

Application Site Address	Land At Kingsland , Marldon Road, Torquay, TQ2 7JH
Proposal	Outline application for the demolition of existing structures and redevelopment to provide up to 90 dwellings, up to 1,858 sq.m gross B1 employment, open space, landscaping, associated infrastructure and access. (means of access to be considered in detail) (revised plans received 11.01.21)
Application Number	P/2019/0710
Applicant	Woodford Developments Ltd and Kier Living (South West Ltd)
Agent	Mr. Mark Scoot
Date Application Valid	03.07.2019
Decision Due date	02.10.2019
Extension of Time Date	
Recommendation	Refusal
Reason for Referral to Planning Committee	Major Outline Application
Planning Case Officer	Mr. Alexis Moran



## **Site Details**

The site relates to an area of land bound by the A380 Hamelin Way to the west, Moles Lane to the north and east and Marldon Road to the south and south-east.

A South West Water reservoir is located to the south and west of the site, slightly further south is the Gallows Gate roundabout. The site is accessed off Marldon Road. There is an existing residential dwelling know as 'Kingsland' to the south and west of the site. There are static homes on the wider site.

The site is within the Edginswell Future Growth Area allocation in the Local Plan. An illustrative masterplan for the area, The Torquay Gateway (Edginswell Future Growth Area), was prepared in 2015 which was subsequently adopted as a Supplementary Planning Document (SPD) by Torbay Council.

## **Description of Development**

The application seeks outline consent with all matters reserved other than access, for the development of up to 90 residential units and 1,858m<sup>2</sup> GEA (20,000sqft) of B1 office development, associated access, highways improvements, parking, open space, landscaping and supporting infrastructure on land at Kingsland, Edginswell.

## **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 Torquay 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**

None.

## **Summary of Representations**

There have been three representations to the scheme (all objections), the key issues raised are set out below:

The proposal does not comply with the adopted Local Plan or made Neighbourhood Plan. The approved Masterplan SPD for this area clearly indicates that this site should be used solely for a mix of employment purposes (B1, B2 and B8). The current mix of housing and B1 office space conflicts with this requirement and should mean that the application be refused.

Allowing the proposed development would significantly and demonstrably outweigh the benefits and would therefore not comply with NPPF Paragraph 11. This relates to the non-delivery of a significant amount of employment space. Balanced, sustainable growth of jobs and homes runs to the heart of the spatial strategy of the adopted Local Plan and the fact that employment space, which is allocated within the adopted SPD, will not be brought forward is wholly counter to this. Moreover, if this part of the site is not to come forward for employment development, it will mean that a balance mix of uses cannot be developed within the FGA, and thus questions whether the objectives as set out in adopted Local Plan Policy SS1 can be achieved. In addition, the policy conflicts with Policy H1, which, whilst encouraging proposals for new housing development, only does so when it is consistency with other plan policies.

## **Summary of Consultation Responses**

Torbay Council Highways Consultant - Based upon the information submitted by the applicant, the Highway Authority offers no objection to the proposed development.

Torbay Council Ecologist - Any Reserved Matters application will require ecology mitigation and a nett gain in biodiversity. HRA comments awaited.

Torbay Council Drainage – “The developer is proposing to drain his surface water run-off from the development using soakaways.

Infiltration testing has been carried out at eight trial pits within the site. None of these infiltration test comply with the requirements of BRE365. In the majority of the tests the trial pits have not been allowed to drain fully and the developer has therefore calculated an infiltration rate based on a depth less than the depth of the trial pit. This is not acceptable the full depth of the trial pit must be used in the calculation of the infiltration rate. In addition trial pits 2 and 4 have only had two tests carried out whereas BRE365 clearly identifies that 3 tests must be carried out. As none of the infiltration tests comply with BRE365 the infiltration rates quoted are unsuitable for the design of the infiltration drainage.

The plan showing the location of the trial pits and soakaways clearly identifies that the trial pits were not undertaken at the location of the proposed soakaways. Similarly the depth of the trial holes do not correspond to the proposed depth of the soakaways.

In order to confirm whether infiltration techniques such as soakaways and permeable paving are suitable, infiltration testing in accordance with BRE365 must be undertaken at the proposed location of the soakaways and permeable paving. In addition the infiltration testing must be undertaken at the proposed invert level of the soakaways and formation level of permeable paving.

The only hydraulic calculations that have been submitted for the proposed surface water drainage for the development are some sample calculations for the size of the

soakaways. No details of the surface water drainage discharging to the soakaways are included within the calculations.

The developer must supply a drawing showing the proposed surface water drainage for the development which provides details of the proposed manhole cover levels, invert levels, pipe diameters, pipe gradients, pipe numbering used in the hydraulic modelling and details of the impermeable areas discharging to each pipe length. All of this information is required to be included within the hydraulic modelling.

The developer must demonstrate that the surface water drainage for this development has been designed in order that there is no risk of flooding to property on the site or any increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Therefore the developer must supply hydraulic calculations for the entire surface water sewer system to demonstrate that there is no risk of flooding for the critical 1 in 100 year storm event plus 40% for climate change.

Based on the above comments, before this planning permission can be granted the applicant must supply details to address all the points identified above.”

RSBP – “The RSPB is satisfied (Ecological Impact Assessment Land at ‘Kingsland’ (EPS Ecology, December 2016) and the Ecological Addendum (EPS Ecology, 31 January 2019)) that an appropriate level of habitat and protected species survey was carried out. We note that no curlew buntings were recorded on site. Of European Protected Species considered, several species of bats were recorded, associated with the perimeter and internal hedgerows, so that these habitats additionally have value for bats as foraging habitat and movement corridors. The type of development proposed is a departure from that set out in plans such as Torquay Re-think: Torquay Gateway (Edingswell) Masterplan (Torbay Council et al, undated), eg, p28, Figure 18 Edingswell Valley Land use shows the site as employment land, and it is not clear how requirements for public green space provision linked to new housing, and retention and provision of linked green corridors for the whole Masterplan area relate to the proposals in this planning application. The proposal includes removal of the majority of the internal N-S hedgerow, one that was assessed as a notable

feature and an important hedgerow. We do not consider that buffer planting of native trees and shrubs against the retained hedges on the west and north boundaries of the site will be adequate mitigation for that loss. No information is presented on how the retained and widened hedges will be managed in perpetuity to maintain and enhance their existing biodiversity value and, if your authority grants this outline application, we recommend full details are provided with any reserved matters application. We also recommend that a biodiversity offsetting contribution is made so the loss of the hedgerow habitat on site can be compensated for by an appropriate length of new hedgerow creation elsewhere in Torbay. The EPS documents mention installing bird and bat boxes on proposed buildings. In our view, it is better to use integral swift 'bricks' that can be built into dwellings etc as they are constructed. These are unobtrusive, require no maintenance and last the lifetime of the building. They need to be installed at the minimum height of 5 metres above the ground with 5 metres of 'clear air space' in front of the entrance in order to attract swifts. However, swift bricks will also be used by house sparrows and blue and great tits, and are one measure to provide an element of net gain by providing habitat for urban-nesting birds. Bat boxes must be located where there is no disturbance from artificial lighting. An overall ratio of one swift brick per dwelling is recommended. Bigger buildings, such as office blocks, can have groups of 2-3 bricks built in c1 metre apart from each other. There are many types of commercially available swift bricks which are increasingly becoming standard in new developments, more information is available on request.

2 In relation to retention of existing and provision of new habitats, we recommend Torbay Council ensures that development proposals for this site meet the requirements of Torbay Local Plan (2012 to 2030), including Policy SS8 Natural Environment (para 1 re retaining/providing habitat corridors and para 4 re long term management for green space, dark corridors and requiring appropriate mitigation for adverse impacts and developer contributions where necessary), Policy C4 Trees, hedgerows and natural landscape features which states that developments should seek to retain and protect existing hedgerows wherever possible, with replacement and other mitigation measures required via planning condition or legal agreement where loss of hedgerows is considered acceptable as part of a development, and Policy NC1 Biodiversity and geodiversity which includes the requirement that "all developments should positively incorporate and promote biodiversity features".

Avoiding, mitigating and compensating for harm to biodiversity assets is separate

from securing net gain (ref, para 175 National Planning Policy Framework). The new Environment Bill will, once enacted, make net gain a mandatory requirement for new developments.”

Torquay Neighbourhood Forum: “In general the TNPF supports the principle of development of the Future Growth Area for mixed use housing and purpose built job creation as part of a jobs led growth for Torquay. Its use for housing should only be considered when the economic needs of Torquay support the provision. We positively support its development for purpose built job creation space (as a priority over housing) due to the net loss of jobs in Torquay during recent years. The development of greenfield sites for housing are not supported when so many brown field sites are allocated and available to develop. The development of the FGA must be done holistically so that the strategic aims for job creation space in the Local Plan for the FGA are met. Ad hoc development of parcels of land does not allow this to happen and so an updated Master Plan should be made available to comply with the various policies in the development plan as a whole, to ensure development integrates with the surrounding communities and to ensure the appropriate level of mitigation for protected species are put in place for the whole area in an integrated network. It is deeply regretted that the community and the TNPF in particular have not been consulted prior to the application being made. Had consultation taken place then a development could have been supported. This application is premature to an integrated development of the whole of the FGA as part of meeting the strategic economic needs of Torquay in the Local Plan.”

TDA:

“The Economy Investment and Enterprise team, TDA object to the application as currently proposed.

The application sits within a designated Future Growth Area under SS2 of the adopted Local Plan, which promotes both residential and employment led development. A key element of the Future Growth Area designation is, ‘the creation of a range of employment opportunities, delivered in the early stages of development, designed to meet identified economic growth sectors’. There is also a requirement for the appropriate phasing to ensure an overall balanced provision of

jobs, home and infrastructure. The current proposal for this site is heavily residential led.

The Torquay Gateway Masterplan has been developed in consultation with the council, community, and landowners to encourage sustainable development which meets the ambitions of Torbay as a place. The application in question is within the area highlighted as Edginswell Valley, in which the masterplan promotes the development of employment space B1, B2, and B8.

The employment space allocation within the application sets out office use and whilst we welcome new employment sites coming forward, there is very limited demand for larger office space in Torquay. We do however see demand for industrial space to come forward in Torquay, where there is a very limited offer of new space and limited availability in existing supply. We would also suggest industrial space in the region of 4-5,000 sq ft units with a mix of sizes in an industrial scheme within an overall application that shows more of a balance between housing and employment space. The site offers excellent access to businesses serving Torbay and the surrounding areas and beyond being ideally located for access to the South Devon Highway.

We feel the developers will build out the housing element as a priority, see no demand for office occupiers come forward in that location and then seek changes to deliver additional residential. We would like to see conditions applied that request relevant employment space, that is demanded [please note previous comment regarding limited office demand] being delivered in tandem with housing at designated volumes.

Torbay remains amongst one of the lowest areas in terms of economic performance across the UK, particularly in relation to GVA per head where it ranks in the 9th lowest nationally. The Local Plan acknowledges the need for a transformation step change and delivery of ambitious growth to secure Torbay's long terms future economic prosperity. This proposed application does not provide sufficient employment of the right type to support the ambitions of the Local Plan or Torbay Economic Strategy.”



Additional comments received 18.01.2020 – “We would like to update that very recently (Nov/Dec 2020) we retested our current demand pipeline which sets out over 280,000 sq ft of demand for mainly light industrial space predominantly in Torquay and Paignton. Demand for B1 office is very limited. We reinforce that we would like to see conditions applied that request relevant employment space, that is demanded [please note previous comment regarding limited office demand] being delivered in tandem with housing at designated volumes.”

Natural England: The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal. Should the proposal be amended in a way which significantly affects its impact on the natural environment then, in accordance with Section 4 of the Natural Environment and Rural Communities Act 2006, Natural England should be consulted again.

Arboriculture: There would appear room on the site for arboriculturally sustainable development but the detailed design proposals are not shown, or how the development can accommodate the number of units whilst retaining the trees. It is recommended that a tree protection plan using the full theoretical RPA is submitted with the detailed design at Reserved Matters stage.

DCC Archaeology: “I am recommending that a scheme of archaeological mitigation be agreed for this development. I am also recommending that the medieval parish boundary between St Marychurch and Kingskerswell, identified as a hedgerow for possible removal in the application, actually be retained as a significant historic landscape feature. I recommend that this point be raised with your Landscape Officer. The proposal is sited in an area of known archaeological interest recorded on the Devon & Torbay Historic Environment Record (HER). Scatters of prehistoric stone tools have been found during previous smaller scale groundworks within the proposal area. A Bronze Age axe has also been found in the area. This indicates a potential for evidence of prehistoric settlement surviving 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

associated with prehistoric settlement. If the medieval; parish boundary is also to be impacted by groundworks, then this will also need to be recorded. 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 as taking the form of a staged programme of archaeological works, commencing with desk-based context study and the excavation of a series of evaluative trenches to determine the presence and significance of any heritage assets with archaeological interest that will be affected by the development. Based on the results of this initial stage of works the requirement and scope of any further archaeological mitigation can be determined and implemented either in advance of or during construction works. This

archaeological mitigation work may take the form of full area excavation in advance of groundworks or the monitoring and recording of groundworks associated with the construction of the proposed development to allow for the identification, investigation and recording of any exposed archaeological or artefactual deposits. 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.”

Environmental Health: No objection

SWW: No objection

Housing Delivery Officer: Housing services have viewed the above application including a number of the submitted plans and would have advised that they believe the split on the site to be around 75% Greenfield and 25% Brownfield. With this being the case, and as per Council, 30% affordable housing being provided on the Greenfield element of the site (20 units) and 20% on the Brownfield (6 units) and so a total of 26 affordable units in total.

Provision of the affordable housing will be sought on the basis of 1/3 Social Rent, 1/3 Affordable Rent and 1/3 Shared Ownership. The bedroom mix should be proportionate to the site as a whole with a pepper potted approach to the layout and as per section H6 of the Local Plan for a scheme providing 26 affordable units that the provision should also include 1 wheelchair adapted unit.

**Key Issues/Material Considerations:**

Planning Officer Assessment

1. Principle of Development
2. Design and Visual ImpactOptimusPrime10
3. Impact on Residential Amenity.
4. Impact on Highway Safety.
5. Ecology and Biodiversity
6. Drainage and Flood Risk
7. Other considerations

## **1. Principle of development**

A key issue with this application is whether the proposed residential and employment mix is suitable on this site is acceptable in principle.

The application site is located within a wider Strategic Delivery Area (SDA), as designated in the Torbay Local Plan under Policy SS1, which identifies areas for the delivery of growth and change in Torbay for the period of the Local Plan. In addition to the above the site is also part of a wider Future Growth Area as identified within Policy SS2 of the Torbay Local Plan. The site forms part of the Torquay Gateway SDA and Policy SDT3 of the Torbay Local Plan, concomitantly the Torquay Neighbourhood Plan identifies the site as being a Future Growth Area. Policies SS1 and SS2 identifies that Future Growth Areas are areas within SDAs that show broad locations where the Council will seek to work with landowners and the community, through neighbourhood planning and/or master-planning, to identify in more detail the sites, scale of growth, infrastructure etc that is required to help deliver the aspirations of the Local Plan.

The site is also subject to an adopted masterplan for the wider Future Growth Area (adopted December 2015) for the Torquay Gateway (Edginswell) area. The adopted Masterplan identifies the site for employment with south-east corner of this site shown as B1 office use and the remaining site as B2/B8 Light industrial/warehouse development. The proposed development is at odds with the principles of the Masterplan for this area, i.e. there is a substantially smaller employment offer with no B2/B8 uses proposed and instead residential dwellings in their space. The area shown as B1 development in the indicative layout plan submitted with the application does however appear to accord with that allocation in the masterplan.

Consultation comments from the TDA advise that Torbay remains amongst one of the lowest areas in terms of economic performance across the UK, particularly in relation to GVA per head where it ranks in the 9th lowest nationally. They also advise that there is a demand for over 280,000 sq ft of mainly light industrial space predominantly in Torquay and Paignton whereas the demand for B1 office is more limited.

Amongst other things, Policy SS2 states that Future Growth Areas should create a range of employment opportunities, delivered in the early stages of development, designed to meet identified economic growth sectors. Policy TS2 (Master Plans) of the Torquay Neighbourhood Plan states that Major development proposals within the Torquay Gateway areas will be supported where they contribute to meeting the objectives of the Torquay Neighbourhood Plan for these areas and they conform to the area wide Master Plans adopted by the Council.

The introduction commentary of the Torquay Neighbourhood Plan advises that the Neighbourhood Forum want the delivery of a gateway of significance for the town which is mixed use, well-connected and provides sustainable communities, to allow change and growth as the economy expands.

Local Plan Policy SS4 states that the Local Plan supports the creation of at least 5000-5,500 net additional jobs by 2030. To help achieve this, at least 65,000 square metres of employment space, comprising 28,000 square metres of Use Class B1- B2 space and 38,000 square metres of other employment uses are proposed on the sites in Policy SS5, which includes this site, as part of mixed use developments where appropriate. Policy SS5 advises that in order to meet the needs of existing, growing and new businesses, sufficient high quality space will be provided to meet existing and arising requirements of employers and for major employment or mixed use developments, the Council will seek around 25% of space to be provided as Use Class B space, to reflect the needs of the area and to increase GVA. The Policy goes on to say that specific sites will be identified through Neighbourhood Plans and Masterplans, as previously noted, this site is allocated for employment in the Torquay Gateway Masterplan and the Torquay Neighbourhood Plan. The loss of employment on this site also has a knock on effect of making the wider gateway site and the community less sustainable by reducing the potential for people to live within easy walking distance of their employment.

Torquay Neighbourhood Plan Policy TH6 states that sustainable community planning Development proposals within the Edginswell Future Growth Area should be developed with consideration of the immediate surrounding communities of Shiphay,

the Willows and Barton. Opportunities to provide transport connectivity as well as complement, augment and/or support the provision of community facilities and primary schools which serve the wider area are important considerations for creating an integrated sustainable community.

Torquay Neighbourhood Plan Policy TTR2 encourages a reduction in the need to minimise the distance for travel between homes and places of work, education, recreation and shopping. Concomitantly Policy THW3 states that in order to contribute to sustainable development, where major residential developments of more than 20 units are proposed, they will be supported where they will be served within a reasonable walking distance by a range of community facilities. The greater the number and variety of facilities, the greater the support which will be provided.

It is considered that the sustainable walking distance from a residential dwelling:

- to a bus stop is 400m,
- to the nearest local convenience is 800m and,
- to the nearest primary school is 800m

The proposed scheme indicates two additional bus stops close to the site and footpaths from the site that would link up with the existing footpaths some 800m further to the east. The site is not within 800m of local conveniences or a primary school, the closest of which is Shiphay Learning Academy some 1.2km away. Although the site is an allocated one, it is allocated for employment uses and the departure from this to a largely residential scheme, would need to be considered differently in terms of sustainability with more focus on the aforementioned distances to local conveniences and primary schools. It is therefore considered that there is some conflict with Policies TTR1, TTR2 & THW3.

It is acknowledged that the land immediately east of Moles Lane, adjacent to this site is allocated for housing development. The masterplan identifies this new growth area for housing as coming forward with a local centre and primary school. The provision of these services will create a sustainable form of development that cannot be achieved through the piece meal development of this smaller application site

proposed to be delivered in advance of the provision of any of the new local services.

It is noted that the Council cannot currently demonstrate a 3 or 5 year housing land supply. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision making process. The 'tilted balance' in favour of sustainable housing development therefore applies subject to the detail wording of the NPPF Para 11 and the associated footnotes.

However the non-delivery of a significant amount of employment space results in an imbalance between sustainable growth of jobs and homes which is a key theme of the Local Plan and Torquay Neighbourhood Plan and the fact that employment space, which is allocated within the adopted SPD, will not be brought forward is not deemed to be sustainable.

Given the forgoing, the mix currently proposed by this application is considered to be an significantly unsustainable form of development in the wider context and is therefore considered to be contrary to NPPF Para 11.

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

Whilst the proposal only seeks detailed consent for the proposed access, being in outline with all other matters reserved for future consideration, the submitted information does include an indication of a proposed site layout and detail on the likely character and appearance of the development, offering indicative layout and section drawings. It is necessary as part of this application to consider whether the submitted detail indicates and provides sufficient comfort that the amount of development could be appropriately achieved in terms of its layout, design and character, without undue visual impact.

Achieving good design is a central thread within government guidance and Part 12 of the NPPF "Achieving well-designed places" offers key guidance. Paras 126, 127, 130, and 134 are particularly relevant and accumulatively inform that the creation of

high quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 134 advises 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.

Therefore, if on receipt of an application for approval of reserved matters, the Local Planning Authority does not consider the detailed proposals to be of sufficiently high quality, they may, at their own discretion and based on the then submitted detail, decide to issue a refusal on that basis without prejudice to the principle of any outline permission already granted.

Local Plan Policy SS2 states that development delivered within each of the Future Growth Areas must be integrated with existing communities and reflect the landscape character of the area as informed by Torbay's Landscape Character Assessment (2010). Policy SDT3 identifies that the scale and nature of new development in the gateway must reflect the character of the individual area, as informed by Torbay's Landscape Character Assessment and should be green infrastructure led.

Local Plan Policy SS8 states that development proposals outside of the AONB designation (the site is not within the AONB) will be supported where they conserve or enhance the distinctive character of Torbay, or where the impact is commensurate with the landscape importance. Local Plan Policy SS11 states in part that development should be of an appropriate type, scale, quality, mix and density in relation to its location. Local Plan Policy DE1 outlines a number of factors towards securing development that is well-designed and that respects Torbay's special qualities and Torquay Neighbourhood Plan Policy TH8 advises that development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.



In terms of context the site is identified within the Torbay Landscape Character Assessment as Landscape Character Type 3A: Upper Farmed and Wooded Valley Slopes. The Torbay Landscape Character Assessment states that the Edginswell area makes a significant contribution to the local setting of Torquay and that the bypass passes through a largely unspoilt fringe of well managed farmland that has a defined landscape pattern.

The Torquay Gateway Masterplan states that the area comprises a pattern of sloping arable and pasture fields defined by hedges that follow the contours. The hedgerows and trees along the eastern side of the area create a significant screen along the urban edge. The bypass is becoming well integrated being partially screened by cuttings and establishing planting; the side slopes are identified as being of local conservation interest.

In terms of assessing the design and visual impact as the proposal is in outline the design will principally be scrutinised at reserved matters stage should outline permission be granted. Notwithstanding this, basic principles can be considered to determine whether the amount of development is likely to be adequately achieved.

In terms of design the indicative layout appears to present sufficient confidence that the quantum of development could be achieved. The basic layout suggest perimeter blocks will be achieved which will present properties facing and framing the streets, which is a supported layout proposition. The indicative layout suggests that garden space could be adequately resolved to meet the standard expected within the Development Plan of 55sqm, whilst also reflecting the more spacious character of the rural edge development. However, comments from the Devon County Archaeologist suggest that the medieval parish boundary hedgerow should be retained and additional ecology mitigation may also be necessary. The suggested distances between properties are largely in excess of the 20-21m guide for back-to-back relationships plus an allowance for likely level changes, which indicates that the guide distance should be increased to secure suitable levels of privacy.

The indicative layout appears to suggest adequate parking could be provided to meet the expected level of 2 spaces per dwelling. Further details would be required as part of a reserved matters submission to enable the precise parking arrangement to be properly scrutinised, but it appears, based on the space available, that an adequate parking arrangement could be provided for the proposed number of units without compromise on other important aspects of the scheme, such as dwelling sizes, the availability of landscaping and amenity space etc. However the indicative layout appears to show the fronts of properties dominated by parking, this approach is not encouraged given the impact it would have on the future character of the site.

All matters considered there appears to be scope to resolve an adequate design outcome for the amount of development sought to present an acceptable residential environment for future occupiers and occupiers of existing properties. Ultimately a detailed layout and residential environment would be considered at the reserved matters stage, the description of development is 'up to 90' dwellings therefore this number may be less once a fully worked up scheme is submitted.

In regard to visual impact although the application seeks outline consent the suggested layout and scale should be duly interrogated to determine the likely visual impact resulting from the amount of development being proposed. Having considered the proposal and the context there is considered to be broad alignment between what is being proposed and the informative landscape assessment, the Torbay Landscape Character Assessment, the adopted Masterplan for the area and the Neighbourhood Plan guidance albeit that the proposal would not accord with the land use in the aforementioned plans.

The application is supported by a landscape and visual impact assessment and this concludes that the proposals would not result in any significant landscape or visual impacts and that these would all be similar or less to those that could reasonably have been anticipated when the wider area was allocated for mixed use development. The proposals for the application site would therefore be compatible with the relevant policies in the Local Plan subject to incorporating the mitigation

measures identified on Parameter Plan 6: Landscape Masterplan into the scheme at the Reserved Matters stage.

In terms of character the indicative proposal is somewhat suburban in layout and scale but this is not at odds with the adopted Masterplan for the area, although different on form, i.e. with significantly less employment land and in its place the addition of residential dwellings.

In terms of the design and visual impact of the detailed access, the junction point sits at the southern boundary of the site where there are two existing accesses and as such appears to be the most suitable location which would cause the least harm on the character of the area. The access point is therefore unlikely to have a detrimental impact upon local character when considering the current character.

All matters considered based on the indicative information provided the proposed development is for the reasons above considered to demonstrate the potential to provide a satisfactory form of development in terms of layout albeit that with additional landscaping, ecology mitigation and potential retention of existing historical features on the site, this may not result in the maximum quantum of development applied for in outline. That in mind, it is considered that the proposal is broadly in accordance with Policies H1 and DE1 of the Local Plan. However the reduced level of employment on the site would mean that the layout is contrary to Policies SS2, SS4 & SS5 of the Local Plan and Policy TH6 of the Torquay Neighbourhood Plan.

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

Policy DE3 of the Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers. The NPPF guides that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve and that planning policies and decisions should ensure that developments, amongst a number of things, should create places that promote health and well-being, with a high standard of amenity for existing and future users.

The site borders an existing residential property to part of southern and western border which is shown as being within the ownership of the applicant. The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts through the use of a planning condition. In terms of the finished development the residential use aligns with the residential uses nearby and the additional dwellings and employment space would not result in undue noise or general disturbance for the existing dwelling adjacent to the site. In terms of scale and form this will be established within a future reserved matters application however officers are satisfied that it will be possible to develop the site without having an unacceptable impact on the residential amenity of existing dwellings.

In summary the proposed access arrangements, indicative layout and supporting information are considered to demonstrate the potential to provide a satisfactory form of development in terms of protecting the amenities of adjacent occupiers, in accordance with Policies DE1 and DE3 of the Local Plan.

However, it should be noted that the adopted Masterplan for the site does not show the host property known as 'Kingsland' as being retained as part of any future development of the Torquay Gateway and does not include any residential development.

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

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

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

Currently the site has two access points onto Marldon Road. It is proposed that the western access be retained to serve the retained dwelling know as 'Kingsland'. The eastern access will be permanently stopped up and a new, superior, access provided for the proposed development.

The proposed access junction would provide a right-turn ghost island that meets current design standards and visibility splays of 2.4 x 120m are available. The proposed junction design is considered to secure adequate visibility

Within the site the access road will provide a 5.5m wide carriageway with the layout designed to accommodate refuse vehicles moving throughout the site. Two metre wide footways are provided on both sides. In terms of future considerations, should the proposal be granted planning permission, it is recommended that internal roads are built to the standards outlined within the Torbay Highway Design Guide to ensure that they have the potential to be adopted by the Local Highway Authority. Ultimately further scrutiny will be given to the internal layout at reserved matters stage.

A secondary pedestrian/cycle link is provided onto Moles Lane allowing for future connections to be made as the wider Torquay Gateway Area is developed.

The applicant has submitted drawings which illustrates the footway/cycleway being extended to the Nut Bush Lane junction. Additionally, the extended footway has been widened to 3m to accommodate a footway/cycleway. The applicant has also identified bus stop locations and layouts on Marldon Road. Theses developments will be delivered via S.38 & S.278 agreements.

The submitted swept path analysis shows an articulated vehicle successfully accessing and egressing the Marldon Road/Moles Lane priority junction.

The applicant has provided a Framework Travel Plan for both of the residential and employment elements of the development.

A review of the Highway Link Assessment has identified a maximum increase of 3% on Marldon Road (West of the Site) which is considered negligible in terms of impacting on the capacity or operation of the local highway network.

The applicant has undertaken junction capacity modelling for the proposed site access, the results identify the operation of the junction in a future assessment year of 2025 to be operating well within capacity.

Local Plan Policy SS6.2 and SDT3 indicates that development of the Edginswell Future Growth Area will require infrastructure improvement works. In addition, Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD also suggests a sustainable transport obligation should be secured. The precise amount would be established at reserved matters stage.

Notwithstanding the above, there are currently no local services within a reasonable walking distance of the site; whilst there are bus stops provided it is most likely that future occupiers of any residential development of this site will rely on their cars for many journeys and as such the development is not sustainable.

## **5. Ecology & Biodiversity**

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

Policy TE6 of the Torquay Neighbourhood Plan states that, all development within the Edginswell Future Growth Area must have a Habitats Regulations Assessment (HRA) as appropriate and be compatible with ecological requirements set out in the Habitats Regulations.

The site is within the Landscape Connectivity Zone for the South Hams SAC with respect to Greater Horseshoe Bats. The results supplied by the applicant indicate that during the 2016 bat static detector surveys, one record of GHB was recorded along the western side of the site (adjacent to the A380 carriageway).

Following the flow chart within the South Hams SAC Habitat Regulation Assessment (HRA) Guidance document (October 2019) it is deemed that in-combination with future development within the Edginswell Future Growth Area, there would be loss, damage or disturbance at a landscape scale to potential commuting routes for Greater Horseshoe Bats. Therefore, it is deemed that there may be a Likely Significant Effect on the South Hams SAC in the absence of mitigation and a detailed HRA is required. A further update on this will be given to Members at the Committee Meeting.

In regard to broader ecology matters, the buildings onsite to be demolished are deemed to offer low/moderate roosting potential for bats when surveyed in 2016 and resurveyed in 2018. Emergence and re-entry surveys of the building were undertaken in July 2016 and again in July 2018 found no evidence of bat roosting and therefore there are no impacts to roosting bats anticipated.

The proposals will lead to the loss of approximately 0.17km of hedgerow habitat and a further 12m of hedgerow will be lost from the creation of a new site entrance. This is to be mitigated by a two-meter-wide thickening of the western and northern boundary hedgerows will be undertaken to mitigate the loss of the internal hedgerow. The Councils Ecology advice states that details for reserved matters would need to include the submission of all details relating to securing compensation and 10% net gain through habitat creation and enhancement.

Approximately 1.65ha of semi-improved grassland will be lost to development, the applicant would need to compensate for loss of habitats, either on site or offsite, as part of the reserved matters application. Any future reserved matters application should use the most recent national biodiversity metric to help. The details for reserved matters will need to include the submission of a biodiversity metric

calculation which use the most up-to-date metric and associated guidance documents. This calculation would need to secure a 10% net gain in biodiversity.

In summary, subject to a positive HRA, the proposal would accord with the Conservation of Habitats and Species Regulations 2017 (as amended) and the Torbay Local Plan Policies NC1, C4 and SS8 and Policy TE6 of the Torquay Neighbourhood Plan.

## **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 developer is proposing to drain surface water run-off from the development using soakaways. However, as stated by the Councils Drainage Engineer, the infiltration testing does not comply with the requirements of BRE365 and therefore the infiltration rates quoted are unsuitable for the design of the infiltration drainage.

As this is a major application, the developer must submit the drainage details with the application. This would include undertaking the infiltration testing at the proposed location and invert level of the soakaways and in accordance with BRE365. Based on the results of the infiltration testing the surface water drainage can then be designed in order that there is no risk of flooding to properties on the site of increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. Consequently, insufficient information has been submitted to determine whether the proposal would accord with Policy ER1 of the Local Plan.

## **7. Other Considerations**

### **Housing Supply**

Please refer to the affordable housing proposed – numbers and type



The provision of housing is a significant benefit within the planning balance, particularly in light of the current published position where the Authority can only demonstrate 2.9 years, which is a significant shortfall. Paragraph 11 of the NPPF outlines that, decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

Where a proposal is considered to conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. As stated, the land is allocated for employment and the development is therefore contrary to the adopted masterplan for the area, that is itself supported within the Neighbourhood Plan; in addition, due to the distance from local services the proposed residential development is in an unsustainable location. As such it is considered that the adverse impacts are significant and demonstrably outweigh the benefits of the development. When considering the tilted balance it is concluded that in this instance the balance does not lie in favour.

### **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 site is identified for employment within the Development Plan and is hence broadly considered a sustainable site for future employment development as part of the wider Edginswell growth area.

The proposal is supported by a travel plan for the employment and residential applications that seeks to provide the parameters to help the development minimise the use of the private car. The development at Reserved Matters stage, would need to provide details of electrical charging points and cycle parking facilities.

Nevertheless, having regard to the distance of the site from local services it is anticipated that the development will be heavily car dependent.

### **The Economic Role**

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

With regards to the employment aspect of the site, job creation is a driver of economic growth and there would be economic benefits of bringing the site forward for development. Aside the longer-term economic benefits the construction phase would also create jobs within the local economy.

However, the Neighbourhood Plan and the Masterplan for the area show the whole site as being B1 & B2/B8 use, the residential aspect of the site therefore dilutes the amount of employment and jobs that were envisaged for the wider masterplan area. This has the potential to negatively impact on the sustainability of the wider site.

There is an adverse economic impact that would arise from this development which would result in a loss of allocated employment land. In respect of the economic element of sustainable development the balance is not in favour of the development.

### **The Social Role**

There would be a social benefit of the proposed residential aspect of the development as it would provide additional housing, including additional affordable units. However, the location of the site is likely to result in unsustainable forms of journeys given its distance from local conveniences and primary schools.

There would be a social benefit of the proposed development as it would help deliver job opportunities in the local area. Initially the construction phase will provide activity

and employment opportunities. The B1 use would then provide longer term job opportunities for local residents.

On balance, although there are social impacts of the development, the proximity of the site for residential use is not considered to be well connected to amenities and therefore fails to create an integrated sustainable community.

### **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 above.

The environmental benefits identified are marginal in the case of this application but net gains through additional hedgerows, planting and mitigation land would need to be provided as Reserved Matters.

### **Sustainability Conclusion**

Having regard to the above assessment the proposed development is not considered to represent sustainable development.

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

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

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

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

## Local Finance Considerations

### S.106 Agreement

The following are draft Heads of Terms for a legal agreement, which should be completed prior to a planning consent being issued. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable is recommended that authority to progress and complete the legal agreement be delegated to officers.

## Highway works

In-line with Torbay Local Plan Policy SS6.2 and SDP3 development along the Torquay Gateway Corridor will require infrastructure improvement works.

## Sustainable Transport

In accordance with Torbay Local Plan Policy SS7 and the Planning Contributions and Affordable Housing SPD (to open marking housing only) Sustainable Transport obligations should be secured.

## Greenspace and Recreation

No detailed obligation request or expected level of play provision raised by Natural Environment Services. The Planning Contributions and Affordable Housing SPD indicates a development of this scale should secure a LAP and a LEAP. Parameters for the provision and retention of future public play space, which secures appropriate play space for different ages of children, should be secured, including funding mechanisms or public adoption, and dispute mechanisms, along with the provision and maintenance of the public open space, public access routes and allotments.

## Education

Obligations in-line with the adopted SPD should be sought to secure increased school capacity within Torquay, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Lifelong Learning Obligations**

Obligations in-line with the adopted SPD should be sought to secure library improvements within the area, based on the provision of open market housing, the detail of which will come forward at reserved matters stage.

### **Waste and Recycling**

Obligations in-line with the SPD should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

### **Affordable Housing**

Affordable housing provision for this development would need to accord with Policy H2 of the Torbay Local Plan. Housing services have viewed the above application and would expect to see 30% affordable housing being provided on the Greenfield element of the site (20 units) and 20% on the Brownfield (6 units) and so a total of 26 affordable units in total.

The affordable housing provision would be split into 1/3 Social Rent, 1/3 Affordable Rent and 1/3 Shared Ownership. The bedroom mix should be proportionate to the site as a whole with a pepper potted approach to the layout and as per section H6 of the Local Plan for a scheme providing 26 affordable units that the provision should also include 1 wheelchair adapted unit.

The applicant has confirmed that they are willing to provide the affordable units required for this application.

Elements of the provision, such as location and mix, to be agreed through the reserved matters stage when the form and layout is progressed beyond the current indicative stage.

## **Conclusions and Reasons for Decision**

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 create jobs and provide housing would not be a sustainable use of the land at present and should provide more B2/B8 uses, for which there is a proven need for in Torbay. The scheme is considered to be contrary to Local Plan and Torquay Neighbourhood Plan Policies and to the adopted Masterplan for the area which shows this site as allocated for employment land for the wider Torquay Gateway site. Although the Council requires additional housing urgently, the loss of the employment land has the potential to detrimentally impact the viability and sustainability of the wider Masterplan site. The proposal is not considered to be a sustainable development which align growth and infrastructure and the lack of certainty over the submitted drainage details does not suitably address that the application would mitigate climate change.

## **Officer Recommendation**

Refusal.

## **Reasons for refusal:**

### **Drainage**

The proposal, due to the lack of a detailed design for the management of surface water, fails to provide certainty that the risk of flooding to land of buildings adjacent would not be increased, within a Critical Drainage Area designated by the Environment Agency, contrary to Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

### **Loss of employment**

The proposal would result in the development of land which is designated as B2/B8 employment land in the Torbay Local Plan, Torquay Neighbourhood Plan and the adopted Masterplan for the area. The LPA considers that the loss of employment land would reduce the sustainability of the wider Edginswell Growth Area due to the loss of employment opportunities that would arise, resulting in an adverse impact on the economic viability of the area representing an unsustainable from of

development. As such, the proposal is contrary to Policies SS1, SS2, SS3, SS4, SS5 of the Torbay Local Plan and Policy TH6 of the Torquay Neighbourhood Plan.

### **Sustainability**

The proposed development does not accord with the allocation of the land in the development plan, the neighbourhood plan and the Masterplan for the site and, notwithstanding the tilted balance in favour of sustainable development that applies in this case, the planning benefits of the scheme do not present an overriding reason to grant planning permission, when considering the harm arising from the loss of employment land, the lack of adequate access to local facilities and services together the broad unsustainability of the development that is likely to be over-reliant on the private car. The development therefore does not accord with the development plan when considered as a whole and material considerations do not indicate that a decision should be made counter to the development plan. This conclusion is made in accordance with guidance contained within the NPPF, notably Paras. 11, 12 and 14. As such it is considered that the development presents significant harm which gives rise to a clear and demonstrable level of conflict with a range of Local Plan and Neighbourhood Plan policies, notably Policies SS1, SS2, SS3, SS4, SS5 and SS11 of the Torbay Local Plan and Policies TS1, TS2, TH3, TH6, TJ1 and TTR2 of the Torquay Neighbourhood Plan.

### **Lack of s106**

The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of sustainable development contributions and affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.

### Relevant Policies

SS2 - Future Growth Areas

SS3 - Presumption in favour of sustainable development

SS4 - The economy and employment

SS5 - Employment space

SS6 - Strategic transport improvements

SS7 - Infrastructure, phasing and delivery of employment

SS9 - Green Infrastructure  
SS10 - Conservation and Historic Environment  
SS11 - Sustainable Communities Strategy  
SS12 - Housing  
SS13 - Five Year Housing Land Supply  
SS14 - Low Carbon Development and Adaptation to Climate Change  
W2 - Waste audit for major and significant waste generating developments  
W3 - Existing waste management facilities in Torbay  
SDT1 – Torquay  
SDT3 – Torquay Gateway  
TA1 - Transport and accessibility  
TA2 - Development access  
DE3 - Development Amenity  
ES1 - Energy  
C1 - Countryside and the rural economy  
C4 - Trees, hedgerows and natural landscape features  
NC1 - Biodiversity and Geodiversity  
H1 - Applications for new homes  
H2 - Affordable Housing  
DE3 - Development Amenity  
SC1 - Healthy Bay  
SC2 - Sport, leisure and recreation  
SC3 - Education, skills and local labour