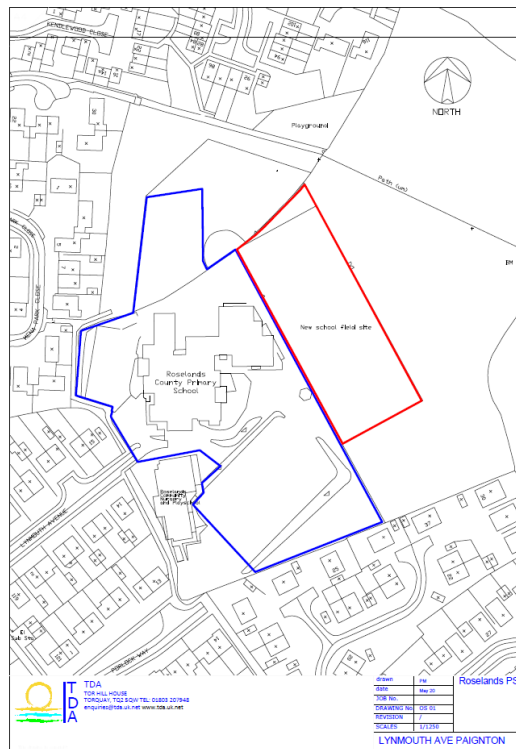


# TORBAY COUNCIL

Application Site Address	Land Adjacent To Roselands County Primary School Lynmouth Avenue Paignton TQ4 7RQ
Proposal	Change of use from green space to a fenced play area for use by Roselands County Primary School.
Application Number	P/2021/0208
Applicant	Torbay Council
Agent	Mr Richard Sutton – Torbay Development Agency
Date Application Valid	22/04/2021
Decision Due date	17/06/2021
Extension of Time Date	12/11/2021
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

## Location Plan:



### **Site Details**

The site forms part of an area of open land within Clennon Valley, Paignton and is approximately 4,851 square metres and is currently semi-improved neutral grassland and hedgerow. The site is within the Clennon Hill/Roselands Valley Urban Landscape Protection Area and is within an 'Other Site of Wildlife Interest'.

### **Description of Development**

The proposal seeks permission for a change of use to a parcel of land within Clennon Valley to be used as a grassed play and educational area for Roselands County Primary School. The site would be enclosed by a 2 metre high green weldmesh fence and two pedestrian access points into the site, as well as a 3 metre wide double gate for vehicular access.

### **Pre-Application Enquiry**

None sought.

### **Relevant Planning Policy Context**

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

### **Development Plan**

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

### **Material Considerations**

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

### **Relevant Planning History**

No relevant planning history relating to the site.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. Approximately 12 letters of objection have been received.

Concerns raised include:

- Impact on local area
- Sets precedent

- Trees and wildlife
- Not in keeping with the local area
- Overdevelopment
- Residential amenity
- Traffic and access -> This matter is not a relevant material planning consideration to this application as the proposal does not increase staff or pupil numbers, nor does it impact the existing vehicular movements or access.

## **Summary of Consultation Responses**

### **Paignton Neighbourhood Forum:**

No response received.

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

No response required.

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

I can confirm that as this development is located in Flood Zone 1 and the planning application relates only to the erection of fencing that will not increase the impermeable area of the site, I have no objections on drainage grounds to planning permission being granted.

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

Please ensure that a method statement for the installation of the fence is submitted - this would preferably be pre-commencement so that that it is agreeable to ourselves.

### **Torbay Council's Senior Strategy and Project Planning Officer:**

I refer to the above consultation to incorporate an area of public open space into Roselands Primary school. I was involved with the TDA at pre-application stage, as the proposal is part of wider measures needed to increase primary capacity serving Paignton. Additional accommodation was approved at Roselands Primary School under P/2018/1214, which included the requirement for a Travel Plan. (Other measures being the opening of the re-purposed Tower House School, and planning for a second primary school on the west of Paignton).

The current proposal encloses an area of public open space for school use. In my view the key strategic planning issue is balancing the needs of the school against the loss of public access and impact on the urban landscape protection area (C5.44) and other site of wildlife interest (OSWI). Paragraph 94(a) of the NPPF requires local authorities to give "great weight to the need to create, expand or alter schools". The proposal is supported by Policies SC3 and SC5 of the Local Plan. Whilst the enclosure of ULPA may have some effect on its value as an "open or landscapes feature within the urban area", the field will remain undeveloped and hedgerows etc. will remain. Therefore the impact on the ULPA is likely to be small. The fence is necessary for safeguarding

purposes. It may be worth protecting the hedge and requiring the bird boxes etc. to be provided through a planning condition.

I appreciate that the proposal will remove an area from public use. However, it is only a small part of the wider Roselands/Clennon area, and I understand does not require the moving of a formal footpath. The land will remain within recreation use, albeit by the school's pupils rather than the general public. As such I do not consider that there is a conflict with Policy SC2 of the Local Plan.

On the basis of the above, I support the application.

**Torbay Council's Senior Environmental Health Officer:**

No objections.

**Police Designing Out Crime Officer:**

I have no objection in relation to the application but would like to make the following comments and recommendations for your consideration.

I note that a 2m weldmesh fence will be used which is supported. In order to offer substantial protection and security of the staff and pupils, fencing certificated to a nationally recognised security standard such as LPS 1175 SR1 could be considered.

Dark colours are recommended as they reduce the reflection of light and therefore aid surveillance opportunities.

Gates within the perimeter fencing should match the design, height and construction of the adjoining fence and not compromise security. They should also be of an anti-climb design and if there is an inner lock release, it must be shielded to prevent anyone reaching through to unlock to mechanism.

**Devon County Council's Ecologist:**

Due to the size and scale of the proposal, it is deemed that the development will not lead to the loss, damage, or disturbance of greater horseshoe bat commuting routes or foraging habitats within a sustenance zone.

In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al., 2019), and given the above, it is deemed unlikely there is to be a likely significant effect on the South Hams SAC. A detailed HRA is not deemed to be required.

There is no loss of habitat associated with this scheme. The grassland management will remain the same post development as it does currently, and the erection of the security fence will not require the loss of any hedgerow habitat, as confirmed by the consultant ecologist.

The development will lead to the creation of hedgerow habitat and strengthening of linear features through additional planting, as well as the seeding of a more floral diverse seed mixture than currently present onsite. This will lead to a gain in biodiversity, as detailed in the submitted Defra metric spreadsheet.

Condition: An Ecological Mitigation and Enhancement Strategy, which will include details relating to habitat creation, species specification and management, will be submitted to and agreed with the LPA.

Condition: A Construction and Ecology Management Plan, which will include details relating to environmental protection throughout the construction phase of development, will be submitted to and agreed with the LPA.

Condition: A Landscape and Ecological Management Plan, which will include that vegetation maintenance will only be undertaken in the winter, when dormice are in hibernation and would not be present and outside of the bird nesting season, will be submitted to and agreed with the LPA.

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.

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 if required, shall be submitted to and approved in writing by the local planning authority.

Condition: Details of the boundary fence will be submitted to and agreed with the LPA. These details will include the mitigation measures provided in the Ecological Addendum report (Ecology Services, April 2021).

**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 or landscapes.

**European sites**

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on statutorily protected sites and has no objection to the proposed development. To meet the requirements of the

Habitats Regulations, we advise you to record your decision that a likely significant effect can be ruled out.

#### Sites of Special Scientific Interest

Based on the plans submitted, Natural England considers that the proposed development will not have likely significant effects on statutorily protected sites and has no objection to the proposed development.

#### Sites of Special Scientific Interest Impact Risk Zones

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on "Development in or likely to affect a Site of Special Scientific Interest" (Schedule 4, w). Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the [data.gov.uk](https://data.gov.uk) website.

#### **RSPB:**

Thank you for the consultation (24 April); I hope these comments are helpful. Whilst RSPB recognises the need to provide schoolchildren with access to safe outside natural space, we have concerns because the proposal will result in loss of some habitat and existing public greenspace and in our view there is not an appropriate level of mitigation or biodiversity net gain.

The 0.4851 ha application site (as described in the Preliminary Ecological Appraisal (Ecology Services, 14/7/19)) is semi-improved grassland with scrub, hedge and trees. It is within the Grange Farm other site of wildlife interest (OWSI) and borders farmland that links to the Clennon Valley. The proposal will result in the grassland management changing from being mown annually to being mown monthly (becoming amenity grassland, a very different habitat), so in the RSPB's view this will reduce the biodiversity value of the semi-improved grassland. Also, installation of a 2m high mesh wire fence will involve removal (and trimming back) of an unspecified amount of the existing scrub and hedgerow.

The PEA noted the likelihood of scrub and hedgerow to host nesting birds and that the site is in an area where suitable habitat could support ciril buntings (a bird of high conservation concern) but considered the proximity to urban development and the level of public use meant ciril buntings would not be present so did not consider them further. While RSPB has no records of ciril buntings at this site from national surveys, we would like to highlight that ciril buntings do breed on suitable farmland habitats around the edges of villages, towns and larger conurbations such as Paignton and Torquay (hence its traditional name 'village bunting') so the potential for their presence should not be discounted on the basis of public access and proximity to urban development.

The PEA also noted that another environmental consultancy was carrying out reptile and dormouse surveys on the site in 2019 (which indicates the habitat has the potential to support those animals) but no information is presented to know if they were found on site. The PEA recommended that Torbay Council liaise with the consultancy to determine if dormice or reptiles were recorded on the site (the Badger Survey and Ecological Update Addendum (April 2021) noted that dormice were found to be potentially absent from the site so their status on site seems unclear). The RSPB recommends this application is not determined until that information is known, as their presence may necessitate further mitigation measures.

The proposed mitigation measures (in the PEA and the Badger Survey and Ecological Update Addendum (April 2021)) are to minimise removal of scrub/hedge vegetation to put up the fence, to time that removal for outside the bird breeding season, to cut the grass down over winter to avoid impacts on any reptiles and to install a 2 way gate to allow for free passage of mammals such as badgers and hedgehogs.

The RSPB recommends that, if your authority decides to grant permission, it attaches conditions requiring removal of any hedge or scrub vegetation to be minimised and timed to avoid the bird breeding season March to mid September inclusive, and ideally to be done in winter and also that a biodiversity offset is calculated for the loss of the semi-natural grassland, to be delivered on other land owned by Torbay Council. The PEA proposed bird nest boxes on trees as biodiversity net gain and these should be secured by condition. The RSPB also recommends enhancing the wildlife and public access value of other local greenspace in Torbay Council's ownership.

We consider our comments align with national and local planning policy including: Torbay Local Plan policy NC1 Biodiversity and geodiversity which states *“All developments should positively incorporate and promote biodiversity features . . . Where there is an identified residual impact on biodiversity, proposals will be expected to deliver a net gain for biodiversity through the creation or provision and management of new or existing habitats . . . If avoidance and mitigation are not sufficient, residual impacts must be off-set in a manner deemed acceptable by the Council.”*

Torbay Local Plan policy C4 Trees, hedgerows and natural landscape features which states *“Where the loss of, or impact on trees, hedgerows or landscape features is considered acceptable as part of development, replacement or other mitigation measures will be required through planning condition or legal agreement. These measures should at least offset any such harm, and preferably achieve landscape and biodiversity improvements, and make provision for on-going management.”*

The Natural Environment and Rural Communities Act (NERC) 2006 states *“Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity.”*

The National Planning Policy Framework (February 2019) states in para 175 that “. . . opportunities to incorporate biodiversity improvements in and around developments should be encouraged, especially where this can secure measurable net gains for biodiversity.”

## **Planning Officer Assessment**

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

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Ecology
5. Impact on Flood Risk and Drainage

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

The proposal seeks permission for a change of use to a parcel of land within Clennon Valley to be used as a grassed play and educational area for Roselands County Primary School.

Paragraph 94 of the NPPF states that local planning authorities should give great weight to the need to expand or alter schools through the decisions on applications.

Policy SC3 of the Local Plan specifies that the Local Plan will support the improvement of existing and provision of new educational facilities to meet identified needs in Torbay. Policy SC3 notes further that this includes the expansion of schools to meet identified short to medium-term needs. Policy SC5 of the Local Plan states that new development will be assessed for its contribution towards reducing child poverty, proportionate to the scale and nature of the proposal. This includes the need to support investment in existing schools and make appropriate contributions and improve equality of access to high quality education provision for all, including early-years education. The proposed development would improve the education facilities in the area. As such, it is considered that the principle of the development would accord with Policies SC3 and SC5 of the Local Plan.

It should be noted that the Council's Senior Strategy and Project Planning Officer supports the proposed development. Policy SC2 of the Local Plan is applicable, whereby there will be presumption against loss of existing recreational and leisure facilities unless:

- i) An assessment has been undertaken which has clearly shown the open space, buildings or land to be surplus to requirements; or
- ii) The loss resulting from the proposed development would be replaced by



equivalent or better provision in terms of quantity and quality in a suitable location; or

- iii) The development is for alternative sports and recreational provision, the needs for which clearly outweigh the loss.

Whilst the proposal removes an area of public open space, it does not require the removal of a formal footpath, although it will encroach over what appears to be an informal footpath within the ULPA. The land will remain within recreational use albeit by the school's pupils rather than the general public. The Council's Senior Strategy and Project Planning Officer considers that the proposal does not conflict with Policy SC2 of the Local Plan.

It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

## **2. Impact on Visual Character**

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 PNP1(c) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the proposal to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

The proposal is for a change of use to a parcel of land within Clennon Valley to be used as a grassed play and educational area for Roselands County Primary School. The site would be enclosed by a 2 metre high green weldmesh fence and two pedestrian access points into the site, as well as a 3 metre wide double gate for vehicular access. Objectors have raised concerns that the proposal is a form of overdevelopment, it is not in keeping with the local area, it will have a negative impact on the local area and it will set an unwanted precedent.

The site is within the Clennon Hill/Roselands Valley Urban Landscape Protection Area. It is important to give consideration to the Urban Landscape Protection Area (ULPA) designation on site in relation to the potential impact the proposal may have.

The site is located within an area designated as an ULPA as defined by Policy C5 of the Local Plan. Policy C5 specifies that development within an ULPA will only be permitted where:

1. It does not undermine the value of the ULPA as an open or landscaped feature within the urban area; and
2. It makes a positive contribution to the urban environment and enhances the landscape character of the ULPA.

The Council's Senior Strategy and Project Delivery Planning Officer has stated that whilst the enclosure of ULPA may have some effect on its value as an "open or landscaped feature within the urban area", the field will remain undeveloped and hedgerows etc. will remain. Therefore, the impact on the ULPA is likely to be small. The fence is necessary for safeguarding purposes. It is considered that the proposed development would not have a significant adverse impact on the special qualities and characteristics of the ULPA. It is considered that it is possible to develop the site for the type and quantum of development as set out in the proposal without having an unacceptable adverse impact on the ULPA in terms of the proposal not undermining the value of the ULPA as an open or landscaped feature within the urban area and making a positive contribution to the urban environment and enhance the landscape character of the ULPA, subject to a suitable landscaping scheme.

Notwithstanding the consultation comments above Officers consider that the proposal would result in some harm to the character and visual amenity of the locality, as the proposal will alter the natural appearance of the area. The proposal includes an angular enclosure and could include associated outdoor school paraphernalia that will detract from the natural appearance of the site. In such a case it is necessary to consider whether there are public benefits which would outweigh the harm.

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

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. Paragraph 127 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Objectors have raised concerns regarding residential amenity. The proposed development is some 35-45 metres from the nearest residential curtilages. The Council's Senior Environmental Health Officer has been consulted on this application and raises no objections. Given its siting, scale, and design of the proposals, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours.

The proposal is considered to accord with Policy DE3 of the Local Plan.

### **4. Impact on Ecology**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

The 0.4851 ha application site is semi-improved grassland with scrub, hedge and trees. It is within the Grange Farm Other Site of Wildlife Interest (OWSI) and borders farmland that links to the Clennon Valley. The application is supported by a Preliminary Ecological Appraisal (PEA) (July 2019) and a Badger Survey and Ecological Update Addendum (April 2021). The PEA noted the likelihood of scrub and hedgerow to host nesting birds and that the site is in an area where suitable habitat could support ciril buntings but considered the proximity to urban development and the level of public use meant ciril buntings would not be present.

It should be noted that the site does not have any tree preservation orders on site, and the site can be cleared without requiring permission from the Local Planning Authority however no tree removal is proposed as part of this development. The proposal will result in the grassland management changing from being mown annually to being mown monthly, becoming amenity grassland. Objectors have raised concerns regarding trees and ecology. Natural England raises no objection to the proposal, stating that Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

The RSPB have been consulted on the proposal and have recognised the need to provide schoolchildren with access to safe outside natural space, however they raise concerns that the proposal will result in loss of some habitat and existing public greenspace and does not provide an appropriate level of mitigation or biodiversity net gain. The RSPB recommends that, if permission is granted, conditions requiring removal of any hedge or scrub vegetation to be minimised and timed to avoid the bird breeding season March to mid September inclusive, and ideally to be done in winter and also that a biodiversity offset is calculated for the loss of the semi-natural grassland, to be delivered on other land owned by Torbay Council.

Devon County Council's Ecologist has been consulted on the application and since the applicant has provided additional ecological information. Due to the size and scale of the proposal, it is deemed that the development will not lead to the loss, damage, or disturbance of greater horseshoe bat commuting routes or foraging habitats within a sustenance zone. In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al., 2019), and given the above, it is deemed unlikely there is to be a likely significant effect on the South Hams SAC. A detailed HRA is not deemed to be required. The proposed development will consist of constructing a security fence to demark ownership of the semi-improved neutral grass pasture field. The semi-improved grassland pasture field is at present mown on a number of occasions throughout the year. This would be the same for the increased play area and will continue post development. The erection of the boundary fence will

not result in any loss of hedgerow habitats. The Ecologist agrees that Grange Farm Other Site of Wildlife Interest (OSWI) will be unaffected by the current development.

The Ecologist has recommended a number of planning conditions that are recommended at the end of this report. Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy NC1 of the Local Plan.

## **5. Impact on 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. Policy PNP1(i) of the Paignton Neighbourhood Plan states that developments will be required to comply with all relevant drainage and flood risk policy.

The site is located within the Critical Drainage Area and the application has been accompanied by a flood risk assessment. The Council's Drainage Engineer was consulted on the proposal and confirms that the site is within Flood Zone 1 and the planning application relates only to the erection of fencing that will not increase the impermeable area of the site, therefore raises no objections on drainage grounds to planning permission being granted.

## **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**

Educational development is important for individual growth and the economy and there would be economic benefits to the construction industry from the proposed development.

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 educational facilities. Given the NPPF, great weight should be given to the expansion of schools and therefore the proposal must carry great weight in this balance.

Impacts on neighbour amenity have been discussed above where it is concluded that it would be 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 in particular the urban landscape protection area; ecology and biodiversity; and surface and foul water drainage. These matters are considered in detail above.

The environmental benefits identified are either marginal in the case of any biodiversity net gain or essentially mitigation as in the case of any landscape/ecological measures to be applied to the development. There will be harm to the landscape quality of this immediate area which weighs against the proposal.

It is concluded that the environmental impacts of the development weigh negatively in the planning balance.

### **Sustainability Conclusion**

Whilst the development is not wholly sustainable having regard to the environmental impacts the social benefits of improved educational facilities weigh heavily in favour of the development

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

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

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

### **Local Finance Considerations**

S106: Not applicable.

CIL: Not applicable.

### **EIA/HRA**

ERA: 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: Not applicable.

### **Planning Balance**

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that whilst the proposal will harm the visual amenity of the site, when considering the planning balance the public benefit outweighs such harm. Therefore, on balance the proposal is considered to be acceptable having regard to the Development Plan taken as a whole.

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

The proposal is considered acceptable in principle; it would provide acceptable arrangements in relation to ecology and flood risk, whilst there will be some harm to the visual amenity of the area this is outweighed by the great weight that is given to providing improved educational facilities. On balance the proposed development is acceptable, having regard to the Torbay Local Plan, the Paignton Neighbourhood Plan, the NPPF, and all other material considerations.

### **Officer Recommendation**

That planning permission is granted, subject to resolving any outstanding ecological matters and the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director for Planning, Housing and Climate Emergency.

### **Conditions**

#### **Removal of Vegetation**

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

site. The development shall then be carried out in accordance with the details submitted.

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

### **Ecology Report Recommendations**

The development hereby approved shall be carried out in accordance with the mitigation measures and recommendations outlined within the submitted and approved Preliminary Ecological Appraisal (July 2019) and the Badger Survey and Ecological Update Addendum (April 2021).

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

### **Badger Surveys**

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 if required, shall be submitted to and approved in writing by the local planning authority.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

### **Ecological Mitigation and Enhancement Strategy**

Prior to the land being brought into use by the school an Ecological Mitigation and Enhancement Strategy, which will include details relating to habitat creation, species specification and management, will be submitted to and agreed with the Local Planning Authority. The development shall then be carried out in accordance with the approved details.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

### **Construction and Ecology Management Plan**

Prior to the commencement of development, a Construction and Environmental Management Plan, which will include details of environmental protection throughout the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

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

### **Landscape and Ecological Management Plan**

Prior to the land being brought into use by the school a Landscape and Ecological Management Plan, which shall include details relating to habitat creation, species specification and management, and timing of provision, including that vegetation maintenance shall only be undertaken in the winter and outside of the bird nesting season in the interest of dormice and nesting birds, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented.

Reason: In the interests of ecology and biodiversity, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030

### **Boundary Treatment**

Prior to the first use of the development hereby approved, the boundary treatment shown on the approved plans shall be fully installed and retained for the life of the development, in accordance with the mitigation measures provided in the Ecological Addendum report (Ecology Services, April 2021).

Reason: In interests of visual and residential amenity and ecology and biodiversity and in accordance with Policies DE1, DE3 and NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy PNP1(c) of the Adopted Paignton Neighbourhood Plan 2012-2030.

### **Hedge and Tree Protection**

No hedge or trees that are within or border the site shall be felled, pruned or cut back other than in accordance with a landscape and ecological management plan (LEMP) that shall have previously been submitted to and approved in writing by the LPA prior to the change of use commencing. The LEMP shall also include details of how the retained vegetation will be protected from damage from users of the approved development.



Reason: In interests of visual amenity and ecology and biodiversity, in accordance with Policies DE1 and NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy PNP1(c) of the Adopted Paignton Neighbourhood Plan 2012-2030.

### **Informative(s)**

1. 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.
2. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

### **Relevant Policies**

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

NC1 – Biodiversity and Geodiversity

PNP1(c) – Design Principles

PNP1(i) – Surface Water

SS3 – Presumption In Favour Of Sustainable Development

SS11 – Sustainable Communities