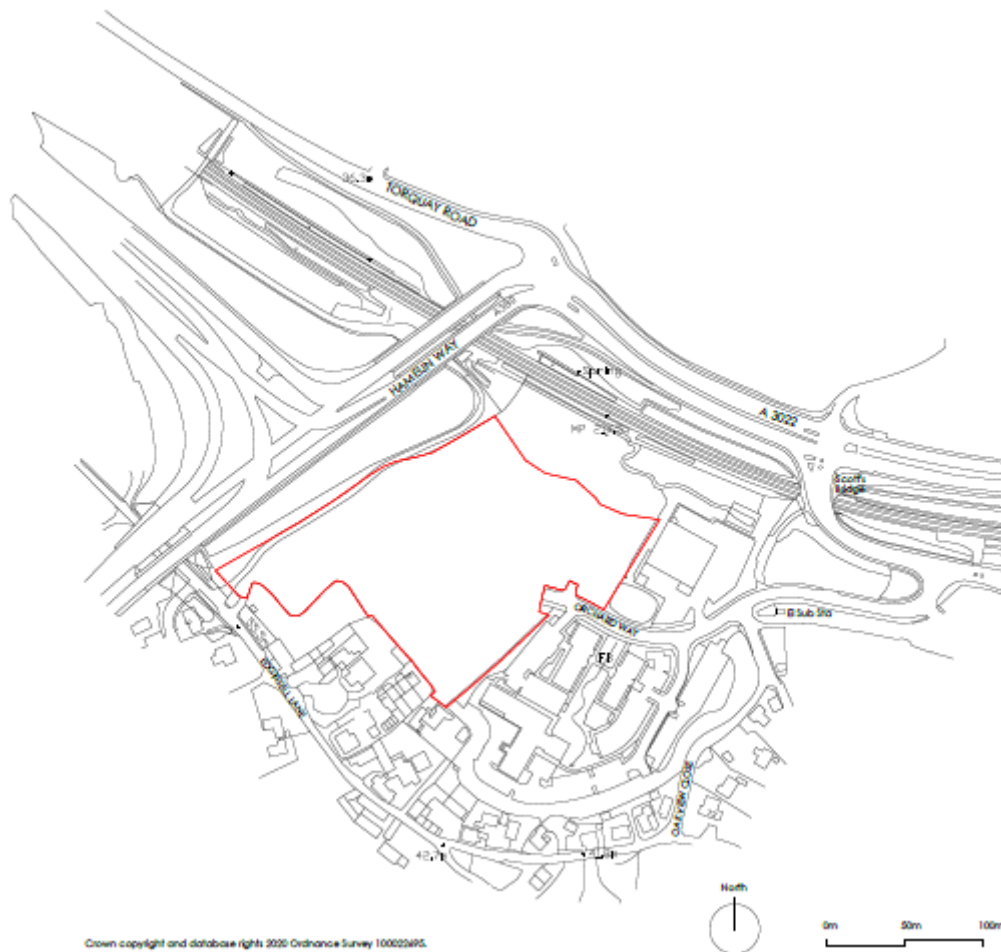


Application Site Address	Land Off Orchard Way, Edginswell Torquay
Proposal	Enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping.
Application Number	P/2021/0123
Applicant	Torbay Council
Agent	KTA Architects Ltd
Date Application Valid	17.03.2021
Decision Due Date	16.06.2021
Extension of Time Date	16.07.2021
Recommendation	<p>Approval: Subject to;</p> <p>The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Major Development (size of site).
Planning Case Officer	Scott Jones



## **Site Details**

The site comprises of 2.4 hectares of unkempt grass/scrubland to the west of Orchard Way and the existing commercial buildings that form Edginswell Business Park. There is a tree and scrub belt along the south-western boundary of the site adjacent to residential properties that sit off Edginswell Lane. The site slopes from south-west to north-east with the south-western corner being the high point of the site. There is a drop of approximately 15m across the site. Across the remaining borders to the north-east there is a nearby watercourse and rail line, before the land rises again to Riviera Way, and to the north-west lies Hamlyn Way, with a public right of way on the intervening strip of land that connects Edginswell Lane with Torquay Road to the North. Orchard Way presently terminates at the western edge of the site.

Regarding further context the site sits within the Edginswell Future Growth Area, as designated within the Torbay Local Plan, and is within the adopted 'Torquay Gateway (Edginswell)' Masterplan area, which envisages commercial uses on the land. There are also a number of listed building within 100m to the south and east of the site, although none directly border the site. In terms of further heritage interests there is an entry recorded on the Historic Environment Record for a post-medieval 'catch meadow' within the site. Other notable matters include an adjacent watercourse to the north which is an identified flood risk area and the adjacent land around the watercourse and railway line is part of a broader linear identified Local Nature Reserve

and Urban Landscape Protection Area. The site is also within the identified Landscape Connectivity Zone associated with the Greater Horseshoe Bats (South Hams SAC).

In terms of some further context the site is part of the wider envisaged Edginswell Business Park, as outlined within the historic major 'hybrid' (detailed and outline) proposals approved and partly implemented on adjacent land to the east under planning reference P/2007/1030 (as amended), which proposed commercial buildings/uses on this part of the site.

### **Description of Development**

The application is for groundworks to alter the land levels of the site in preparation for future potential uses, together with the extension of the current highway into the site.

Regarding the groundworks the proposals are principally a 'cut-and-fill' scheme to lower the southern half of the site and raise the northern half of the site, resulting in two principal plateaus either side of the proposed road extension.

At the south-west border the lowering of the ground levels includes the proposal for a crib wall to retain the engineered drop in level. The retaining structure will be between 1.5m and 5m along the south-west border above which there is a 5m landscaping strip proposed featuring specimen tree species, smaller tree species and shrubs on the high side of the structure. The wall also turns north towards the western end adjacent to the existing Public Right of Way, grading down from around 3.5m to the natural level.

A further retaining structure is proposed more centrally within the site in the form of a concrete retaining wall. This will partly retain the proposed highway but also navigate the drop in level from the upper to the lower plateau. The 'L' shaped structure is approximately 1.5m-2m high at either end but raises to a height of around 4m within its length.

At the northern edge of the site a graded earth bank is the third engineered structure being proposed, which is proposed to retain the 'fill' on the lower half of the site and the subsequent drop in level to the adjacent land. The earth bank will traverse a drop of around 4.5m.

The proposed highway extension consists of a 70m extension of the existing carriageway westwards into the site, with a 2m wide footway on the northern side and a 3m wide foot/cycleway on the southern side. There is a proposed 'stub' access junction proposed to the southern side approximately halfway along the proposed road.

### **Pre-Application Enquiry**

None.

### **Relevant Planning Policy Context**

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on

local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

### **Development Plan**

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

### **Material Considerations**

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

### **Relevant Planning History**

Major 'Hybrid' Application: P/2007/1743: Mixed Use Development Comprising Business Use Class B1, Car Showroom, Retail Warehouse And Residential And Public House/Restaurant (Class A3/A4) With Associated Highway Works And Car Parking.(In Outline). Approved.

Planning Application: P/2009/0055: Amendments to planning permission (app number P/2007/1743/MOA) comprising a draught lobby to main entrance and additional fire door at ground floor level to office building O2. Approved.

Minor Material Amendment (Section73 Application): P/2016/0955: Variation of condition P1 of P/2007/1743 - to allow amendments to the appearance, footprint and internal layout of one car showroom and alterations to the layout of the parking and car display area. This permission relates solely to those elements granted consent and have extant detailed planning permission under reference P/2007/1743 (two car showrooms and one retail unit). Approved.

### **Summary of Representations**

2 Objections. Key issues as follows:

- Loss of the historic 10m landscape buffer to properties
- Amenity impact on neighbours from the loss of the buffer
- Visual impact of the loss of the buffer
- Lack of conformity with the Masterplan
- Potential impact on stability

### **Summary of Consultation Responses**

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

No comments.

#### **Natural England:**

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

**Torbay Council's Ecology Advisor:**

The proposals are unlikely to have a significant effect upon greater horseshoe bats associated with the South Hams SAC.

In regard to habitat loss the site currently holds grassland and hedgerows and post development will result in a tree-lined planting strip and enhanced orchard area, both towards the southern border. Post development it is calculated that this represents a loss of 2.65 'habitat units' or a net loss of 28%. These 2.65 units will need to be provided offsite.

In terms of broader species works should be undertaken outside of the nesting season to protect birds and the reptile method statement should be followed.

Propose conditions are necessary in regard to lighting, habitat mitigation, construction measures, landscape creation and management, times of clearance, accordance with the submitted ecology reports, and repeat badger surveys.

**Highway Authority:**

No objection. It is advised that any future development proposals should be supported by a Transport Assessment / Statement to accompany the planning submission, which will be subject to review by the Highway Authority before a recommendation can be made. The applicant will also be required to ensure that this is inclusive of identifying pedestrian and vehicle visibility splays from the new proposed accesses, as well as undertaking a swept path analysis exercise, to ensure these are designed to an adoptable standard.

**Torbay Council Strategic Planning / Transport:**

It is noted that the application includes additional highway towards the west of the site. Although detail could wait for a future full planning application it is recommended that any future proposals provide connectivity between Orchard Way and the path running along the north west boundary of the site. This should be accessible to both pedestrians and cyclists.

With regards to the path along the north west boundary and the proposed reinforced embankment development will need to ensure a safe and suitable barrier is provided to protect against falls from height given the extent of the reinforced embankment which appears to be up to 3.95m at its highest point.

The masterplan also shows a route from Orchard Way through or to the south east of plot 1 linking to the space between plot 1 and the watercourse/railway. This is not indicated on these plans and should also be sought as part of wider connectivity improvements, as should the space at the rear, through and around this site for use by the wider community.

It is important that the route, including the additional highway shown, is built to adoptable standards and (ideally) adopted by the Council for safeguarding purposes.

This could be secured through condition. At the very least a footpath and cycle route connection should be dedicated as such and preserved and appropriately maintained as such in perpetuity.

**Torbay Council Drainage Engineer:**

Following the submission of further information, including a site specific flood risk assessment and surface water drainage design for the above planning application, providing the surface water drainage is constructed in accordance with the submitted design, there is no objections on drainage grounds to planning permission being granted.

**Torbay Council (TDA) Engineer:**

It is understood work is in hand to ascertain geotechnical characteristics at this location among others, with which to inform the detail of the current indicative arrangements. Suggest covering any boundary uncertainty by attaching a planning condition similar to the following if granted permission;

‘No development of the proposed boundary ‘crib’ or other retaining walls shall take place without geotechnical investigation and reporting by a qualified geotechnical consultant. Conclusions and recommendations arising from the same should be recognised and adopted by the developer in the proposal and detailing of the installed retaining structure, to include construction and in-service phases.’

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

The proposed landscaping was agreed at pre-app stage to mitigate for the loss of the trees along the boundary - the trees to be removed are G1,G2, G3 G4, NT2 and NT3 to facilitate the enabling works.

It is recognised that the existing tree stock provides a landscape feature along the boundary with its appeal being on the group effect of the trees in the landscape. Except for G3 that has been afforded B category status the remainder of the trees to be removed are C category with a limited life expectancy.

The proposed landscape is a robust design using native trees and bolster planting within the orchard using local varieties. The landscape will provide a dense screen in the long term. The offset is that there will be short to medium term loss of trees in the landscape but owing to their categorisation they are not expected to usefully live beyond 20years.

The large off-site Ash, OT1, requires 20% of its root protection area to be removed to facilitate the ground levels required for any further development proposals. Although unlikely to structurally damage the tree there will be loss of physiological function from the severance of the fibrous and small diameter roots. As the report indicates OT1 is likely to succumb to Ash Dieback although there is no summary on its current level of infection. The age of the tree, its historic management (coppice) has led to a potentially ecologically valuable habitat along the tree line. Owing to the ecological potential of the tree and the current unknown infection level of the tree in respect of Ash Dieback it is deemed that adjustments are sought to the layout so the full root protection area of OT1 is recognised.

It is noted there is no LVIA present as part of the submission which would provide a broader context of the impact.

**Torbay Council's Community Safety Officer:**

Document 3467 'Construction Phase' contains the usual information asked for in a construction management plan regarding the control of noise and dust etc. However it is noted that they are suggesting the following hours:

"Construction hours will be from 7am to 7pm Monday to Friday, 7am to 1pm on Saturdays and closed on Sundays."

Recommend standard hours, 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays, are secured to limit local disturbance.

**Devon County Council Archaeologist:**

The proposal is in an area of archaeological interest relating to the medieval and post-medieval settlement of Edginswell. Groundworks are likely to expose and destroy archaeological features and finds relating to the settlement. The proposal area also contains the remains of part of a post-medieval water meadow system. However, the archaeological evidence is not, in my opinion, of such significance for me to recommend refusal of the application. Archaeological impacts can be satisfactorily mitigated by condition. Should any of the water meadow gullies survive, it may be appropriate to consider retaining them within any proposed landscaping and/or SUDS scheme.

Recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of any heritage assets with archaeological interest.

**Environment Agency:**

It is noted that the application is only for the enabling works and not for the development itself. The concrete retaining wall adjacent to Plot 1 looks like it is probably outside of the indicative flood zone, but it may be worth getting confirmation of this from the applicant and that there will be no development/land-raising within the indicative flood zone. However, a detailed FRA may need to accompany the detailed application for Plot 1 to show that the development can satisfy flood risk policy, i.e. that the development will be safe over its lifetime and not increase flood risk elsewhere.

Regarding the access the extended section appears to be located within flood zone 1. However, part of the existing access extends through flood zone 3 and therefore emergency evacuation of the site will be a consideration for you and the emergency planners with any future application for development of the site.

Provided that there is no development taking place within Flood Zone's 2 and 3 in the current application then we would have no further comments to make.

**Planning Officer Assessment**

## Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact, including heritage impacts
3. Residential Amenity
4. Highways and Movement
5. Ecology and Trees
6. Flood Risk and Drainage
7. Low Carbon Development, Climate Change and Waste Reduction

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

The site has been historically linked with the adjacent business park, principally as it was part of the wider proposals in the historic major mixed-use scheme submitted and approved 14 years ago, which was implemented and partly built out. The land subject to this application was outlined to deliver a small number of business buildings/uses and a bulky goods retail unit within this historic application. The business uses associated with the historic 'hybrid' application have fallen away as no Reserved Matters were submitted within the appropriate time limit, but the retail unit sits as an extant permission over part of the site as it was approved in detail.

Notwithstanding that only part of the site still benefits from an extant planning permission the site is still clearly identified for commercial uses in the current Development Plan. In terms of the Local Plan the site is part of the Edginswell Future Growth Area (identified within Policy SS2) and is identified as an employment site within Policy SS5 (Employment space). There is also an adopted Masterplan relevant to the site and wider area (Edginswell) and this identifies the site as part of 'Edginswell Business Park'. The Masterplan aligns with Local Plan support for high quality business uses and purports that some form of mixed use may be suitable. The indicative layouts and commentary within the Masterplan are divergent to the historic scheme granted planning permission but there is consistency in terms of the land being part of the longer-term aspirations and within the 'boundary' of the business park. In terms of the more recent Neighbourhood Plan the site is again identified as an employment site (TJ1.10) and there is reference to the adopted Masterplan.

In terms of summing up matters of principle and planning policy, in the context of the Development Plan, there is consistency in terms of the land being identified for employment uses. The current engineering operations act as preparatory works for potential future commercial uses and in such circumstances are considered enabling operations that are linked to delivering potential future commercial uses, which are supported in terms of planning policy. As such the engineering works are considered aligned with the aspirations of the Development Plan in terms of principle when considered in the round.

The application, in terms of principle, is considered suitably aligned with the strategic and employment policies contained within the Development Plan, notably Policies SS2 and SS5 of the Torbay Local Plan and Policies TS2 and TJ1 of the Torquay Neighbourhood Plan, and guidance contained within the Adopted Torquay Gateway (Edginswell) Masterplan.



## **2. Design and Visual Impact, including heritage impacts**

The principal considerations are the visual impact of the loss of the existing habitat and site character, which is principally scrub and grassland with sporadic border trees, and the visual impact of the proposed works, this being the regraded land and the retaining features created within.

Paragraph 124 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 130 states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'.

There is no landscape designation over the land in terms of the Development Plan, but it is noted that the site forms part of the identified landscape area of a secluded Valley (3B Edginswell Valley) in the Torquay Landscape Character Assessment (2010). The wider area is identified as moderately sensitive with a management strategy to conserve. It is unclear whether this character assessment, which is dated 2010, reflected the local change in context from the consented mixed-use scheme, which appears to have commenced around 2009. There is no notable comment however there is notation that if development were to be permitted in this area it would be well contained from the wider area by the valley topography but would lead to the loss of an attractive and intimate local valley and detract from character of adjoining land. This suggests the assessment possibly pre-dated the build-out of the earlier phase of the business park but was possibly aware that development was forthcoming/likely.

In terms of design and visual impact is it practical to consider that part of the site benefits from an extent permission to build a bulky goods unit and that there is broad policy support through the Development Plan to deliver employment across the site. The inherent loss of the open features is hence not particularly significant, but more how the proposals influence the design and visual impact of future development.

In terms of the core of the site the proposed plateaus present a form of development that is similar to the historic proposals. This will present a stepped form of land that responds to the fall in land levels towards the valley floor to the north. The proposed land levels do not inherently present a matter of concern in terms of how it would influence the design and visual impact of future development.

In terms of the retaining features the northern graded bank, which is closest to the watercourse and rail line, is considered an acceptable form of engineering within what is principally an external facing element of the development. The solution provides landscape potential and would sit comfortably as a visual feature from further afield and from close proximity, should the adjacent water meadow secure the access and open walking route envisaged within the original mixed-use application. In terms of the central concrete retaining wall there is clear expectations that the wall will become an internal facing service yard based on the extant retail permission and historic layouts. Its impact from mid-distanced views from the north would appear only temporary in nature and limited. In terms of the southern-most retaining element this

appears the most sensitive element of the scheme and has raised some public concern in terms of how its form and location would constrain the landscape potential to visually separate the commercial element from the more rural residential character of Edginswell Lane. In terms of the detail the crib wall itself will be inward facing and post-development (of commercial uses) is unlikely to be a prominent feature within the public realm. In terms of the landscaped bank above this feature a 5m tree and shrub border is proposed, which would include feature oak and pine specimens along its length. There is local concern that the linear feature is not sufficient and is not as robust as the historic '10m landscape buffer' proposed via the historic mixed-use development. The Council's Landscape and Arboricultural Officer has considered the proposal and concluded that the proposed landscaping is a robust design and will provide a dense screen in the long term, whilst recognising that although the tree removal will present a short to medium term loss of trees in the landscape these have a short (20 years) expectancy and the proposals will present a longer-lived feature. Notwithstanding the concerns raised within representations when considering the conclusions of the specialist officer the detail of the southern-most wall and its associated landscaping is considered acceptable in terms of its landscape and visual impact.

Having considered both local and national policy guidance the design is considered to provide an acceptable form of development within the context. This conclusion has taken into account the public representations and specialist advice in terms of the robustness of the landscaping.

Regarding heritage assets the scale and form of the engineering proposals will not impact the setting of nearby listed buildings to the south. The proposal is hence considered acceptable having considered the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority pay special attention to the desirability of preserving or enhancing listed buildings and their settings.

### **3. Residential Amenity**

Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring occupiers and surrounding uses. The NPPF guides (Paragraph 127) that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

The proposed development, post-construction, will not impact the amenity of neighbouring occupiers, which principally sit to the south of the site off Edginswell Lane, as the groundworks and retaining structures will not result in any form of loss of privacy, light, outlook etc. As a precursor to potential future development subsequent proposals would offer scope to consider the impact of buildings and uses on neighbouring occupiers. Notwithstanding the above conclusion the construction phase does have the potential to effect neighbours, principally through noise, dust and general disturbance during construction. The application is accompanied by construction phase information, which has been reviewed by Community Safety and considered acceptable in terms of managing most of the processes during

construction that may impact neighbours. One point of concern is the proposed construction hours and it is recommended that notwithstanding the documents detail should be conditioned as being contained within the hours of 0800 and 1800 Monday to Friday and between 0900 and 1300 on Saturdays, with no working on Sundays or bank holidays. Regarding further construction and post-construction matters there has been a concern raised in public representation regarding land stability. The Council's Engineer has considered the matter of groundworks close to residential plots and has recommend that a planning condition is attached to secure a level of detail and understanding on the engineering solution beyond the current level.

With conditions to secure appropriate working hours during construction and to secure engineering detail to ensure that there will be no impact upon adjacent land in terms of stability the proposals are acceptable in terms of any impact upon the amenity of adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

#### **4. Highways and Movement**

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

The proposal seeks to extend the existing highway (Orchard Way) approximately 70m westwards into the site and aside to this the development is seeking only preparatory works for potential future uses. Due to the form of development the key issue is principally whether the highway extension is a suitable design for the future commercial context. The Highway Authority have confirmed that they do not object to the proposals following receipt of this additional information through the course of the application process. Considering the professional advice received from the Highway Authority the proposal is considered acceptable in terms of the highway works proposed.

Regarding associated matters strategic transport concerns have been discussed by Officers regarding the safety of users of the adjacent Public Right of Way running along the north west edge of the site, due to a subsequent drop in level created by the proposed retaining structure, together with concerns on future connectivity regarding promoting sustainable modes of travel. In regard to the safety issue it is considered reasonable to secure an appropriately formed barrier on top of, or adjacent to, the proposed crib wall that will run along the north west section abutting the Public Right of Way via a planning condition. An appropriately worded condition is proposed within the schedule of conditions at the end of this report. Regarding future connectivity this is principally a matter that is relevant to future detailed development proposals for the site. The applicant has been advised of the policy desire to promote sustainable forms

of transport and improve/provide good connectivity through development, including the masterplans indicative expectation of a foot/cycleway connection to the north west.

Considering the points above and having regard to guidance contained within the NPPF which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Para 109), the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies DE1 and TA2 of The Local Plan, and guidance contained within the NPPF.

## **5. Ecology and Trees**

Policy NC1 of The Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Policy C4 seek the retention of trees and other natural features. Policy TE5 of The Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Guidance within the NPPF provides similar guidance to the above in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity (Para 170).

Regarding ecology matters the site is largely scrub grassland and occasional trees and in terms of notable policy context it is located within the Landscape Connectivity Zone associated with the Greater Horseshoe Bat (South Hams SAC). In terms of species and habitats it is concluded that there are no constraints that should impede the grant of planning permission in terms of ecology considerations. The site is not particularly sensitive in terms of protected species and there are several proposed planning conditions to duly manage and mitigate the impact of the works on reptiles, birds etc and to secure the proposed replacement planting. These conditions are listed in the schedule at the end of this report. The sensitivity of the site and impact of the development on the Greater Horseshoe Bat has been assessed and it has been concluded that the site is not particularly sensitive and there would be no Likely Significant Effect. Natural England have commented on the application and raise no objection.

Regarding biodiversity the loss of the existing habitat has been assessed and notwithstanding the tree planting adjacent to the south west border and the enhancement meadow/orchard within the south west corner, it has been concluded that there would be a net loss of 2.65 'habitat units' or a net loss of 28%. To mitigate this loss compensatory habitat would need to be provided/enhanced offsite and a planning condition is proposed to secure this in line with advice provided by the Council's ecology provider.

Regarding trees there is proposed removal of a handful of specimens along the south west boundary to facilitate the enabling works. The Council's Arboricultural Officer has reviewed the context and has recognised that the existing tree stock provides a landscape feature along the boundary with an appeal of its group effect in the

landscape. In this context the proposed replacement planting is considered acceptable and is deemed a robust design using native trees, which will provide a dense screen in the long term. It is recognised that there will be short to medium term loss of trees in the landscape, but this is considered an acceptable impact when considering the life expectancy of the current trees, which are not expected to be long-lasting. There is one element that is considered to require some further consideration, which is the incursion of the proposed wall into the Root Protection Area of an offsite Ash tree (OT1). The advice of the Council's Arboricultural Officer is that on the current information although the work is unlikely to structurally damage the tree the wall should be moved to respect the full Root Protection Area. This advice is subject to the receipt of further information on the health of the tree and its ecological value, which has been requested from the applicant. As matters stand the officer recommendation is that the scheme is amended unless further information on the health and likely impact on the tree is submitted that amends this professional advice.

Subject to resolution of the Root Protection Area of tree referenced OT1, having considered the submitted assessments, and subject to conditions to secure the tree planting, offsite mitigation, and broader ecology matters, as detailed within the schedule of conditions within this report, for the reasons stated above the proposals are in-line with the aspirations of Policies NC1 and C4 of The Local Plan, The Neighbourhood Plan, and advice contained within the NPPF

## **6. Flood Risk and Drainage**

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

The proposed groundworks will largely retain the site as a natural permeable surface, with the principal surface change being the relatively moderate extension to the highway centrally within the site.

The application is supported by a site specific flood risk assessment that seeks to demonstrate that the development would not increase the risk of flooding and accord with policy advice contained within the Development Plan and the Environment Agency's Critical Drainage Area Advice Note for Torbay.

In terms of detail it is proposed that the surface water arising from the proposed highway will be managed via the local highway drainage network, discharged into this system at an attenuated rate equivalent to a greenfield run-off. As a point of note the existing highway drainage ultimately discharges into the nearby watercourse. The remainder of the site, which will remain unpaved, is to continue to discharge as per the existing situation re unmanaged natural infiltration. This presents a situation where the surface water disposal for the development plots will be confirmed when detailed proposals come forward for the sit, which is considered appropriate.

The Council's Drainage Engineer has considered the drainage proposals and, following the receipt of revised detail that overcomes certain issues on detail, the proposal is considered suitable for approval on drainage and flood risk grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained

within the NPPF. A planning condition is recommended to ensure that the proposed management for the highway run-off is secured and maintained for the life of the development.

## **7. Low Carbon Development, Climate Change and Waste Reduction**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy W1 (Waste hierarchy) of the Local Plan seeks that all development should seek to minimise the generation of waste, having regard to a waste hierarchy, which includes prevention, for example using less material in design and other measures to minimise waste generation.

The supporting information submitted with the application does not explore the issue of low carbon development or climate change in any great detail. The absence of detail on these aspirations does not appear to be integral to the broader merits of the proposal as it is accepted that the engineering operations have limited scope to deliver low carbon development or positively influence climate change, and it would be future detailed proposals for the site that would be duly scrutinised on these policy aspirations. Regarding waste reduction goals again the supporting detail is not overly expressive of the design considerations however, notwithstanding this, there appears a broadly substantiable emphasis to the scheme in terms of seeking to secure functioning commercial levels on a sloping site through a cut-and-fill process that limits the reliance on taking soil/waste offsite to potential landfill, which would be unsustainable in terms of transport needs and ultimately the creation of waste.

The development is, for the reasons above, considered suitable for approval, in accordance with Policy SS14 and W1 of the Torbay Local Plan, with further expected scrutiny of low carbon and energy proposals reserved for future proposals that may come forward over the land.

### **Sustainability**

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

#### **The Economic Role**

Job creation is a driver of economic growth and there would be economic benefits should the preparatory works help facilitate the delivery of commercial development on a site that has been long earmarked for such purposes. Aside this more immediately the preparatory works will provide economic benefits to the construction industry. There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

#### **The Social Role**

The principle social benefit of the proposed development is whether it would help deliver job opportunities in the local area. Initially the construction phase will provide activity and employment opportunities and longer term the preparation of the site can only positively influence the attractiveness of the site for future development proposals, which would present the key benefit in term of employment opportunities for local residents. These short and longer terms benefits weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on ecology and biodiversity and drainage. These matters have been considered in detail within this report.

The environmental benefits are considered neutral, with the form of development and planning conditions principally aligned with mitigating environmental impacts that would naturally be linked to developing (or in this case preparing for development) greenfield sites. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### **Sustainability Conclusion**

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

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

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

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

### **Local Finance Considerations**

#### **CIL**

Not Applicable.

Not Applicable.

### **EIA/HRA**

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

HRA: Due to the scale, nature and location this development is not considered to have a likely significant effect on European Sites.

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to promote economic growth would produce a positive impact overall and help with the delivery of detailed commercial proposals for a long-identified site.

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

The proposal is considered acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and is acceptable in terms of access, ecology and flood risk matters.

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

### **Officer Recommendation**

Approval: Subject to;

The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;

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

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

### **Conditions**

#### **Hours of construction**

Notwithstanding the submitted detail hours of operation throughout the construction phase shall be between 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and at no time on Sundays and Bank Holidays.



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

### **WSI (PC)**

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

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2019), that an appropriate record is made of archaeological evidence that may be affected by the development. This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

### **Structural details (PI)**

Prior to commencement of works to build the proposed boundary 'crib' or other retaining walls details of the structural assessment and design of these structures shall be submitted to and approved in writing by the Local Planning Authority. The details shall be accompanied by evidence of a supporting geotechnical investigation and reporting by a qualified geotechnical consultant and the conclusions and recommendations arising from the same should be recognised and adopted within any proposed design. The development shall proceed in full accordance with the approved details.

Reason: To secure an appropriate and safe form for development and to protect highway safety and local amenity, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

### **Safety Barrier**

Prior to the installation of the retaining structure along the north west boundary adjacent to the Public Right of Way details of a safe and suitable barrier to run along this retained boundary shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved detail and the approved barrier shall be provided within 8 weeks of the practical completion of the related retaining structure unless an alternative timetable has been agreed in writing with the Local Planning Authority

Reason: To secure adequate safety features are provided, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030

### **Construction Method Statement**

The development shall proceed in full accordance with the submitted 'Construction Phase Information for the Engineering Works' (Document Reference 3467 – Orchard Way, Edginswell. Torquay), unless otherwise detailed in conditions pursuant to this notice.

Reason: In the interests of highway safety and local neighbour amenity, in accordance with Policy TA2 and DE3 of the Torbay Local Plan 2012-2030.

### **Tree Protection measures PC**

Prior to the commencement of development a Tree Protection Plan and an Arboricultural Method Statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The approved detail shall be adhered to throughout the construction phase of the development.

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

### **Highways Standards**

Construction of the internal roads and footpaths within the internal layout shall be in accordance with the Torbay Highways Design Guide for new developments.

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

### **Ecology 1 - Lighting (PC)**

Prior to the commencement of development a detailed Lighting Strategy shall be submitted to and agreed in writing by the Local Planning Authority. The Strategy shall seek to minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented, and shall include details such as the following: artificial lighting associated with public realm lighting and internal and external lighting associated with any proposed buildings. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policy NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

### **Ecology 2 - In accordance with the EIA**

Development shall commence and proceed in accordance with the actions set out in the Ecological Impact Assessment (GE Consulting, January 2021) and the Shadow Habitats Regulations Assessment (GE Consulting, March 2021).

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

### **Ecology 3 - CEMP (PC)**

Prior to the commencement of development a Construction and Environmental Management Plan, which will include details of environmental protection throughout

the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure important features and protected species are not unduly impacted.

#### **Ecology 4 - LEMP**

Within 6 calendar months of the commencement of development a Landscape and Ecological Management Plan, which shall include details relating to habitat creation, species specification and management, and timing of provision, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, DE1, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

#### **Ecology 5 - Habitat mitigation (PC)**

Prior to the commencement of development, which shall include operations consisting of site clearance including clearance of vegetation, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the erection of a site office, the creation of a site compound and/or the creation of temporary means of access, a Compensatory Habitat Scheme appropriate to compensate for a Biodiversity Impact Assessment score of -2.65 Biodiversity Units shall have been submitted to and approved in writing by the Local Planning Authority. The compensatory habitat secured by the scheme will be functional within 12 months of commencement of development and be managed for a minimum of 30 years.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure that necessary mitigation is secured prior to operations.

#### **Ecology 6 – Badgers (PC)**

Prior to the commencement of development, including all forms of site preparation including scrub clearance, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

### **Ecology 7 - Vegetation Clearance**

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

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF

### **Landscaping**

The proposed landscaping shall be implemented in full within the first available planting season following substantive completion of the development hereby approved, unless otherwise submitted to and agreed in writing by the Local Planning Authority.

In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of ten years from the date of planting (or following replacement), such trees/plants shall be replaced in the next planting season and maintained in accordance with an approved maintenance plan.

Reason: In the interests of visual amenity and in accordance with Policies DE1, SS8, SS9 and C4 of the Torbay Local Plan 2012-2030 and Policies TE5 and TH8 of the Torquay Neighbourhood Plan.

### **Drainage**

The development shall proceed in full accordance with the submitted and approved Flood Risk Assessment and drainage plan. The drainage system shall then be maintained at all times thereafter to serve the development.

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

### **Informative(s)**

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

### **Relevant Policies**

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

SS1 - Growth Strategy for a prosperous Torbay  
SS3 - Presumption in favour of sustainable dev  
SS8 - Natural Environment  
SS9 - Green Infrastructure  
SS10 - Conservation and the historic environment

TA1 - Transport and accessibility  
TA2 - Development access  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
ER1 - Flood Risk  
ER2 - Water Management  
W1 - Waste management facilities  
NC1 - Biodiversity and geodiversity

TS1 - Sustainable Development  
TS4 - Support for Brownfield and Greenfield development  
TH8 - Established architecture  
TE5 - Protected species habitats and biodiversity