

## TORBAY COUNCIL

Application Site Address	Land to the southeast of 39 Wall Park Road, Brixham.
Proposal	Outline application for 3 dwelling houses and associated improvements to the private access lane, with all matters reserved.
Application Number	P/2019/0594
Applicant	Mr & Mrs King
Agent	Ian Hobson Designs
Date Application Valid	02.08.2019
Decision Due date	27.09.2019
Extension of Time Date	
Recommendation	Approval: Subject to the planning conditions outlined within the report, as updated, with the final drafting of conditions and the negotiation/completion of a S106 Legal Agreement to secure Affordable Housing Contributions and contributions to mitigate the recreational impacts of the development on Berry Head , as outlined within the report, and addressing any new material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director of Planning, Housing and Climate Change.
Reason for Referral to Planning Committee	Certain issues have come to light as a result of the legal process to complete the planning obligation and an amendment of the original committee resolution is now required.
Planning Case Officer	Craig Davies

## Location Plan



## Update July 2021

On 14th September 2020 Planning Committee resolved to approve application P/2019/0594 subject to:

- i) The conditions set out in the submitted report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;
- ii) The completion of a S106 Legal Agreement to secure the heads of terms as set out in the submitted report, in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document and the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to the Assistant Director of Planning, Housing and Climate Emergency; and
- iii) 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.

As part of the due diligence process to prepare the section 106 legal agreement, it has come to the attention of officers that the access lane from Wall Park Road to the site is not in the applicant's ownership, although they have a right of access. As a result, it

will not be possible to oblige the developer to set up a management company to ensure long-term maintenance of the lane. Officers are satisfied that an acceptable form of development will be achieved because a condition requires that a specification for the resurfacing of the lane is agreed prior to commencement of the development, and that the lane is made up to that specification within an agreed timescale.

Additionally, the ecologist who has advised the Council in this matter has had cause to review his advice and now considers that a 5m dark corridor will not be necessary because that hedge is not part of a transit route for Greater Horseshoe Bats. He remains of the opinion that hedgerows are an important feature in the landscape and would like to see the hedge on the south western boundary retained. Council officers consider that this request can be adequately secured by a landscaping condition.

The Council's legal officer has advised that, while legally acceptable, the proposed amendments are significantly different from those previously approved by the Committee and that, as a result, an amended resolution is required.

### **Officer Recommendation**

Approval: Subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;
2. The completion of a S106 Legal Agreement to secure off-site Affordable Housing Contributions in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document, and contributions to mitigate the recreational impacts of the development on Berry Head in accordance with the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to Officers.

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**

#### **Standard time condition:**

That in the case of any reserved matter, an 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.

#### **1. Reserved Matters condition**

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 details submitted and approved pursuant to the outline consent.

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced, and the development shall be undertaken in 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).

## **2. Lighting Assessment**

All reserved matters applications shall include a Lighting Assessment detailing measures to minimise indirect impacts from lighting associated with the pre-construction, during construction, and operational activities, and demonstrating how the best practice (Bat Conservation Trust / Institution of Lighting Professionals, 2018) guidance has been implemented. This shall include details such as artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence, and shall ensure that the hedgerow along the southwestern boundary of the site is kept to under 0.5lux. Once agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with the approved details.

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

## **3. Construction Environmental Management Plan – Biodiversity**

All reserved matters applications shall include a Construction Environmental Management Plan (CEMP: Biodiversity), which shall have been prepared in accordance with specifications in BS42020; clause 10.2 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 (may be provided as a set of method statements).
- 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: Biodiversity, 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 shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

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

#### **4. Landscape and Ecological Management Plan (LEMP) or equivalent**

All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, which shall be submitted and shall include, but not be limited to, the following.

- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents, and which, for the avoidance of doubt shall include the hedgerow on the south-western boundary of the site.
- b) Ecological trends and constraints on site that might influence management.
- c) A habitat phasing plan to ensure habitat is established and functional in advance of impacts.
- d) Aims and objectives of management.
- e) Appropriate management options for achieving aims and objectives. Noting the comments from Natural England with regards to preferred hedgerow management options.
- f) Prescriptions for management actions.
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- h) Details of the body or organisation responsible for implementation of the plan.
- i) 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: To secure a satisfactory form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030.

#### **5. Flood risk**

As part of any reserved matters application a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in-line with the design parameters outlined within the submitted and approved Flood Risk Assessment, shall be submitted to and approved in writing by the Local Planning

Authority. The approved scheme shall be implemented in full prior to the first occupation of the development unless a phasing plan has been submitted to and approved by the Local Planning Authority, and shall be subsequently maintained thereafter.

Reason: To ensure that there are no increased flood risk, in accordance with Policies ER1 and ER2 of the Torbay Local Plan, the Paignton Neighbourhood Plan, and advice contained within the NPPF.

## **6. Biodiversity enhancement measures**

As part of any reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.

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

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

## **8. Access lane**

Prior to the commencement of works on site, details of a scheme of improvements to the access lane serving the site, including (but not limited to) resurfacing, widening, and upgrading the surface water drainage system, where applicable, shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the scheme of improvements to the access lane shall be implemented in full in

accordance with a timetable that shall have been agreed in writing with the Local Planning Authority before development continues above slab level.

Reason: To ensure that the access is suitable, and in accordance with Policies TA2, ER1 and ER2 of the Torbay Local Plan 2012-2030 and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

### **9. Written Scheme of Investigation**

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which shall have 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, that an appropriate record is made of archaeological evidence that may be affected by the development.

### **10. Energy Efficiency and Low Carbon Development**

As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The details shall include the provision of electric vehicle charging facilities to all dwellings.

The measures in relation to each residential unit shall be completed, in accordance with the approved details, prior to the first occupation of that unit.

Reason: In the interests of sustainable development and in accordance with Policy BH7 of the Brixham Peninsula Neighbourhood Plan, and Policies SS14 and TA3 (and Appendix F) of the Torbay Local Plan 2012-2030.

### **11. Existing Hedge Which is to be Retained**

In this condition "hedge" means the existing hedge on the south-western boundary of the site; and paragraphs (a) and (b) below shall have effect until the expiration of 1 year from the date of the occupation of the final dwelling to be occupied on the site for its permitted use.

(a) The hedge shall not be cut down, uprooted or destroyed, nor shall the hedge be topped, lopped or cut back other than in accordance with the details agreed in the Landscape and Ecological Management Plan approved pursuant to condition 4 of this decision notice. Any hedgerow management approved shall be carried out in accordance with British Standard 3998 (Tree Work).

(b) If any part of the hedge is removed, uprooted or destroyed or dies, a replacement hedge or part thereof shall be planted at the same place and shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

(c) The erection of fencing for the protection of the hedge shall be undertaken in accordance with the approved plans and particulars before any equipment,

machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.

Reason: In the interests of biodiversity and visual amenity

### **Original Officer Report:**

#### **Site Details**

*The application site comprises part of the rectangular field to the southeast of Nos. 31-39 Wall Park Road, as well as the private access lane leading from Wall Park Road to Brixham Football Club. The land to the northeast and southeast of the field forms part of the Brixham Urban Fringe & AONB (Berry Head and Sharkham) Future Growth Area in terms of the Torbay Local Plan and comprises suburban residential development (the Bloor Homes development), much of which is complete. The application site lies in the northwestern half of the field with open space between the northwestern boundary of the site and the rear boundaries of Nos. 31-39 Wall Park Road, and open space between the southeastern boundary of the site and the residential development to the southeast. The southwestern boundary of the site is defined by an established hedgerow, with the land further to the southwest comprising Brixham Football Club.*

*The site is located within the South Devon Area of Outstanding Natural Beauty, the Greater Horseshoe Bat Sustenance Zone, and the Minerals Safeguarding Area.*

#### **Description of Development**

*The application seeks outline planning permission for 3 dwellings with associated access and highway improvements, with all matters reserved.*

*The application is accompanied by an indicative site layout plan that shows the potential layout of 3 detached dwelling houses on the site accessed from Wall Park Road via a private access lane. The site layout plan also shows a dark corridor along the southwestern boundary that would also provide a means of access to the southeastern half of the field (which is under separate ownership).*

#### **Pre-Application Enquiry**

N/A.

#### **Relevant Planning Policy Context**

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

*Development Plan:*

*- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")*



- *The Brixham Peninsula Neighbourhood Plan*

*Material Considerations:*

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

**Relevant Planning History**

**Pre-Applications**

*DE/2016/0444: Construction of 26 dwellings.*

*The written response to the pre-application enquiry concluded that “the residential development of the site has the potential to be acceptable subject to the submission of further information including but not limited to landscape and visual impact assessments, ecological surveys, details of how waste will be collected and surface water drainage information”.*

**Applications**

*P/2019/0139: Use of field as garden (certificate of lawfulness). Part allowed / part refused 15.04.2019.*

*P/2017/0227: Formation of 3 x 2 bedroom bungalows. Approved 19.07.2017.*

*P/2016/0395: Demolition of existing barn & erection of new dwelling. Approved 01.09.2016.*

*P/2011/0934: Incorporation of 1 acre of land behind house into boundary of house extending garden. Refused 22.11.2011.*

**Summary of Representations**

*2 letters of objection were received in which the following matters were raised:*

- *The proposed access is inadequate and too narrow.*
- *Surface water flood risks relating to the access lane.*
- *Traffic congestion, access problems, and highway safety issues pertaining to the access lane.*
- *The need for measures to protect residential amenity (safety, access, noise) during construction works.*
- *Previous application for the use of the site as a garden was refused.*
- *The site is a greenfield site and should be retained.*
- *Access issues for refuse collection vehicles.*

*1 neutral letter of representation was received in which the following matters were raised:*

- *Surface water flood risks relating to the access lane.*
- *The access lane is narrow and has no passing places.*
- *Access and highway safety concerns.*

## **Summary of Consultation Responses**

### **Brixham Town Council:**

*Brixham Town Council objected to the proposal for the following reasons:*

*“1. The proposed development is outside the settlement boundary and on a site rejected by the BPNP Housing Site Assessment.*

*“2. Although adjacent to the settlement boundary, the development does not satisfy the provisions set out in BPNP Policy BH9 – Exception Sites.*

*“3. The proposed development would be detrimental to the character and visual amenity of the AONB.*

*“4. The proposed options for mitigation of harm to important flora and fauna (specifically greater horseshoe bats and existing hedgerow) are not considered practicable, due to the Local Authority and other agencies lacking the resources to ensure that such mitigation is maintained in the long term.”*

### **Devon County Council Ecologist:**

*Regarding Greater Horseshoe Bats, the consultee response stated:*

*“The site is within the Sustainance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats.*

*Ecology report indicates that the grassland to be lost to development does not provide suitable GHB foraging habitat. The grassland onsite offers negligible foraging opportunities for GHB s due to its amenity nature and species poor composition – this conclusion is considered valid.*

*Note that no bat surveys have been carried out, but we currently consider that impacts can be assessed without survey.*

*The only hedgerow onsite will be retained and clarification has been provided which confirms the existing vehicular access onto the site will remain.*

*This hedgerow is described as being ‘considered suitable for foraging/commuting bats and therefore it must be ensured that it is not illuminated’.*

*Further information has been provided by the ecologist in August 2020, and this confirms that whilst the hedgerow does provide suitable bat commuting/foraging habitat, it is not considered that this hedgerow is used by GHBs associated with the South Hams SAC.*

*The hedgerow is not considered an important landscape feature for bats from the South Hams SAC due to the urban nature of the surrounding land use and poor connectivity to both the Berry Head SSSI roost site, and the wider landscape to the south of the scheme. The Bloor Homes development to the direct south of the scheme has meant this hedgerow has become isolated from linkages into the wider countryside likely to be of highest value to GHBs.*

*By following the flow chart provided in the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC.*

*There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.*

*No mitigation required with respect to GHBs as the further information provided by the ecologists confirms that the proposals will not have any impact upon GHBs using the South Hams SAC and the Berry Head roost site.”*

*Regarding recreational impacts on Berry Head, the consultee response stated: “Policy NC1 of the Torbay Local Plan states that “development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.*

*This site falls within the Brixham Peninsula (Policy SDB1) and in accordance with the Supplementary Planning Document on Recreational Impacts on Berry Head, Torbay Council will be seeking S106 contributions of £95 per dwelling.*

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

*In order to mitigate the potential recreational impacts on the protected site the applicant needs to make the agreed payment, as per the Supplementary Planning Document on Recreational Impacts on Berry Head.*

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

*Regarding priority habitats (hedges), the consultee response stated: “The updated scheme proposals and ecology report provided in August 2020 states that existing vehicular entrance within the hedge the south-eastern boundary will not require widening. No direct impact to this hedgerow is now proposed.*

*Ecology reports indicates that the south east hedgerow will be kept unlit, so it provides a dark corridor for foraging/commuting bat species. The hedgerow will be protected from development due to the creation of a 5m buffer along the eastern edge.*

*Hedgerow will be protected throughout construction and this will be detailed in a CEMP, with the creation of this document being a condition of this outline permission.*

*The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development and a 6ft high closed board fence will be installed to prevent it the 5m buffer being illuminated.*

*Condition: A detailed Lighting Strategy will be conditioned for agreement with the LPA. The strategy will 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. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to under 0.5lux.*

*Condition: A Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase, will be conditioned. This will need to be agreed with the LPA.*

*Condition: A Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management, will be conditioned. This will need to be agreed with the LPA.”*

*Regarding bat flight lines, the consultee response stated:*

*“Ecology report states that a hedgerow to the south-east of the site is suitable in supporting foraging/commuting bats and the updated ecology report states that this hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening.*

*No bat activity surveys undertaken to accompany planning application, and this is considered sufficient.*

*The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development and a 6ft high closed board fence will be installed to prevent it the 5m buffer being illuminated above 0.5 lux.*

*Further Information Required: Further clarity is still required with regards to the future ownership/ management of both the hedge and the close bordered fence. As stated in my previous comments, specific details of management can be submitted at RM but certainty is required from the applicant at this stage that the hedgerow and fence will be maintained and managed to ensure the dark corridor remains functional for bats.*

*Condition: The details for reserved matters will include the submission of a Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.*

*Condition: The details for reserved matters will include the submission of a detailed Lighting Strategy for agreement with the LPA. The strategy will 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. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to under 0.5lux

*Condition: The details for reserved matters will include the submission of a Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.*

*Regarding dormice, the consultee response stated:*

*“No dormice surveys were undertaken to accompany planning application and no detail provided as to the suitability of the south-eastern hedgerow for dormice. This south-eastern hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening – no impacts upon dormice.”*

*Regarding badgers, the consultee response stated:*

*“Signs of badgers checked when site walkover undertaken. No signs of badger present during site surveys.*

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

*Regarding Cirl Buntings and nesting birds, the consultee response stated:*

*“Site is within a Cirl Bunting consultation zone. Site walkover indicates no suitable Cirl Bunting foraging habitat onsite or within the site’s locality. Hedgerow is suitable in supporting nesting birds and this habitat will be unimpacted.*

*No further surveys/mitigation required if the following condition is provided.*

*Condition: 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.”*

**Natural England:**

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

*The consultation response also set out general advice on other natural environment issues.*

**County Archaeologist:**

*“The proposal is sited in an area of archaeological potential. The fields in this area are recorded as ‘Wall’ or ‘Wall Park’ on the mid-19th century Tithe Map. A Roman coin*

*has also been found in the vicinity. This may indicate the presence of buildings of the Roman period below the present ground surface.*

*As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.*

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

*If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:*

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

*Reason:*

*'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of archaeological evidence that may be affected by the development'*

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

*I would envisage a suitable programme of work taking the form of archaeological monitoring of consented groundworks and the recording of any features or finds that are observed. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines."*

**Torbay Council's Highways Development Engineer:**

*No objection.*

**South West Water:**

No objection.

**Torbay Council's Waste Client Manager:**

Response pending. A verbal update will be provided at the meeting of the Planning Committee.

**Key Issues/Material Considerations**

**Planning Officer Assessment**

1. Principle of Residential Development.
2. Design and Visual Impact.
3. Quality of Residential Environment
4. Impact on Neighbouring Amenity.
5. Impact on Highway Safety.
6. Ecology and Biodiversity.
7. Drainage and Flood Risk.
8. Low Carbon Development.

**1. Principle of Residential Development**

*The proposal is for the development of three detached dwelling houses on unallocated greenfield land. The site is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, but is not designated as Countryside Area in terms of the Local Plan and is not designated as a Local Green Space in terms of the Neighbourhood Plan. In addition, it is noted that the site forms part of CIL Charging Zone 2 ("Outside 20 percent most deprived LSOAs and within the built up area") in terms of the adopted CIL Charging Zone maps.*

*It should be noted that, along with other parcels of land in the area ('Wall Park Extensions' and 'Berry Head Road', collectively comprising 15ha of greenfield land), the site was considered for allocation for housing as part of the making of the Brixham Peninsula Neighbourhood Plan. These parcels of land were assessed collectively and, as set out in the Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, were rejected for the following reasons:*

*"Development is likely to give rise to significant harm to the landscape character and visual amenity of this part of the AONB, within an area identified as being highly sensitive to change and subject to particular pressure, as well as likely to cause significant impacts to protected species. The sites are not deliverable because of the severe environmental constraints and are therefore not considered to be appropriate for allocation in the Neighbourhood Plan."*

*It is considered that the application site differs in terms of its context and situation compared to some of the other parcels of land that were collectively rejected for allocation, and that the suitability of the application site for residential development should be considered on its individual merits<sup>1</sup>. With due regard to the reasons set out*

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<sup>1</sup> In this regard it is worth noting that, whereas the assessment of the 'Wall Park Extensions' and 'Berry Head Road' sites in the Brixham Peninsula Neighbourhood Plan 'Housing Site

*in Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, specifically the concerns raised regarding the landscape character and visual amenity of the AONB, protected species and environmental constraints, it is considered that these concerns have been adequately addressed and/or mitigated as part of the application and that the site is deliverable for residential development subject to a number of planning conditions.*

*Policy E2 of the Neighbourhood Plan states that development outside settlement boundaries will need to meet the criteria in Policy C1 of the Local Plan. Similarly, Policy BH4 of the Neighbourhood Plan states that development that extends settlements onto adjoining greenfield sites will be considered in the context of Policy C1 of the Local Plan.*

*Policy C1 of the Local Plan states that, in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting.*

*It is important to note that the site is somewhat anomalous in that, while it is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, it is not designated as being within the Countryside Area in terms of the Local Plan. This reflects the site's unusual situation of being greenfield land that, following the construction of residential development (Bloor Homes) on the allocated site to the east, is now surrounded on three sides (northwest, northeast, and southeast) by residential development, with Brixham Football Club adjacent to its fourth side (the southwest). While the site previously had some level of attachment to the surrounding countryside prior to the adjacent Bloor Homes development, the site now comprises an enclave within adjacent development with a clear sense of separation and visual distinction from the surrounding countryside. It is therefore considered that the proposal does not amount to development in the open countryside, would not be away from existing settlements, would not result in the loss of open countryside, would not lead to the creation of urban sprawl, and would not encourage the merging of urban areas with surrounding settlements. (In this regard it is relevant that the site is not designated as being within a Settlement Gap as described in Policy E3 of the Neighbourhood Plan.) The proposal might more reasonably be considered as a form of infill development on land that, although being an open field, is privately owned and not a local green space, and is largely surrounded by residential development that forms the eastern edge of this part of Brixham. It is therefore considered that the proposal does not present any conflict with the considerations set out in Policy C1 of*

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Assessment' document concludes by stating that, "following a suggestion that these sites be considered for protection by way of a Local Green Space designation by the Statutory Consultee Natural England, this Neighbourhood Plan has allocated these sites as Local Green Space within site E4-4", the application site itself was in fact not included in the said Local Green Space designation. This would support the view that this site is a somewhat anomalous site that differs from some of the other parcels of land with which it was grouped, and that the site warrants careful consideration and assessment on its individual merits, as this report seeks to provide.



*the Local Plan, and that the proposal is therefore in accordance with Policies E2 and BH4 of the Neighbourhood Plan.*

*It is noted that the consultation response from Brixham Town Council asserts that the proposal should be considered in terms of the criteria set out in Policy BH9 of the Neighbourhood Plan, and that the proposal fails to meet the criteria. This policy, along with Policy C1 of the Local Plan, sets out certain types of developments that may be considered for land outside settlement boundaries as 'exception sites'. The intention of these policies is that, when dealing with land outside settlement boundaries that would not otherwise be considered suitable for development, exceptions may be considered for certain specified uses (for example agricultural development, affordable housing, touring caravans and tents, and various others) due to, for example, the specific locational needs of the said use or due to the challenges associated with delivering certain worthwhile but less profitable uses. In this instance it is considered that the application site can be considered suitable for development as the development constraints that have previously been identified have been adequately addressed within the proposal and can be adequately mitigated through the proposed planning conditions. It is therefore not considered necessary for the 'exception sites' criteria set out in Policy BH9 of the Neighbourhood Plan and Policy C1 of the Local Plan to be met.*

*Policy H1 of the Local Plan states that proposals for new homes on unallocated sites will be assessed against a set of criteria, proportionate to the scale of the proposal. The assessment of the proposal in relation to each criterion in Policy H1 is set out below:*

- 1. The need to provide a range of homes, including family homes, affordable homes, and opportunities for self-build homes, to meet the full objectively assessed needs as far as is consistent with other policies in the NPPF, Local Plan, and Neighbourhood Plan:*

*The proposed dwelling houses would be moderately sized and would be suitable for use as family homes. While the proposal is for market housing, the proposal also includes the payment of commuted sums for affordable housing in accordance with Policy H2 of the Local Plan, as set out in more detail later in the report. The proposal would therefore make a positive contribution towards addressing local housing needs.*

- 2. The maintenance of a rolling 5 year supply of deliverable sites:*

*It should be 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. In this regard it is important to note, however, that the Council's position with respect to the maintenance of a 5-year or 3-year housing land supply is of less important in this case as the 'tilted balance' in favour of sustainable development does not apply to sites that are located within the AONB, as is the case with this proposal.*

- 3. The opportunity to create mixed, balanced and prosperous communities, including employment provision, with good access to social and environmental infrastructure:*

*The proposal would provide dwelling houses that would be large enough for use as family homes, would be in an acceptable location with respect to social infrastructure, and would be well located with respect to environmental infrastructure. While the*

*proposal would not involve any new employment provision, the proposed dwellings would be in an acceptable location with respect to existing employment opportunities, noting that the eastern edge of Brixham Town Centre would be around 700m to the west. The site is within walking distance of local schools and bus routes are close by.*

*4. The creation of high quality living environments, including the protection of the amenity, recreational opportunities and access to facilities of all residents:*

*The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site in a layout that would provide an acceptable quality of living environment, including ample indoor dwelling space and outdoor amenity space, and without resulting in any unacceptable impacts on the amenities of neighbouring properties.*

*5. The capacity of physical, social and environmental infrastructure, including highways and sewerage, to accommodate development:*

*The proposed dwellings would be in an acceptable location with respect to existing social and environmental infrastructure. Regarding physical infrastructure capacities, it is reiterated that Torbay Council's Highways Engineer and South West Water have assessed the proposal and have raised no objections. It is noteworthy that the proposal also includes improvements to the private access lane which would be secured using a planning condition.*

*6. The objective to maximise the re-use of urban brownfield land and promote urban regeneration, whilst creating prosperous and liveable urban areas:*

*This criterion is not directly applicable to the proposal as the proposal relates to greenfield land rather than to brownfield land. It is nevertheless noted that, although the proposal is for a relatively low dwelling density of around 15 dwelling units per hectare, the proposal would not amount to an inefficient use of the site, noting that the remainder of the open field (the southeastern part) would still be able to take access from the cul-de-sac at Pilgrim Close to the east in the event that this land were to be considered for development in the future.*

*7. The landscape and biodiversity impacts of the proposal and the objective to achieve a net gain in biodiversity:*

*Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape and, on balance, the proposal's impact on the landscape character is considered acceptable.*

*The application has been accompanied by an ecology report, and the proposal's ecological impact is assessed in detail in the consultation response from the Devon County Council Ecologist and in the section on ecology later in this report. The proposal has been designed to accommodate the retention of the hedgerow along the southwestern boundary as a dark corridor, with the ongoing maintenance of the dark*

corridor to be the responsibility of a management company, secured as part of a Section 106 Legal Agreement. Subject to a number of planning conditions, it is considered that the ecological impacts of the proposal can be adequately mitigated.

8. *The objective to reduce the need to travel by car, whilst making appropriate arrangements for vehicle ownership:*

*Although the site is located at the eastern edge of this part of Brixham, the proposed dwelling houses would be around 20 minutes' walk from Brixham Town Centre. In terms of access to public transport, the proposed dwelling houses would be a short walk from the nearest bus stop on Wall Park Road, and would be around 20 minutes' walk from the central bus station in the town centre. The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site with enough space to include sufficient on-site vehicular parking as well as cycle storage.*

9. *Consistency with other policies in the Local Plan and Neighbourhood Plan:*  
*This is set out in detail in the remainder of this report.*

*The proposal is therefore considered to be in accordance with the criteria set out in Policy H1 of the Local Plan for residential development on unallocated sites.*

*Policy M3 of the Local Plan states that any proposal on or in the vicinity of an important mineral resource, including a Mineral Safeguarding Area, should demonstrate that it will not cause unnecessary sterilisation or prejudice the future extraction of important minerals or building stone on these sites. Given that the site is in proximity to neighbouring residential development, it is considered unlikely that the site would be considered suitable for activities relating to the extraction of minerals due to the potential impact on neighbouring amenity. It is also noteworthy that the application site comprises less than a third of the area of the open field to the rear of Nos. 31-39 Wall Park Road, and that a significant proportion of the open field would therefore remain undeveloped. The proposal is considered to be in accordance with Policy M3 of the Local Plan.*

## **2. Design and Visual Impact**

*Whilst the application is in outline with all matters reserved, the submitted information does include an indicative site layout plan which provides sufficient basis for an assessment of whether the proposed three dwelling houses could be constructed on the site in a layout, design and character that would not result in undue visual impact.*

*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'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan states that development should demonstrate good quality design and should respect the character and appearance of the surrounding area. Policy SS8 of the Local Plan states that, when assessing development proposals within the Area of Outstanding Natural Beauty (AONB), the conservation of the landscape and scenic beauty, biodiversity and*

*geodiversity will be given great weight, and that development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. Policy E1 of the Neighbourhood Plan states that development within the Area of Outstanding Natural Beauty (AONB) must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty, and that development should not harm protected landscape characteristics including dark night skies and tranquillity.*

*Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape, noting that the site is also partially screened from public views by the established hedgerow that would be retained as a dark corridor along the southwestern boundary. The proposal is for detached dwellings that would be laid out in a relatively spacious arrangement that would accord with the character and urban grain of the surrounding residential areas, and the proposed retention of a portion of the open field between the rear plot boundaries of Nos. 31-39 Wall Park Road and the proposed dwelling houses would also serve to retain some of the open and spacious characteristic that currently prevails. The proposal is for a fairly low-density form of development (around 15 dwelling units per hectare) that is considered appropriate given the site's location at Brixham's urban fringe. On balance, the proposal's impact on the landscape character and scenic beauty of the AONB is considered acceptable, noting that the proposal would offer some public benefit in the form of the delivery of three dwelling houses as well as the payment of commuted sums for affordable housing, as explained in more detail later in the report.*

*The proposal is considered to be in accordance with Policies DE1 and SS8 of the Local Plan, Policies BH5 and E1 of the Neighbourhood Plan, and the guidance contained in the NPPF.*

### **3. Quality of Residential Environment**

*Policy DE3 of the Local Plan states that development should provide a good level of amenity for future residents.*

*It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to construct three detached dwelling houses on the site in a manner that would provide a good quality of residential environment for future residents, including sufficient access to natural light, internal dwelling space, outdoor amenity space, on-site vehicular parking, and on-site cycle storage, in accordance with the requirements of Policy DE3 of the Local Plan.*

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

#### **4. Impact on Neighbouring Amenity**

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

*Given the siting and scale of the proposed dwelling houses as indicated on the indicative site layout plan, it is considered that the proposal would not result in any unacceptable impacts on the amenities of neighbours in terms of their privacy, outlook, or access to natural light.*

*Given the somewhat constrained access to the site and the potential for a negative impact on the amenities of occupiers of neighbouring properties during construction works, a condition is proposed requiring a Construction Method Statement.*

*Subject to the said condition, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.*

#### **5. Impact on Highway Safety**

*Policy TA2 of the Local Plan states that all development proposals should make appropriate provisions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy BH8 of the Neighbourhood Plan states that access to new developments should comply with the relevant adopted standards. Policy TA3 of the Local Plan states that dwelling houses should each be provided with at least 2 on-site parking spaces as well as adequate space for covered cycle storage and bin storage.*

*The proposed dwelling houses would take vehicular and pedestrian access from Wall Park Road via an existing private access lane, and the submission also indicates that improvements would be made to the access lane. According to the submitted indicative site layout plan, the access lane would have a width of at least 3m for the entirety of the length of the access lane. Given that the access would serve multiple dwellings and would only be wide enough for 1 vehicle with no passing places, the proposal presents some conflict with the adopted Highways' Standing Advice which seeks to ensure that accesses serving more than one dwelling are wide enough to allow for vehicles to pass. It should be noted, however, that the Council's Highways Engineer has assessed the proposal and has raised no objections. Furthermore, Paragraph 109 of the NPPF 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. Given that the proposal would also include improvements to the access lane, it is considered that the increase in vehicular movement arising from three additional dwelling houses would not result in an unacceptable impact on highway safety or a severe cumulative impact on the road network.*

*It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to provide each of the proposed dwelling houses with on-site parking for at least two vehicles, as well as cycle storage. There would also be sufficient space to ensure that vehicles are able to manoeuvre on site such that they are able to enter and exit the site in a forward gear.*

*The proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.*

## **6. Ecology & Biodiversity**

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

*The application has been accompanied by a Preliminary Ecological Appraisal (“the ecology report”) conducted by an ecologist. The ecology report has been assessed by the Devon County Council Ecologist (see the detailed consultation response above) who has indicated that, subject to a number of planning conditions and subject to a means of ensuring the ongoing maintenance of the hedgerow along the southwestern boundary of the site as a dark corridor, the application is acceptable on ecological grounds. In this regard it is noted that a Section 106 Legal Agreement would be used to secure the formation of a Management Company that will be responsible for, amongst other things, maintaining the hedgerow as a dark corridor. In accordance with the requirements of Policy NC1, the Section 106 Legal Agreement would also secure a payment towards mitigating the potential measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.*

*The consultation response from the Devon County Council Ecologist confirms that a detailed Habitats Regulations Assessment is not required.*

*Subject to the said Section 106 legal agreement as well as planning conditions requiring a detailed lighting strategy, a Construction and Environment Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP), a repeat survey for the presence of badgers on the site, and a condition controlling the timing of vegetation clearance, the proposal is considered to be in accordance with Policy NC1 of the Local Plan and the guidance contained in the NPPF.*

## **7. Flood Risk and Drainage**

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

*The site is located within the Critical Drainage Area and the application is accompanied by a Flood Risk Assessment which states that surface water drainage for the proposed dwellings would be achieved via soakaways, and that surface water drainage from the access lane would continue to discharge into the road gullies and highway drainage system within Wall Park Road (as per the existing) but with an upgraded surface and gully system. Given the nature of the proposal, and subject to a condition to secure the use of soakaways, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.*

## **8. Low Carbon Development**

*Policy SS14 states that, commensurate with their scale and nature, development proposals will be required to minimise carbon emissions and the use of natural resources expected to arise during the lifetime of the development. The said policy also seeks to ensure that the projected effects of climate change are duly considered. Policy BH7 of the Neighbourhood Plan seeks to ensure the use of sustainable construction methods in development and states that developments should be designed so as to minimise energy use and maximise energy efficiency.*

*Given that the application is in outline with layout, scale, design and landscaping being reserved matters, a condition is proposed requiring that, at reserved matters stage, evidence be submitted to demonstrate how the scheme meets the abovementioned policy aims in this regard. The site is considered to be in a sustainable location with respect to bus routes and local facilities and amenities, and, as discussed above, surface water drainage would be achieved via soakaways.*

*Subject to the said condition, the proposal is considered to be in accordance with Policy SS14 of the Local Plan and Policy BH7 of the Neighbourhood Plan.*

### **Sustainability**

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

#### **The Economic Role**

*Housing development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development.*

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

*There are no adverse economic impacts that would arise from this development*

*In respect of the economic element of sustainable development the balance is considered to be in favour of the development*

#### **The Social Role**

*The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry considerable weight in this balance. The proposed development would also contribute towards affordable housing through the payment of commuted sums, with this being secured through a Section 106 Legal Agreement.*

*Impacts on neighbour amenity have been discussed above where it is concluded that it would possible to develop this site as proposed without significant harm to residential amenity.*

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

### **The Environmental Role**

*With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on the landscape, ecology and bio-diversity, and surface water drainage. These matters have been considered in detail above.*

*The proposal would result in the use of a field, which currently contributes a sense of openness and spaciousness to the immediate vicinity, for residential development. Given that the site is within the AONB, this has been carefully considered as part of the assessment of the application. The site is somewhat anomalous in that, although it falls outside of the settlement boundary in terms of the Brixham Peninsula Neighbourhood Plan, it is not designated as Countryside Area in terms of the Torbay Local Plan, and adjacent development has rendered the site an enclave surrounded by residential development on three of its four sides, with the fourth side (the southwestern boundary) being screened from view from the public realm by a hedgerow that is to be retained. Given that there is a clear physical separation and visually distinction between the site and the rural landscape and countryside of the AONB further to the southeast, the impact on the character of the landscape and AONB is considered acceptable. It is also noteworthy that the proposal is for a relatively low-density form of development (around 15 dwellings per hectare) that would retain some of the existing sense of openness and spaciousness.*

*Conditions are proposed that would secure mitigation with respect to ecological impacts, the detailing and incorporating of biodiversity enhancement and energy efficiency measures at reserved matters stage, and the use of soakaways for the drainage of surface water relating to the proposed dwelling houses.*

*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.*

### **Local Finance Considerations**

#### **S106:**

*Prior to a planning consent being issued, a S106 legal agreement pertaining to the following matters should be completed. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. It is recommended that authority to progress and complete the legal agreement be delegated to officers.*

### **Management Company**

*In order to ensure that the dark corridor along the southwestern boundary of the site as well as communal areas including internal access roads and open spaces are suitably maintained in perpetuity, the applicant has agreed to institute a Management Company. This would be secured in terms of a Section 106 Legal Agreement.*



### **Affordable Housing**

*In accordance with the requirements of Policy H2 of the Local Plan, the applicant has agreed to the payment of a commuted sum in the region of £32,400 towards affordable housing, with this amount calculated in accordance with the Council's 'Planning Contributions and Affordable Housing' Supplementary Planning Document. This would be secured in terms of a Section 106 Legal Agreement.*

### **Recreational Pressure on Berry Head**

*For non-CIL liable developments, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a Section 106 contribution of £95 per dwelling in order to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation. This is as per Policy NC1 of the Torbay Local Plan which states that "development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure", as well as the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document. The applicant has agreed to the payment of this amount which will be secured in terms of a Section 106 Legal Agreement.*

### **CIL:**

*Given that the site is within CIL Charging Zone 2 and that the proposal is for 3 dwelling houses, the CIL liability for this development is Nil.*

### **EIA/HRA**

#### **EIA:**

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

#### **HRA:**

*The site is within the Sustainance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats. By following the flow chart provided in the South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC. There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.*

### **Planning Balance**

*The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a positive impact overall and help with the supply of much needed housing. Subject to the planning conditions and obligations detailed below, and bearing in mind that a number of elements, including the layout, scale, appearance and landscaping for the development will need to be the subject of reserved matters applications, the proposal is considered to be in accordance with the Development 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.*

### **Proactive Working**

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

### **Conclusion**

*The application is considered acceptable, having regard to the Local Plan, the Neighbourhood Plan, and all other material considerations.*

### **Officer Recommendation**

*Approval: Subject to;*

- 1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;*
- 2. The completion of a S106 Legal Agreement to secure the heads of terms above, in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document and the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to Officers.*

*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**

**Standard time condition:**

*That in the case of any reserved matter, an 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.*

### **11. Reserved Matters condition**

*An application for the following reserved matters shall be submitted to the Local Planning Authority for its approval in writing:*

- (v) layout,*
- (vi) scale,*
- (vii) appearance; and*
- (viii) landscaping.*

*The details of the reserved matters shall be consistent with the details submitted and approved pursuant to the outline consent.*

*Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced, and the development shall be undertaken in 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).*

### **12. Lighting Assessment**

*All reserved matters applications shall include a Lighting Assessment detailing measures to minimise indirect impacts from lighting associated with the pre-construction, during construction, and operational activities, and demonstrating how the best practice (Bat Conservation Trust / Institution of Lighting Professionals, 2018) guidance has been implemented. This shall include details such as artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence, and shall ensure that the hedgerow along the southwestern boundary of the site is kept to under 0.5lux. Once agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with the approved details.*

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

### **13. Construction Environmental Management Plan – Biodiversity**

*All reserved matters applications shall include a Construction Environmental Management Plan (CEMP: Biodiversity), which shall have been prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following.*

- h) Risk assessment of potentially damaging construction activities.
- i) Identification of 'biodiversity protection zones'.
- j) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- k) 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.
- l) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP: Biodiversity, and the actions that will be undertaken.
- m) Responsible persons and lines of communication.
- n) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

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

#### **14. Landscape and Ecological Management Plan (LEMP) or equivalent**

All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, which shall be submitted and shall include, but not be limited to, the following.

- j) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- k) Ecological trends and constraints on site that might influence management.
- l) A habitat phasing plan to ensure habitat is established and functional in advance of impacts.
- m) Aims and objectives of management.
- n) Appropriate management options for achieving aims and objectives. Noting the comments from Natural England with regards to preferred hedgerow management options.
- o) Prescriptions for management actions.
- p) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- q) Details of the body or organisation responsible for implementation of the plan.
- r) 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: To secure a satisfactory form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030.*

### **15. Flood risk**

*As part of any reserved matters application a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in-line with the design parameters outlined within the submitted and approved Flood Risk Assessment, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development unless a phasing plan has been submitted to and approved by the Local Planning Authority, and shall be subsequently maintained thereafter.*

*Reason: To ensure that there are no increased flood risk, in accordance with Policies ER1 and ER2 of the Torbay Local Plan, the Paignton Neighbourhood Plan, and advice contained within the NPPF.*

### **16. Biodiversity enhancement measures**

*As part of any reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.*

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

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

### **18. Access lane**

*Prior to the commencement of works on site, details of a scheme of improvements to the access lane serving the site, including (but not limited to) resurfacing, widening, and upgrading the surface water drainage system, where applicable, shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the scheme of improvements to the access lane shall be implemented in full prior to the occupation of the development hereby approved.*

*Reason: To ensure that the access is suitable, and in accordance with Policies TA2, ER1 and ER2 of the Torbay Local Plan 2012-2030 and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.*

### **19. Written Scheme of Investigation**

*No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which shall have 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, that an appropriate record is made of archaeological evidence that may be affected by the development.*

### **20. Energy Efficiency and Low Carbon Development**

*As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The details shall include the provision of electric vehicle charging facilities to all dwellings.*

*The measures in relation to each residential unit shall be completed, in accordance with the approved details, prior to the first occupation of that unit.*

*Reason: In the interests of sustainable development and in accordance with Policy BH7 of the Brixham Peninsula Neighbourhood Plan, and Policies SS14 and TA3 (and Appendix F) of the Torbay Local Plan 2012-2030.*

### **Development Plan Relevant Policies**

*Torbay Local Plan:*

*SS3 – Presumption in favour of sustainable development*

*NC1 – Biodiversity and geodiversity*

*SS8 – Natural environment*

*SS10 - Conservation and the historic environment*

*SS14 – Low carbon development and adaptation to climate change*

*C1 – Countryside and the rural economy*  
*H1 – Applications for new homes*  
*H2 – Affordable housing*  
*M3 – Preserving and safeguarding of limestone resources and key local building stone*  
*DE1 - Design*  
*DE3 – Development amenity*  
*TA2 – Development access*  
*TA3 – Parking requirements*  
*ER1 – Flood risk*  
*ER2 – Water management*  
*SDB1 – Brixham Peninsula*

*Brixham Peninsula Neighbourhood Plan:*

*E1 – Landscape beauty and protected areas*  
*E2 – Settlement boundaries*  
*E3 – Settlement gaps*  
*E4 – Local green spaces*  
*BH4 – Housing development*  
*BH5 – Good design and the town and village design statements*  
*BH7 – Sustainable construction*  
*BH8 – Access to new dwellings*  
*BH9 – Exception sites*