance with policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

**Informatives**

*Protected Species Informative:*

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.

### CIL Informative

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

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

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

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

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

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

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

### Proactive Working Informative

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.

### **Original Committee Report (12<sup>th</sup> November Committee)**

#### **Description**

*Conversion of existing building to form 5 houses and 5 apartments, including: demolition of existing extensions, erection of two-storey and first-floor extensions, installation of three new dormers, and formation of pitched roof over existing flat roofed outbuilding.*

#### **Executive Summary/Key Outcomes**

*The application seeks permission for the creation of 5 houses and 5 apartments, along with associated development, including a 16 space car park and associated amenity space.*

*The site includes a key building within the Roundham and Paignton Harbour Conservation Area.*

*Whilst the application proposes some positive alterations to the original property, including the restoration of some of the original features, the extension to the east of the original building, which includes a two-storey element, is deemed to be of an excessive length and scale. The extension would be wider than the original building and rather than being subservient to it, would appear to be overly dominant, resulting in harm to the character and appearance of the original property. The proposal would neither preserve nor enhance the character of the conservation area. The proposal is therefore deemed to be contrary to Policies SS10 and DE1 of the Torbay Local Plan 2012-2030.*

#### **Recommendation**

*Refusal*

#### **Reason for Referral to Development Management Committee**

*The proposal is a Major development.*

#### **Site Details**

*The site includes a large, two-storey, brick, render and tile-hung building, which is currently in use as 15 holiday units and 5-bedroom owners accommodation,*

*along with its curtilage.*

*The main building of Astoria Court has been altered and extended with a two storey flat-roofed block to the south-east corner and a two-storey, pitch-roofed 20th Century extension to the east, which is attached to the main, original building by a single-storey link block. The main building is set back by some 40m to the east of Belle Vue Road.*

*A large sandstone wall forms the western boundary of the site with a detached garage located to the south of the main entrance, which is partially attached to the boundary wall.*

*The site is within the Roundham & Paignton Harbour conservation area; an area Tree Preservation Order covers the site.*

### **Detailed Proposals**

*The application seeks permission for 5 houses and 5 apartments, with 16 car parking spaces within the application site, and associated amenity space.*

*The existing detached garage on the western boundary of the site is to be converted and extended with the addition of a pitched roof, to provide a single unit. This is illustrated on the submitted plans as unit 1.*

*The original part of the house will be divided to form 5 apartments (Units 2-6). This would involve the addition of roof-lights to the north-eastern, or principal, elevation and three small, pitch-roofed dormers to the rear, south-western elevation of the original building.*

*The two-storey, twentieth-century extension to the east would be extended to its rear with a two-storey extension of 3m in length and 8.5m in width. The height of the extension has been amended during the application process to be the same height as the existing. The proposed extension to the east would include three pitch-roofed dormers, punctuating through the eaves level. The extension would form three 2-bed houses (units 7-9).*

*The existing single-storey link is to be increased by a storey. The overall length of the extension to the east would therefore read as one attached structure to the original property measuring 16.7m in length.*

*An octagonal roof is to be added to the two storey flat roof extension to the rear of the original dwelling (to its south-west) which is to be remodelled to form a 1-bed house (Unit 10).*

*Unsympathetic windows in the existing extensions are to be replaced with windows appropriate to the character of the original property and the wider conservation area.*

There would be around 297m<sup>2</sup> of floor space demolished, with 454m<sup>2</sup> of new build. This gives a total additional floor area of 157m<sup>2</sup>.

### **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")

### **Material Considerations**

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

### **Summary Of Consultation Responses**

#### **Drainage Engineer:**

Providing the surface water drainage is constructed in accordance with the submitted hydraulic design there are no objections on drainage grounds.

#### **Highways:**

No objection

#### **Historic England:**

No comment

#### **Conservation Officer:**

There are indeed some good things in this application however this does not overcome the objections to the replacement wing for later 20th century extension. It is worth repeating that under Policy SS10 we would normally be seeking the complete removal of the wing without replacement.

The reduction in ridge height of units 8 & 9 is welcome, especially against the south-east elevation gable (drwng 3841-104 B-P1). However the sheer length of the rear roof, against that of the main block (the original building) in proportion of

55:45 clearly shows this to be excessive and another argument for reducing units 7, 8, & 9 from three to two here, and probably altering the roof line between the two units.

The rear extensions to the new units 8 & 9 add nothing to the building except a new and unwelcome form; they remain aesthetically unpleasing and are particularly overbearing to bedroom two and the private amenity space of unit 2.

The windows of the original proposed gable end on the south east return were alien in form to all other windows, but we did not ask for their removal. This is welcome and simply reflects a better understanding of the obvious geometry at the point of attachment.

The scale of the redevelopment at the rear: an insistence on 3 units instead of 2. The excessive length of these three units whether viewed from the front (north-east elevation) or the rear (south-west elevation) highlights the lack of subservience of the new work to the old. These units as here proposed neither enhance the original key building nor the wider Roundham & Paignton Harbour conservation area.

**Arboricultural Officer:**

The tree protection plan defines adequate protection zones for the dominant trees on site and should be an approved document for implementation as part of any consent.

The proposed landscape plan indicates suitable shrub and lower plant proposals for the site and positions trees in suitable locations. Greater detail of planting pits, table of prescriptive watering volumes, mulching, staking and so on will be required. Also tree sizes proposed are small and should be a minimum of 12-14cm girth and of rootballed or containerised stock type. BS.8545 contains expansive details on tree planting and establishment.

*Recommendation*

That the scheme be suitable for approval on arboricultural merit however greater detail is required for the soft landscape elements as noted above.

**Police Architectural Liaison Officer:**

From a designing out crime, fear of crime and disorder perspective the Police raise no objections to the proposal

**Strategic Transport:**

No comments received.

**Summary Of Representations**

1 letter of objection has been received. Issues raised by the objectors:

- The lodge to the front of the site is out of keeping with the building line.

### **Relevant Planning History**

DE/2017/0185 - Change of Use from Holiday Units with Owners Accommodation to 9 Self Contained Residential Units; the applicant was provided with a positive response to the proposal for 9 units.

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

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

1. Principle of the development
2. Visual impact
3. Amenity
4. Drainage
5. Ecology and trees

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

Policy H1 of the Torbay Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed.

The historic use of the building is as holiday apartments with owner's accommodation. The site is located outside a Core Tourism Investment Area. Policy TO2 (Change of use of tourism accommodation and facilities) states that the change of use of holiday accommodation or facilities outside Core Tourism Investment Areas will be permitted where:

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

Policy TO2 also requires that where a change of use away from tourism is permitted, there will be a requirement to restore buildings or land to their original historic form by the removal of unsightly features, signage, clutter and extensions relating to the holiday accommodation use. Additionally, a high priority will be given to restoring the character and appearance of buildings within conservation areas.

It is considered that the proposed conversion from holiday accommodation to

*residential would not significantly undermine the holiday character of the area or the range of holiday facilities. It is also considered that the proposal would bring other benefits, such as the provision of housing to help address the shortfall in the Council's 5 year housing land supply. The proposal has the potential to enhance the original property by restoring some of its historical character and this will be assessed in further detail later in this report. In principle, the proposed change of use is acceptable.*

## **2. Visual impact**

*Policy SS10 of the Torbay Local Plan 2012-2030 states that developments within the conservation area should preserve or enhance its character; this is in compliance with the NPPF. Indeed Paragraph 193 states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.*

*Policy DE1 states that development should be well designed, respecting and enhancing Torbay's special qualities and the character of the natural built environment including areas and building of historic interest.*

*The proposal would involve amending and improving a number of unsympathetic extensions to the original building and the restoration of the period detail of the property with the porch to the entrance of the building being reinstated to its original width. The materials proposed in the external finish are in keeping with the original property. Unsympathetic windows are to be replaced with windows appropriate to the character of the original property and wider conservation area.*

*However, whilst the length of the original building is 14m, the length of the enlarged eastern extension to the east would be 16.7m. The extension would therefore be greater in length than the original property and therefore would not appear as a subservient addition.*

*The excessive width and built form associated with the enlarged extension to the east of the original building, and the two storey extension to the rear of it, would have an over-dominant impact on the character and appearance of the original building, which is designated as a key building in the conservation area.*

*Officers have attempted to find a positive solution to this by advising that the extension to the east should be reduced in scale, resulting in the development reducing from 10 units to 9. However, in this instance, the applicant has advised that they wish the development to be determined for the scheme of 10 units.*

*It should be noted that applying Policy TO2 in full would result in the requirement to remove all unsympathetic extensions to the original property, which would leave just the original building to be subdivided.*

*For the reasons mentioned above, it is considered that the proposal would result*

*in an unsympathetic addition to the original property, which would neither preserve nor enhance its original character, or the character of the wider Roundham and Paignton Harbour conservation area. As such it is deemed to be contrary to the requirements of Policies SS10, DE1 and TO2 of the Torbay Local Plan 2012-2030.*

*It is considered that the proposal would lead to 'less than substantial harm' to the significance of a designated heritage asset which would not be sufficiently outweighed by public benefits. Therefore the proposal would be contrary to Paragraph 193 of the NPPF.*

### **3. Amenity**

*Policy DE3 (Development amenity) of the Torbay Local Plan details that all development should be designed to provide a good level of amenity for future residents or occupiers and should not duly impact upon the amenity of neighbouring and surrounding uses.*

*The proposed development would have a limited impact on the amenities of occupiers of nearby properties in the area.*

*However, it is considered that the standard of accommodation for some of the proposal's occupiers would be compromised. The combination of the single storey increase to the existing link building and the additional two-storey extension to the rear of the extension to the east of the original building, would result in dominant additions in relation to Unit 2. The proposal would result in a poor outlook and lack of natural light in relation to this unit, particularly its amenity space. Moreover, the window in the side elevation of the rear extension of unit 8 would result in overlooking to unit 2 and its external amenity space.*

*There are also potential amenity issues in relation to the communal gardens to the front of unit 6 which may result in conflict with users of the garden and occupiers of the unit. However, these concerns could be overcome by securing appropriate boundary treatment and landscaping.*

*As the proposal would result in what is considered to be a poor standard of accommodation for some of the proposed units, it is considered to be contrary to Policy DE3 of the Local Plan.*

### **4. Drainage**

*As Torbay is a Critical Drainage Area any surface water discharge rate from the site to the surface water sewer or drain must be limited to greenfield run off rate for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus a 30% allowance for climate change. It should be noted that where the greenfield run-off rate for the site is below 1.5l/sec, a discharge rate of 1.5l/sec will be accepted. The Councils Drainage*

*Engineer has confirmed that the proposed method of draining surface water run-off is acceptable. The proposal is therefore deemed to comply with Policy ER1 of the Local Plan 2012-2030.*

### **5. Ecology and trees**

*In terms of ecology, the submitted Protected Species Assessment states that no bats or breeding birds were found on the site or within the buildings. However any building works should follow the standard recommendations with regards to checking for bats prior to construction and the halting of works in proximity to any bats found should be undertaken.*

*No works involving the removal of hedges should occur during the bird nesting season.*

*With regards to trees, the Council's Arboricultural Officer has confirmed that the proposed tree protection measures are acceptable, as is the proposed shrub planting. If the application were to be approved, additional soft landscape details and the proposed protection measures would be secured by condition.*

### **Other considerations**

*The proposed parking and manoeuvring areas largely follow the existing situation, and are considered to be acceptable and comply with Policy TA3.*

*The proposal would include cycle storage and bin store areas.*

### **Neighbourhood Plan**

*The Paignton Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application. The proposal broadly complies with the policies within the Paignton Neighbourhood Plan.*

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

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

*Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due*

regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

### **Local Finance Considerations**

**S106/CIL -**

**S106:**

Not applicable.

**CIL:**

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

**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.

### **Conclusions**

The proposed extension to the east of the original property, by reason of its size, siting and design, is considered to be an uncharacteristic and overly dominant addition and is deemed to be detrimental to the character of the original property and the wider conservation area. It is also considered that the proposal would result in substandard living accommodation for some of the proposal's future occupiers. As such, the proposal is considered to be contrary to Policies DE1, DE3, SS10, and TO2 of the Local Plan, and the guidance contained in the NPPF.

### **Condition(s)/Reason(s)**

01. The proposed extension to the east of the original property, by reason of its size, siting and design, is considered to be an uncharacteristic and overly-dominant addition that would be detrimental to the character of the original property and the wider conservation area. The proposal therefore fails to preserve or enhance the character and appearance of the conservation area, contrary to policies DE1, SS10, and TO2 of the Torbay Local Plan 2012-2030. The proposal would result in less than substantial harm to a heritage asset and insufficient public benefits have been demonstrated to outweigh this harm, contrary to the guidance

contained in the NPPF.

02. *The combination of the single-storey increase to the existing link building and the additional two-storey extension relating to the rear of units 8 & 9, would result in dominant additions, overlooking and loss of light to the potential future occupiers of unit 2. As such, it is considered that the proposal would not provide an adequate standard of living accommodation to some of the proposal's future occupiers, contrary to Policy DE3 of the Torbay Local 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/has not worked proactively and positively with the applicant to attempt to resolve the planning concerns the Council has with the application. However, in the event the applicant was unable to satisfy the key policy tests of Policies DE1, DE3, SS10, and TO2 in the submission and as such the application has been refused.*

### **Relevant Policies**

*DE1 - Design  
DE3 - Development Amenity  
H1 – Application for New Homes  
H2 – Affordable Housing  
SS11 - Sustainable Communities Strategy  
SS10 - Conservation and Historic Environment  
ER1 - Flood Risk  
ER2 - Water Management  
NC1 - Protected sites - internationally import  
TO2 - Change of use of tourism accommodation  
TA2 – Development Access  
TA3 - Parking requirements*

**Application Number**

P/2018/0700

**Site Address**

Claylands Cross  
Brixham Road  
Paignton  
TQ4 7BA

**Case Officer**

Mr Scott Jones

**Ward**

Blatchcombe

**Description**

Hybrid Application:

1. Full application for service road, with Phase 1 building and associated car parking and loading yard.
2. Outline application for Phase 2 building and associated car parking and loading yard with all matters reserved except for access.

Includes two industrial units totalling 10,788 sqm. Phase 1 unit for B2 (general industrial) use; Phase 2 unit for B8 (storage/distribution), B2 (general industrial), or B1 (business) use

**Executive Summary**

The application site relates to a vacant brownfield site which has been previously used as a waste transfer facility for inert construction products and more recently for the temporary storage of highways maintenance materials for the Local Authority. The site comprises 5 hectares of mixed grass/scrub and woodland, with a central scrub plateau that has been recently cleared. To the west of the site is Brixham Road (part of the Torbay Major Road Network), to the north is Tweenways junction and the Morrison's superstore, which is located on lower ground, to the east is Paignton Zoo, and to the south is a play area and residential properties. The site is identified in the Torbay Local Plan as a potential development site for consideration in the Neighbourhood Plan, primarily for employment investment. The site is within the Critical Drainage Area as designated by the Environment Agency and is within a Greater Horseshoe Bat Sustenance Zone and a Strategic Flyway. The site is adjacent to an Urban Landscape Protection Area, Core Tourism Investment Area, Ancient Woodland and Other Site of Wildlife Interest.

This hybrid application includes proposals for full planning permission and outline permission:

- Full planning permission is requested for alterations to Claylands Cross junction to create an access to the application site; access roads within the western part of the site; and the provision of a B2 Use (General Industry) building with a gross ground floor area of 5574sqm, with related parking, loading and general infrastructure including drainage and earth retaining works.
- Outline planning permission is requested with all matters reserved except access for the erection of a B1 (Business) / B2 / B8 (Storage and Distribution) building with an indicative ground floor area of 5035sqm, with indicative car parking areas, loading yards and service road. The layout plans show the two buildings separated by the spine road and on two separate levels, which reflects a level change on the site. Each building is served by a loading yard and car park area.

The proposals include parking spaces for each unit and include electric charging facilities and disabled parking, and cycle parking.

The site is identified within the Torbay Local Plan (SDP3.3) as a key site for employment providing 6.8ha of employment land, which is deliverable early in the plan period. The site is noted as a potential development site for consideration in the Paignton Neighbourhood Plan for employment investment. Policies SS4 and SS5 of the Torbay Local Plan support the provision of new employment space and the improvement of existing employment space in West Paignton to support the creation of additional jobs. Similarly, policies SDP1 and SDP3 support the creation of a range of employment opportunities in this area. The supporting information indicates that the construction period is projected to create approximately 168 full-time equivalent jobs and contribute approximately £45m towards the local and regional economy, and that once complete and operational the development is expected to accommodate approximately 318 direct full-time equivalent jobs and approximately 48 full-time equivalent indirect jobs, and directly contribute over £13m towards the local economy per year.

In-line with the above the principle of industrial development in this location is considered acceptable and compliant with Local Plan policy. There is strong planning policy support for the proposed employment use which is recognised as being important to delivering the Local Plan's growth strategy.

A Habitats Regulation Assessment (HRA) is required to assess the impact of the development and determine any likely significant effect on the integrity of the South Hams SAC. The Council's ecology advisor is currently reviewing additional ecological information that has recently been submitted. Consideration of the impact upon protected species is also being considered. The Council's Arboricultural Officer has also raised a request for further information to determine the impact upon trees, whilst the Council's Strategic Transport Officer and Highway Authority Officers are awaiting revised junction details following some initial

concerns regarding the safety of the design and the impact upon the network. Subject to the resolution of these issues the application is supported and considered acceptable.

### **Recommendation**

Conditional approval: Subject to;

- (i) A Habitats Regulation Assessment that concludes the proposed development would not have a likely significant effect on the South Hams SAC and the imposition of any proposed conditions;
- (ii) Submission of a final detailed junction design to the satisfaction of Officers in consultation with the Highway Authority;
- (iii) Submission of additional information in regard to tree protection measures and mitigation tree planting, to the satisfaction of Officers, and
- (iv) Final drafting of conditions and any necessary S106 Legal Agreement to be delegated to the Assistant Director of Planning and Transport.

### **Statutory Determination Period**

13 weeks determination period, with an extension of time agreed with the applicant until 23rd December 2018.

### **Site Details**

The application relates to a vacant brownfield site which has been previously used as a waste transfer facility for inert construction products and more recently for temporary storage of highways maintenance materials for the Local Authority. The site is approximately 5 hectares in size with a central plateau of recently cleared scrub and grass. To the edges and towards the lower eastern section of the site there are areas of woodland.

In terms of the site's location, to the west is Brixham Road (KFC and Bookers sit opposite); to the south there is a play area and residential properties off Harbourne Avenue at the edge of the "Roselands" residential estate; to the east the land drops towards Paignton Zoo; and to the north the land drops away to Morrison's superstore.

In regard to relevant designations, the Local Plan identifies the site as a potential development site for consideration in the Paignton Neighbourhood Plan (PNPE7) primarily for employment investment, it is within the Torbay Critical Drainage Area (as designated by the Environment Agency), and within Greater Horseshoe Bat Sustenance Zone and a Strategic Flyway. In addition, the adjacent highway from which access is sought is part of the Torbay Major Road Network. In terms of nearby designations, the site is adjacent to an Urban Landscape Protection Area (Clennon Hill/Roselands Valley), a Core Tourism Investment Area (Zoo), and an

Other Site of Wildlife Interest (Paignton Zoo). The referendum version of the Paignton Neighbourhood Plan does not specifically identify the site for any purposes.

### **Detailed Proposals**

This is a hybrid application comprising proposals for full planning permission and outline permission. Full planning permission is sought for "Phase 1", which covers the western half of the site closest to the Brixham Road, and outline permission is sought for "Phase 2" which is the eastern half of the site, as summarised below.

Full planning permission is sought for works to the existing junction off Brixham Road with Borough Road, to create a four-arm junction and access into the site to serve the development, with the existing access further north removed. Full planning permission is also sought for a service road to serve a single large employment building (B2 - General Industry), along with associated car parking and a service yard / loading bay. The roof of the proposed building would be a low-lying pitched roof set behind a parapet. In terms of materials the building would be finished in grey brick and grey sheet cladding, with grey aluminium windows and curtain walling, under a sheet metal roof with roof-lights. The building height is 10.3m to the top of the parapet and 11m to the tops of the three ridges within the roof design. The proposed building would be 83.5m wide by 66.8m deep, having a gross internal ground floor area of 5574sqm, with a small degree of mezzanine office space above. The principal elevation faces south towards a parking area with 68 spaces, which includes 8 electric charging points and 4 disabled spaces. To the rear there is a loading bay and service area. There are a further 7 parking spaces provided within a linear run adjacent to the service road to the side of the building.

Outline planning permission is sought for a single employment building indicatively shown in the eastern half of the site, which is proposed to be used for B1 (Business), B2 (General Industry) or B8 (Storage/Distribution) purposes. The use class will be established by the first use of the building. The outline proposal shows a single rectangular building that is slightly smaller than "Phase 1", providing 5035sqm of gross internal floor space at ground floor. The indicative plans show access and car parking to the west and southwest of the building via a ramped access downwards. 75 car parking spaces are shown. To the north of the building, ramped access is shown down to a loading bay and service area. Indicative finished floor levels show the building being set 5m lower than "Phase 1" with the western section of the building being built close to the existing ground level and the eastern section being on raised land where the land currently drops away. The design and access statement submitted with the application shows the building design and expected building height comparable to the "Phase 1" building, although this detail is indicative only at this stage and would be agreed in the submission of the reserved matters application.

## **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")

### **Material Considerations**

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

\*The Paignton Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post examination draft neighbourhood development plan, so far as material to the application.

## **Summary of Consultation Responses**

### **Engineers**

Due to the ground conditions the proposal is for surface water run-off to be discharged at a controlled rate to a surface water system. Following the receipt of revised surface water drainage details there is no objection to the grant of planning permission in respect to flood risk. The development should proceed in accordance with the submitted surface water drainage strategy and detail drawing number 9519-WSP-00-GL-DR-C-0004 Rev L.

### **South West Water**

No Objection.

### **Environment Agency**

No objection to the development. Note that the landowner will require to agree a new closure plan for the landfill surrender as a number of the monitoring positions will change, which does not need to be sought through the planning process. It is also noted that the risk of building on landfill will remain with the developer in terms

of potential issues such as subsidence and the build-up of gases if not suitably managed.

### **Community Safety**

No objection in regard to potential noise impacts subject to the recommendations of the noise impact assessment being implemented, which sets appropriate targets for noise related to mechanical plant. In regard to contamination as there is still gas and vapours being produced on the site it will be necessary to attach conditions if planning permission is granted, relating to the submission and implementation of a remediation scheme and the reporting of any unexpected contamination.

### **Strategic Transport incorporating the comments of the Highway Authority**

At present there is a degree of concern in regard to the design and modelling of the junction and further consideration on the physical works and lighting arrangements for the junction are required. The absence of an agreed design curtails the ability to conclude on the acceptability of the highway works in terms of safety and the potential impact upon the strategic network. It is recommended that any final design should be subject to an independent safety audit.

The access itself and internal road network is considered acceptable. Initial concern on the tracking information submitted in terms of some minor conflict with a section of the footpath to the east of the Phase 1 building has resolved this issue and there is now no conflict with pedestrians.

It is recommended that an adequate section of the access road is adopted to ensure that vehicles can enter off the junction and turn safely before having to enter private land. This should therefore include a turning head. It would be necessary that such highway is designed and built to Torbay's adoptable standard.

The parking is below the expected standards outlined within Appendix F of the Local Plan and there is hence some discordance with Policy TA3 of the Local Plan. It is however noted that the level of parking is not dissimilar to that identified within a preceding outline application which was resolved to be approved by Development Management Committee prior to its withdrawal in order to progress this more detailed application. It is recommended that a robust Travel Plan that seeks at least 30% modal shift should be agreed and regularly reviewed in order to address the limited supply of on-site parking.

### **Natural England**

No objection in regard to statutory protected sites. Protected species should be considered against standing advice and potential impact on SSSIs should be considered with reference to the GIS database.

### **Ecology Advisor**

Updated comments are awaited following the submission of further ecology

surveys.

Initial comment on the preliminary submission documents concluded that there was insufficient information to enable a Habitat Regulations Assessment to be undertaken by Torbay Council, and assessment that is considered necessary due to the sites location in relation to the South Hams SAC and Strategic Flyways and the presence of a known Greater Horseshoe Bat Roost adjacent to the site within the boundary of the Zoo. Further information is required in regards to;

- Full methods and results of bat activity and roost surveys, great crested newt surveys, and invertebrate surveys,
- A rationale for reptile translocation at the site, including full details of receptor site selection and subsequent monitoring,
- Further details of habitat creation and management proposals, and
- A revised impact assessment to more accurately reflect the balance of biodiversity loss and gain likely to result from the proposals.

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

No objection. Previous comments submitted for planning reference P/2016/1123 are still relevant. As commercial development can be vulnerable to crime it is recommended the development is constructed to achieve Secured by Design compliance to ensure a consistent level of security throughout and opportunities for crime, fear of crime and ASB are minimised. Secured by Design have compiled a specific guidance document 'Commercial Developments 2016' which incorporates new and improved security standards developed to address emerging criminal methods of attack .

### **Summary of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement. 21-day consultation period commenced 18.07.2018. Two letters of objection:

One letter accepts that the development needs to go ahead but requests that due consideration is given to screening along the border with properties off Harbourne Avenue and the park.

One letter from Paignton Zoo objecting to Phase 2 due to the loss of badger foraging habitat and the potential implications upon heightened TB risk to zoo mammals where there was a case of bovine TB last year and there is currently DEFRA imposed restrictions on the movement of animals.

### **Relevant Planning History**

2016 'Hybrid' application (P/2016/1123) for similar commercial development for detailed access to the site and outline employment uses for B1 (Business) and B8

(Storage and Distribution). The application was considered by the Development Management Committee on the 9th January 2017 where members resolved to approve the application subject to the submission of a Habitats Regulation Assessment (Screening) that concludes the proposed development would not have a likely significant effect on the South Hams Special Area of Conservation, the submission of additional information about groundwater, landscaping, highways, biodiversity, noise, lighting and securing financial contributions where necessary, with the final drafting of conditions relating to those set out in the submitted report to be delegated to the Executive Head of Business Services. This application has been withdrawn following the submission of the current application.

P/2002/1561 Proposed parking area for servicing gas governor APPROVED 12/11/2002

P/2001/1684 Storage of disused refrigerators (also involving removal of some non-leakable CFCs) APPROVED 12.04.2002

P/1988/2131 Use as offices and laboratory accommodation APPROVED 19.12.1988

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

#### **Principle and Planning Policy**

The site is identified within the Torbay Local Plan (SPD1 and SDP3.3) as a key site for employment providing 6.8ha of employment land which is deliverable early in the plan period. The Torbay Local Plan also identifies the site as a potential development site for consideration in the Paignton Neighbourhood Plan for employment investment (PNPE7). This indicates that the Local Authority considers the site as having potential for employment-based development.

Policies SS4 and SS5 of the Torbay Local Plan support the provision of new employment space and the improvement of existing employment space in West Paignton to support the creation of additional jobs. Similarly Policies SDP1 and SDP3 support the creation of a range of employment opportunities in this area.

In terms of national policy guidance the NPPF states that in making effective use of land, planning policies and decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land (Para 118).

In-line with the guiding policies outlined above, the principle of development for employment purposes in this location is considered acceptable.

#### **Highway Safety, Access and Parking**

The application proposes an employment use for the land together with detailed junction amendments and access arrangements to serve the development, together with detailed parking for "Phase 1" and indicative parking for "Phase 2". "Phase 1" includes 75 parking spaces and the indicative plans for "Phase 2" show 80 spaces, which gives a total of 155 spaces across the development. Both phases show electric charging and disabled provisions, along with cycle storage. The issues around highway safety, access and parking are considered below.

### Highway Safety and Access

Access to the site is proposed via Brixham Road and works to the junction at Claylands Cross are proposed. The works would include an additional fourth arm to the signalised junction and associated works to the crossing routes and detailed design elements, together with the extension to the footway from the junction to the site on both sides of the carriageway and a pedestrian crossing with dropped kerbs. It is necessary to ensure that the development would provide a safe access and would not create severe impacts upon the wider road network.

The initial design detail for the junction and the modelling information that informed the design raised concern in terms of the likely impact upon the network, in terms of capacity, and a concern in terms of highway safety due to the junction design. Following positive and proactive discussions, the parameters to inform the junction design (and the resultant modelling) has been broadly agreed and revised detail is currently being finalised for consideration. A revised junction layout and traffic assessment is therefore awaited.

Based on the draft information currently available for the agreed junction strategy, which is to create a four-arm junction, this would function on a 120-second traffic light cycle (to align with other junctions on the Western Corridor). It has been demonstrated that there would be a non-severe impact upon the capacity of the junction and wider network. The main concern, in terms of network capacity, is the potential for southbound queues in the AM peak and northbound queues in the PM peak. The draft remodelling has identified the expected peak flows for the emerging junction design in 2020, together with comparison figures for the existing junction in 2020. In 2020, the existing junction will experience peak queues up-to circa 220m. Whereas, the draft information on the emerging design suggests the amended four arm junction would result in peak queues up-to circa 200m. Although there is awareness that the junction is close to capacity the difference on network flow with and without the development is not considered significant and importantly there remains sufficient clearance between the queues and the nearby junctions to the south that serves Sainsbury's and Yalberton and to the north at Tweenaway. The NPPF clearly states that development should only be prevented or refused on highways grounds if there would be severe residual cumulative impacts on the road network (or an unacceptable impact on highway safety).

In light of the information currently available, the likely impacts upon the road network are not considered to be severe or unacceptable, and therefore the development should not be refused on the grounds of its impact on the Western Corridor.

Whilst it is not considered that the impact of the development on the highway network would be severe in relation to paragraph 109 of the National Planning Policy Framework, to ensure that the development does not unduly impact on the highway network and that a safe access is provided, further information is required. It is the advice of Highway Officers that any resultant design is subject to a Safety Audit.

In summary there are ongoing discussions between the applicants and officers. Members will be updated further at the Committee Meeting. If the revised submitted design is found to have a less-than severe impact upon the highway and does not raise undue highway safety issues Officers consider that the scheme would be acceptable on highway and movement grounds, having regard to Policies TA1 and TA2 of the Local Plan, and the guidance contained in the NPPF.

### Parking

The number of parking spaces for "Phase 1" is below the expected provision as identified within Appendix F of the Torbay Local Plan and the number of parking spaces indicatively shown for "Phase 2" would be below the expected provision should the building's use be B1 or B2. Should the building's use become B8 the indicative layout would provide parking for "Phase 2" above expected levels.

There is considered limited opportunity to increase parking levels without the likelihood of impacts on either the overall design quality, by reducing prominent landscaping to the front of the development, or ecology, by pushing development to the edges of the site where existing trees and proposed mitigation planting is expected. In addition it is relevant to recognise that the level of parking proposed is not dissimilar to the level of parking proposed in the previous outline scheme that was resolved to be approved by the Development Management Committee in early 2017, under a similar policy regime. In this context the level of parking is considered acceptable, subject to ensuring that due consideration is given to measures to try and promote sustainable modes of transport to the site by employees and/or visitors. To this end, cycle parking is proposed for both phases, and its provision should be a condition of any approval. In addition, robust travel planning should be encouraged to try and promote car sharing and/or more sustainable modes of transport over single car use. Again this should be a condition of any grant of consent, and this should include regular monitoring and review to meet the agreed targets. General guidance is that a travel plan should seek to achieve at least 30% of employee trips being made by sustainable modes of transport. A travel plan and freight plan will also help alleviate the junction impacts by avoiding commercial vehicle movements during peak times can be

secured by condition if approved.

In regard to the detail of the parking provision electric charging points and disabled parking is also detailed, which is welcomed and should be secured by condition.

In summary, the level of parking is considered acceptable in order to balance the policy aspirations of supporting economic growth and job provision, and the desire to seek good design, good landscape quality and to protect ecology, subject to measures to promote sustainable travel choices, in accordance with Policies TA2, TA3, DE1, C4 and C1 of the Local Plan.

## **Design and Visual Impact**

Paragraph 124 of the NPPF states that good design is a key aspect of sustainable development and that high-quality buildings and places is fundamental to what planning and development processes should achieve. Consistent with this Policy DE1 of the Torbay Local Plan states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials, whether they protect local and longer distance views and the impact on the skyline especially from public vantage points, having regard to the location and prominence of the site and whether they positively enhance the built environment.

Due to the topography and existing screening the site is unlikely to be visible from much of the surrounding area, with the exception of Brixham Road and from the south, particularly Diptford Close. The changes to the junction and topography of the site will urbanise the appearance of the site and open it up to views from Brixham Road. Whilst the character of the site will change as a result of the proposal the changes are not considered to be out of character with the locality, with the site being located on a major road network and in close proximity to retail, industrial and residential developments.

The scale of the buildings proposed is similar to the warehouse buildings on the opposite side of Brixham Road in the immediate locality. The scale of development proposed would be appropriate in this urban location subject to mitigation through a robust landscaping scheme. There are opportunities for further landscaping particularly to the Brixham Road frontage and to the south of the site alongside the boundary with the play park to help screen the development from Brixham Road and help to maintain a green setting to the site.

The palette of materials for "Phase 1" is considered to be suitably well-resolved and will present a relatively positive addition within the streetscene in the more prominent western half of the site. The principal elevation of the Phase 1 building fronts the parking area and overlooks the access road, which provides a legible internal layout, whilst also providing a more active frontage when passing and approaching the site. The side of the building facing the public realm will be partly

screened by planting and its scale will be naturally diminished due to the lower land level within the site.

As "Phase 2" is proposed in outline the detailed layout, scale, landscaping, and appearance will be considered through a further Reserved Matters application. Notwithstanding this, the details provided indicate that an acceptable scheme can be achieved.

It is also noted that the existing woodland fringe that surrounds the site, which is to be enhanced, provides a cohesive boundary to connect the site to other areas of woodland nearby continuing to provide a strong green corridor between this site and those to the east and south east, which is consistent with the aspirations of Policies C4 (Trees, hedgerows and natural landscape features) and DE1 of the Torbay Local Plan.

In summary the design is considered acceptable and the visual impact of the development is considered minimal, which presents development in accordance with the aspirations of Policy DE1 of the Local Plan and the NPPF, notably Paras 124 and 127. This is subject to the use of conditions to secure details of boundary treatment, lighting, refuse storage, and hard and soft landscaping.

### **Impact Upon Local Amenity**

In terms of sensitive receptors, the proposals are to be sited to the north and south of existing residential developments. Paragraph 124 of the 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 180 states that planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development. Policy DE3 of the Torbay Local Plan states that developments should be designed to not unduly impact upon the amenity of neighbouring and surrounding uses, with one of the criteria for assessment being the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution.

The proposals are separated from existing residential dwellings by existing planting and areas of open space. Due to the separation distances involved, where the nearest dwelling to the south is approximately 80m from the nearest building and 140m from the nearest service yard, and to the north the nearest dwelling is over 90m from the nearest building and 50m from the nearest service yard, along with the scale and design of the proposals, it is considered that there would not be any unacceptable harm to residential amenity in terms of access to natural light, privacy, or outlook.

The proposal would result in an intensification of the use of the site, with both day-time and night-time operations, which could result in harm to local and residential amenity in terms of traffic and other noise, along with light nuisance. The accompanying noise assessment has considered plant noise and location, and the noise impact expected by car movement and activity during both day and night, such as car doors closing. The conclusions are that the expected noise impacts are acceptable. No objections have been raised by Environmental Health officers in terms of potential noise subject to the recommendations of the noise impact assessment being implemented. In terms of lorry movements, it is recommended that a condition be imposed requiring the approval of a freight management plans, to include the proposed delivery times and evidence to justify them. Conditions can also be imposed to secure a construction method statement and the details of external lighting, to ensure acceptable effects in terms of amenity during the construction phase

Subject to the use of the aforementioned conditions, the proposal is considered acceptable on amenity grounds and compliant with Policy DE3 of the Torbay Local Plan and relevant guidance within the NPPF.

## **Drainage, Flood Risk and Contamination**

### Drainage and Flood Risk

The site lies within the Critical Drainage Area, as designated by the Environment Agency, and the standing technical advice, along with Policies ER1 and ER2 of the Torbay Local Plan, provides advice on the hierarchy approach to surface water drainage.

The supporting information states that, due to the ground conditions, the proposal is for surface water run-off to be discharged at a controlled rate to a surface water system. This is considered acceptable by the Council's Engineers.

In terms of detail, following the receipt of revised surface water drainage, there is no objection to the grant of planning permission in respect to flood risk. The development should proceed in accordance with the submitted surface water drainage strategy and drawing number 9519-WSP-00-GL-DR-C-0004 Rev L.

Subject to the above, the proposal is considered to be in accordance with policies ER1 and ER2 of the Torbay Local Plan.

### Contamination

The application site has been previously used as a waste transfer facility for inert construction products and for temporary storage of highways maintenance materials for the Local Authority.

Soil testing has been carried out at the site and indicates the presence of contamination. In light of this, a condition has been recommended to require the submission of a remediation scheme, the implementation of the approved remediation scheme, and the reporting of unexpected contamination.

Paragraph 118 of the NPPF states that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and support appropriate opportunities to remediate despoiled, degraded, derelict, contaminated or unstable land. In addition Paragraph 178 states that decisions should ensure that a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities. Subject to the inclusion of the conditions recommended by the Council's advisors, the development is considered to be aligned with the aspirations of national policy and is considered compliant with Policy ER3 of the Torbay Local Plan.

### Ecology and Arboriculture

In terms of wildlife habitats, the proposed works would involve the removal of approximately 3 hectares of woodland and grassland/scrub. A corridor of woodland which bounds the site to the north and east will be protected and retained post-development.

In terms of fauna, an extended phase one habitat survey together with a number of further specialist surveys, including badger, assessment of trees for bat roosting potential, bat activity, great crested newt and invertebrate surveys, have been undertaken to inform the application.

The species surveys have confirmed the presence of a number of badger setts within the woodland to the eastern and south-eastern parts of the site. Bat activity surveys have confirmed the presence of a number of bat species, including occasionally foraging and commuting within the site boundaries by Greater Horseshoe bats. Surveys of the site confirm the likely absence of great crested newts from within the site and invertebrate surveys indicate a relatively limited invertebrate presence. It has been confirmed that reptile translocation has taken place, under licence, for a population of slowworms and grass snakes from the site and that reptile exclusion fencing remains in order to prevent recolonisation. It is also noted that the woodland and scrub habitats are likely to support nesting birds.

In regard to the proposals, a range of habitats will be retained and enhanced, created, and managed, and a number of mitigation measures are proposed in order to take into account biodiversity enhancement aims of local and national planning policy and protected species legislation. Mitigation measures include the creation of approximately 12,000sqm of species-rich wildlife meadow, with scattered native trees and areas of native shrub planting to enhance and buffer woodland edge habitat. These measures seek to ensure that there is a continuous

native species habitat corridor present around the northern and eastern site boundaries. Additional areas of amenity grassland, native hedge and tree planting along the western site boundary will provide further habitat.

The mitigation above complements the objective of retaining and protecting woodland within the eastern extent of the site in order to protect badger setts and the creation of an artificial sett within the north-eastern extent of the site (to counter the proposed closure of setts within the southern extent of the site), managed under a Natural England licence. In respect of bats it is recommended to retain a darkened vegetated corridor around the northern, eastern and southern site boundaries, and to undertake emergence surveys of trees identified with moderate/high potential for roosting bats if removal is proposed under Phase 2. In regard to birds it is proposed that any vegetation clearance will be undertaken outside of nesting bird season or under supervision of a suitably qualified ecologist. In relation to invertebrates, it is proposed to re-create a mix of habitats within the site designed to include species which act as food plants for invertebrates

The Conservation of Habitats and Species Regulations 2017 imposes on local authorities the duty imposed by the EU Habitats Directive to ensure that plans or projects will not adversely affect European Sites such as SACs. In order to fulfil this duty, the authority must carry out a Habitats Regulation Assessment ('HRA'). The results of this process will be presented at the Committee Meeting.

Paragraph 175 of the NPPF states that in terms of biodiversity, if significant harm resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Advice from Natural England suggests that the development is unlikely to result in significant effects upon the South Hams SAC due to the urban location of the site despite the fact that the site is located within the Sustenance Zone and partly with a Strategic Flyway.

In terms of arboriculture a number of trees are to be removed as part of the application, as approximately 3 hectares of mixed woodland and grassland/scrub is to be removed. The submitted tree report identifies trees, groups and woodlands on and adjacent to the site as key features for the local area, however Root Protection Areas (RPAs) have not been plotted and there is an absence of an Arboricultural Impact Assessment.

At present, no details have been included to show an assessment of the value of trees to be removed and how planting proposals would provide suitable mitigation. At present there is insufficient information to assess the impact upon the tree population from proposed removals and also the viability of the proposals with regard to the impacts upon the Root Protection Areas of retained trees, including any changes in levels, services and enabling works, in order to determine accordance with the policy aims of Policy C4 (Trees, hedgerows and natural landscape features) of the Torbay Local Plan. Further information has been

requested on these points and Members will be updated at the committee meeting.

As matters stand, the ecological and arboricultural implications of the development are not fully resolved and the outcome of the Habitat Regulations Assessment, impact upon biodiversity and protected species, and impact upon trees, will be summarised to Members at the Committee Meeting. Officers are, however, satisfied that acceptable solutions are achievable.

### **Local Finance Considerations**

The proposed development is expected to provide full-time higher paid employment opportunities and help to raise Torbay's economic output and help in reducing unemployment across the area.

Over the construction period, the submitted information states that the proposed development is projected to create approximately 168 Full-time equivalent jobs and contribute approximately £45m towards the local and regional economy. Once completed and operational, the development is expected to accommodate approximately 318 direct Full-time equivalent jobs and approximately 48 full-time equivalent indirect jobs, and directly contribute over £13m towards the local economy per year.

If consent is granted the immediate commencement of Phase 1 is expected.

Building a strong, competitive economy is supported in the NPPF where it states that planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt, and that significant weight should be placed on the need to support economic growth and productivity (Para 80). Local policy is equally supportive and strategic Policy SS4 (The economy and employment) of the Torbay Local Plan states that the Council will, in principle, support proposals that deliver employment space and high value jobs.

### **S106/CIL and Affordable Housing -**

#### Affordable Housing

Affordable housing provision/contribution is not required from this development in accordance with Policy H2 of the Torbay Local Plan.

#### S106

Contributions are not required from this development in accordance with Policies SS5/SS6/SS7/SS9/SS11/H2, or the Planning Contribution and Affordable Housing SPD. To date, there have been no identified requirements for S106 payments.

#### CIL

The application does not include residential or retail floor-space. The CIL liability for this development is therefore Nil as the CIL rate for this type of development is

Nil.

## **EIA/HRA**

### **EIA:**

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development. Date Screening Opinion issued: 30.08.2018

### **HRA:**

The application site is within a strategic flyway/sustenance zone associated with the South Hams SAC.

A Habitat Regulations Assessment is being carried out for this development and a conclusion is awaited on whether the development is likely to have a significant effect on the South Hams SAC.

If no likely significant effect is concluded, the application would be suitable for approval subject to any other relevant material planning considerations and subject to securing any mitigation measures either by condition or s106 agreement as may be appropriate.

## **Human Rights and Equalities Issues**

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

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

## **Proactive Working**

In accordance with the guidance contained in the National Planning Policy

Framework the Council has worked in a positive and pro-active way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

### **Conclusions**

The proposals are, subject to resolving outstanding matters in regard to junction design that satisfies highway safety and network impact considerations; and subject to satisfactory conclusions of the HRA exercise that concludes no likely significant effect on the South Hams SAC, or other ecology and arboricultural matters, considered to accord with the provisions of the Torbay Local Plan and all other material considerations and are recommended for approval.

### **Condition(s)/Reason(s)**

01. In relation to the area identified as "Phase 2" on the Proposed Site Layout Plan (Drawing Number 9519-WSP-00-GL-DR-C-0001 Rev K), an application for the following reserved matters shall be submitted to the Local Planning Authority for its approval in writing:(i) layout;(ii) scale;(iii) appearance; and(iv) landscaping.

The details of the Reserved Matters shall be consistent with the outline proposals within the submitted and approved Design and Access Statement (Dated 26.06.2018). Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development within Phase 2 is commenced, including clearance of scrub or trees, and the development shall be undertaken in full accordance with the approved reserved matters.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

02. The outline permission granted in relation to Phase 2 is subject to the following standard condition:
  - that in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and
  - that the development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

03. The full planning permission granted in relation to Phase 1 shall commence within three years of the date of this planning permission.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

04. No development shall take place within a phase, including any groundworks or demolition, until a Construction Method Statement (CMS), in relation to that phase, has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period for that phase.

The CMS shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason: 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. These details are required pre-commencement as specified to ensure that building operations and vegetation removal are carried out in an appropriate manner to avoid nuisance to neighbouring uses and inconvenience to highway users, in accordance with Policy DE3 of the Torbay Local Plan.

05. No development (including demolition and ground works) or vegetation clearance works shall take place within any phase of the development until a Waste Audit and 5 year Waste Management Plan for that phase has been

submitted to and approved in writing by the Local Planning Authority. The Waste Audits and 5 year Waste Management Plans shall include measures to:

- a) Prevent and minimise, re-use and recycle waste (including composting where appropriate).
- b) Minimise the use of raw materials.
- c) Minimise the pollution potential of unavoidable waste.
- d) Seek alternative modes of transport (to the use of roads) to move waste (wherever possible).
- e) Make provision for the storage and collection of waste.
- f) Dispose of unavoidable waste in an environmentally acceptable manner.

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

Reason: To minimise waste from the development in accordance with Policy W2 of the Torbay Local Plan. These details are required pre-commencement as specified to ensure that waste generation is minimised from the start of the development and is dealt with in a sustainable way.

06. No development (including demolition and ground works) or vegetation clearance works shall take place within any phase of the development until a Construction and Environmental Management Plan (CEMP) for that phase has been submitted to and approved in writing by the Local Planning Authority. The CEMP[s] shall be prepared in accordance with the specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of "biodiversity protection zones".
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction.
- d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP[s] shall be implemented and adhered to throughout the construction periods of the relevant phase of the development that they

relate to.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan and the NPPF. These details are required pre-commencement as specified to ensure that biodiversity is not harmed by building operations or vegetation removal.

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

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

08. Prior to the first use of any phase, a Landscape and Ecological Management Plan (LEMP) for that phase shall have been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be prepared in accordance with the specifications in clause 11.1 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

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

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

the LEMP.

Reason: In the interests of the amenities of the area and biodiversity in accordance with Policies DE1 and NC1 of the Torbay Local Plan and the NPPF.

09. Notwithstanding the submitted landscaping details for "Phase 1", prior to the commencement of development above ground level, details of all proposed hard and soft landscaping for that phase shall have been submitted to and approved in writing by the Local Planning Authority.

Reason: To protect the amenities of the area and secure good design, in accordance with Policies DE1, C4 and NC1 of the Torbay Local Plan.

10. All landscaping and planting, seeding or turfing comprised within the approved landscape scheme for any phase of development, that has been approved by condition (Phase 1) or by a reserved matters application (Phase 2), shall be carried out in full in the first planting season following the practical completion of that phase of development. Any trees or plants which within a period of 5 years from completion of the phase of development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within one month of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policies DE1 and C4 of the Torbay Local Plan

11. No development shall take place until a detailed remediation scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation. The approved remediation scheme shall be implemented and a verification report submitted to and approved in writing by the Local Planning Authority, prior to occupation or the development being brought into use.

Reason: To secure an appropriate form of development that ensures that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors, in accordance with Policy ER3 of the Torbay Local Plan. These details are required pre-commencement as specified to ensure that human health or the environment is not harmed by

building operations.

12. In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the Local Planning Authority. Development on the part of the site affected must be halted and site investigations shall be carried out. Where required by the Local Planning Authority, remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These shall be implemented prior to occupation, or the development being brought into use, on the site affected.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other receptors, in accordance with Policy ER3 of the Torbay Local Plan.

13. No building within a phase shall be occupied until the surface water drainage system to serve that phase has been constructed in accordance with the submitted surface water drainage strategy, hydraulic design and drawing number 9519-WSP-00-GL-DR-C-0004 revision L (or, if necessary, further details to be submitted to and approved in writing by the Local Planning Authority). The approved surface water drainage system shall be maintained at all times thereafter to ensure that there will be no increased risk of flooding to surrounding buildings, roads and land.

Reason: In the interests to adapting to climate change and managing flood risk, and in order to accord with Policy ER1 of the Torbay Local Plan and the NPPF.

14. Prior to the first occupation of either phase of the development hereby approved a Travel Plan for each phase shall have been submitted to and approved in writing by the Local Planning Authority. In each case, the Travel Plan shall outline measures to encourage non-car, sustainable forms of transportation, including a scheme of implementation, which shall seek to deliver at least a 30% modal shift to sustainable forms of travel to and from the site. The Travel Plan shall also include measures to regularly review and amend the Travel Plan in order to achieve or exceed the stated goals. The approved measures shall be undertaken in accordance with the approved scheme of implementation.

Reason: In the interests of sustainable development and to minimise the impact of development on the road network, in accordance with the guidance contained in the National Planning Policy Framework and Policy TA1 of the Torbay Local Plan.

15. No building hereby approved shall be occupied or brought into use until the parking spaces and service areas associated with them, as detailed on the plans hereby approved (Phase 1) or approved through any subsequent reserved matters application (Phase 2) have been provided. Once provided, these elements shall thereafter be retained for the life of the development.

Reason: To ensure adequate parking and servicing areas are provided to serve the development, in accordance with Policies DE1 and TA3 of the Torbay Local Plan.

16. Notwithstanding the plans hereby approved, prior to the occupation of any building within a phase, details of secure and covered cycle parking provision for that phase shall be submitted to and approved in writing by the Local Planning Authority. No building within a phase shall be occupied until its associated, approved cycle parking has been provided and made available for use. The facilities shall be maintained as such at all times thereafter.

Reason: To promote cycling as a sustainable mode of travel in the interests of health and reducing greenhouse gas emissions and pollution, and traffic, in accordance with Policies SS13 and TA1 of the Torbay Local Plan.

17. Prior to the first occupation of any building within a phase, details of waste storage and collection for that phase shall be submitted to and approved in writing by the Local Planning Authority. The details shall make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated. The approved facilities for each phase shall be provided as approved prior to the occupation of the building within that phase.

Reason: To provide appropriate waste management for the development in accordance with Policy W1 of the Torbay Local Plan.

18. Prior to the first occupation of the building(s) within any phase of the development hereby approved, a freight management plan relating to that phase shall be submitted to and approved in writing by the Local Planning Authority. The freight management plan shall provide details of collections and deliveries; the nature of the vehicles involved; and the proposed frequency and times of collections and deliveries. The uses approved within each phase shall thereafter be undertaken in accordance with the details approved for that phase.

Reason: To protect residential amenity in accordance with Policy DE3 of the Torbay Local Plan.

19. No development (including demolition and ground works) or vegetation

clearance works shall take place within any phase of the development until fences have been erected and any other protection measures put in place for the protection of trees and/or hedgerows to be retained in accordance with a Scheme for that phase which has been submitted to and approved in writing by the Local Planning Authority. The Schemes shall be prepared in accordance with British Standard BS 5837:2012 (or any superseding British Standard). The fences and any other protection measures required in the approved Schemes shall be retained until the completion of the development in the phase of the development that they relate to and no vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences.

Reason: To protect the trees and hedgerows to be retained in the interests of the amenities of the area and biodiversity, in accordance with Policies C4 and NC1 of the Torbay Local Plan. These details are required pre-commencement as specified to ensure that trees and hedgerows to be retained are not damaged by building operations or vegetation removal, including their biodiversity interests.

20. The development hereby approved shall proceed in full accordance with the recommendations contained within the submitted Noise Impact Assessment (WSP August 2018), and shall be retained as such indefinitely.

Reason: To protect the amenities of adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

21. Prior to the first use of any building within a phase, an External Lighting Scheme for that building and associated phase area shall be submitted to and approved in writing by the Local Planning Authority. The Scheme shall include the location and specification of all external lighting, and be designed to minimise harm to nearby properties and biodiversity. The External Lighting Scheme for each phase shall be implemented as approved prior to the first use of the building within that phase, and shall be retained as such. No additional lighting shall be installed without the prior written approval of the Local Planning Authority. The External Lighting Scheme shall be informed by the submitted External lighting Technical Note (Method Consulting dated 11.06.2018).

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

22. There shall be no external storage of plant, machinery, or materials, unless otherwise submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of amenity and good design, in accordance with

Policies DE1, DE3 and ER3 of the Torbay Local Plan.

23. Prior to the commencement of development in each phase, excluding groundworks or scrub clearance, details of all boundary treatments and retaining structures for that phase shall be submitted to and approved in writing by the Local Planning Authority. The approved details relating to each phase shall be implemented prior to the building in that phase being brought into use.

Reason: in the interests of design, visual amenity and wildlife, in accordance with Policies DE1, C4 and NC1 of the Torbay Local Plan.

24. Prior to the first use of the buildings hereby approved, measures to achieve Secured by Design standards shall be installed in accordance with details that have previously been submitted to and approved in writing by the Local Planning Authority. The approved measures, once installed, shall be retained for the life of the development.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Torbay Local Plan.

25. Prior to the commencement of development all necessary agreements shall be made with the Local Highway Authority in respect to all proposed works to the highway. The agreed works shall be implemented in full prior to the first use of the development.

Reason: To secure all necessary works to the public highway in order to ensure highway safety is maintained and network impacts are adequately managed, in accordance with Policies TA1 and TA2 of the Torbay Local Plan and advice contained within the NPPF.

26. Other than the mezzanine floor space indicated on the approved plans, no further mezzanine floor area shall be provided within either building, unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the impact upon parking and the highway network is duly considered within the development with limited on-site parking, in accordance with Policies DE1, DE3, TA1, TA2 and TA3 of the Torbay Local Plan.

### **Relevant Policies**

- SS1 - Growth Strategy for a prosperous Torbay
- SS3 - Presumption in favour of sustainable dev
- SS4 - The economy and employment
- SS5 - Employment space

SS6 - Strategic transport improvements  
SS7 - Infrastructure, phasing and employment  
SS8 - Natural Environment  
SS9 - Green Infrastructure  
SS11 - Sustainable Communities Strategy  
SDP1 - Paignton  
SDP3 - Paignton North and Western area  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 - Parking requirements  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ER3 - Contamination  
W1LFS - Waste hierarchy  
W2LFS - Waste audit  
NC1LFS - Biodiversity and Geodiversity