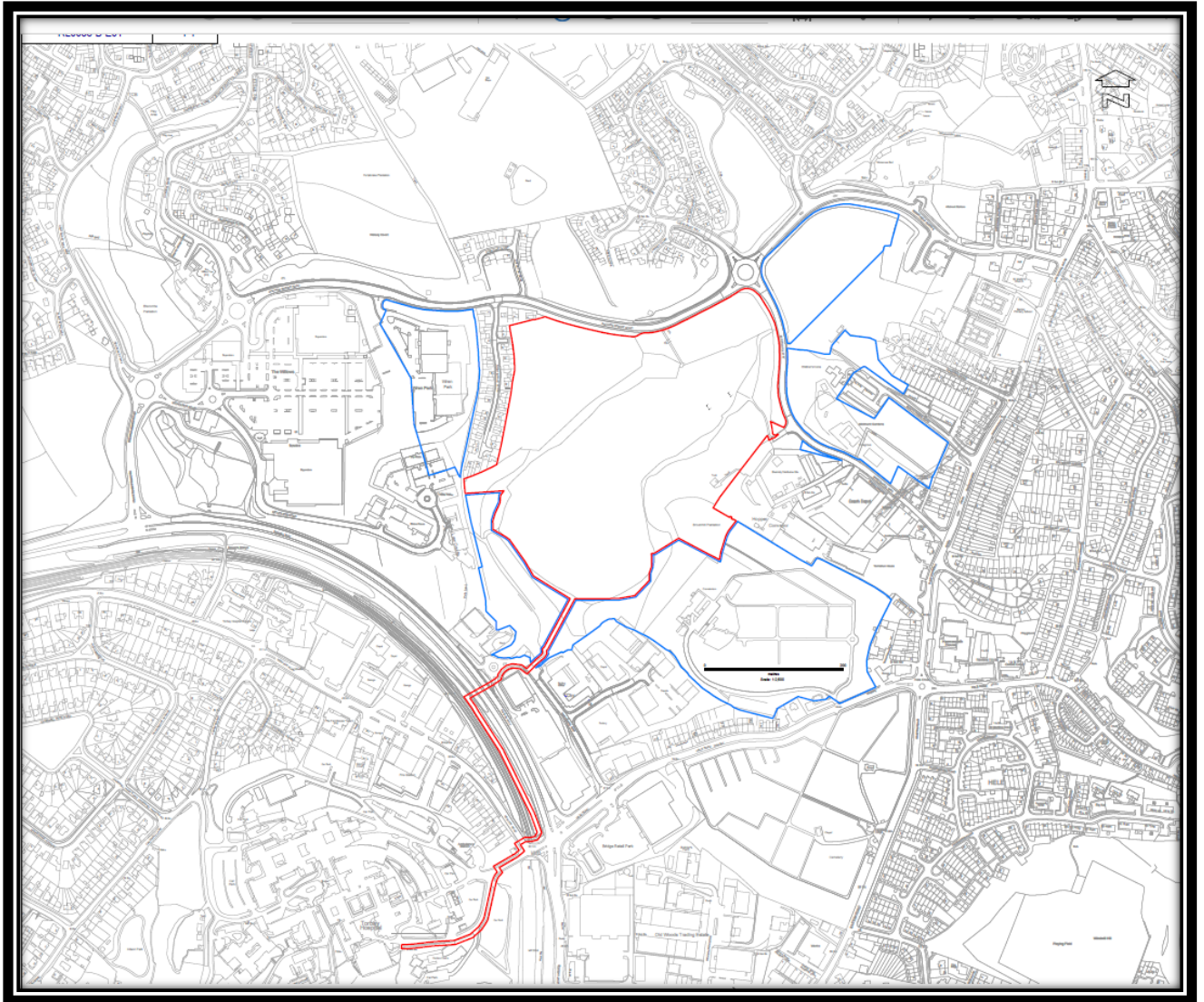


Application Site Address	Land At Nightingale Park, Barton Hill Way, Torquay
Proposal	Installation of solar panel array and associated infrastructure. Installation of fencing, exercise equipment, information boards and CCTV. Landscaping to include new planting and widening of circular path.
Application Number	P/2021/1287
Applicant	TDA
Agent	Fisher German LLP
Date Application Valid	26.11.2021
Decision Due date	25.02.2022
Extension of Time Date	18.04.2022
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	Major Planning Application
Planning Case Officer	Mr. Alexis Moran



Site Details

The application site is approximately 13.27ha in area and is a former landfill site which has now been decommissioned and fully capped. The site lies to the south of Browns Bridge Road and is bound by commercial and employment uses to the south and east with residential uses to the north and west. There are no existing structures on site. The site is bound by established woodland to the east which aid in screening views to the site. The topography of the site rises towards the centre of the site.

Access to the site is currently achieved via a gated entrance on Barton Hill Way along the eastern boundary of the site.

A Public Right of Way route runs along Nightingale Close through the southwestern area of the site, connecting to Broomhill Way.

The current informal footpaths around the site are used by the public for recreational purposes and this would not be altered as part of the proposed development, the central grassland area of the site is less well used.

The site is designated as an area for 'Proposed Sports Facilities - Area of Search' (Policy SC2.6). The Torquay Neighbourhood Plan is consistent with the Torbay Local Plan and designates the site for the provision of new community sports, leisure and recreation facilities (Policy TLS2).

Part of the Site forms part of Barton West Unconfirmed Wildlife Site (UWS) which is described as containing plantation woodland and open grassland habitats.

The site does not contain any designated heritage assets and is not subject to a Conservation Area. The nearest heritage asset (163 Newton Road – Grade II* Listing) is located approx. 400m south of the site.

The site is within Flood zone 1.

Description of Development

The application proposes the formation of an array of photovoltaic panels which, along with the associated access track, hardstanding and built development would cover approximately 5.82ha of the central area. It is anticipated that the generation capacity of the solar array would be around 3.2 MW. It is proposed that the majority of this sustainable electricity will supply the nearby Torbay Hospital.

The photovoltaic solar panels are low profile and appear as black cells. The panels are mounted and have a maximum height of 2.89m from ground level.

The development would consist of rows of PV solar panels from west to east across the site which would be orientated to face south towards the sun. The proposed

development is divided into two banks of panels divided by a 5m wide maintenance gravel access track. The solar panels are supported on a lightweight steel framework, which in turn is supported on kentledge concrete ballast blocks. These are to be placed directly on the existing capping material, this also means that they can be removed with relative ease and the land returned to its previous state if necessary.

Two ancillary buildings are also proposed which include a transformer kiosk and switch gear kiosk to be located in the south western corner of the site. The kiosks will be 3.5m in height.

The array would be enclosed within a wider meshed security fenced area, the fence poles would be 2.1m with the fence height being 2m, CCTV poles will be sited around the perimeter to monitor the site.

A series of landscape proposals to assist the integration of the proposed development into the local landscape character setting and to strengthen visual screening from local area viewpoints are proposed.

The proposal would result in the removal of 7 existing trees which will be mitigated by new planting.

The proposal includes the provision of a permeable gravel surface to, and the widening of, the existing circular paths to a width of 1.8m, providing enhanced, all-weather access to Nightingale Park. Exercise areas and equipment are proposed adjacent to the gravel surfaced paths to provide enhanced recreational opportunities for users of the park.

Access to the site from the adopted public highway is currently achieved via a gated entrance in the north-east corner off Barton Hill Way.

It is proposed that Torbay Hospital will use the energy generated by the panels.

Pre-Application Enquiry

Pre-Application Advice was obtained from Torbay Council in March 2021, in respect of a new ground mounted solar array and associated equipment on land at Nightingale Park.

The pre-application advice stated that a Phase 1 Habitat Assessment, a Biodiversity Impact Assessment and a Landscape Visual Impact Assessment should be submitted with a future application. Given the sites allocation in the Local Plan, an element of recreation and leisure should be incorporated into the proposed plans too.

The pre-application response acknowledges that Torbay Council declared a Climate Emergency in June 2019 and that the provision of renewable energy must be given substantial weight.

Early engagement with the Torquay Neighbourhood Plan Group was recommended. The applicant has advised that on the 14th September 2021 members of the project team attended a virtual meeting with members of the Torquay Neighbourhood Group to outline the proposals and respond to questions. The applicant has advised that a Public Exhibition was held on the 27th September at St Martins Church to inform the wider community of the proposals and to respond to any questions.

On a without prejudice basis the planning officer view, at the pre-application stage, was that the proposed development would gain officer support subject to consultations and the outcome of survey work.

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.

Summary of Representations

Fifteen objections from 9 households have been received as well as 2 representations which were neither for nor against the proposal.

The key issues raised by objectors are as follows:

- Proximity to residential area and loss of amenity
- Health and safety
- Impact on ecology
- Loss of open space public amenity land
- Contrary to Torquay Neighbourhood Plan

All these issues are dealt with in the relevant sections of the report.

Summary of Consultation Responses

Historic England - No objection

Sports Development Manager: Sports facilities in Torbay will struggle in the future to cope with increasing demand, increase in housing and our ageing well population.

Future sports facilities at Nightingale Park are clearly embedded in Torbay's policy's including the Torquay Neighbourhood Plan and Torbay's Playing Pitch Strategy.

Torbay Council Senior Tree and Landscape Officer – "It is likely that the development proposal can be constructed without significant damage or loss of significant amenity value of the tree stock in the area. Greater detail on any planting

proposal will be required this would also include any further tree planting as mitigation for the trees removed in W5 and G15. The area is within the designated urban wildlife corridor and further comment should be sought on the appropriateness of the ecological appraisal.”

Sport England – No comment

Environment Agency - No objection to the proposed development subject to the inclusion of a condition, which relates to the management of contaminated land, being included on any permission granted.

Devon Wildlife Trust- Object to the planning application because we consider that the proposals do not provide sufficient evidence to satisfy the requirements relating to biodiversity in the Environment Act 2021, paragraphs 171 and 174d of the National Planning Policy Framework or the requirements of the Torbay Local Plan 2012- 2030 and Torbay Green Infrastructure Project.

Torbay Council Drainage Engineer – no objection

Torquay Neighbourhood Forum – “The Torquay Neighbourhood Plan Forum supports this proposal. As the land is a former landfill site, we consider the location of solar panels to be a good use for the site. The Applicant has shared the proposals with the Steering Group and we understand that the area will be enhanced as a public amenity with maintained footpaths. Provision of solar energy aligns with the objectives of CoP26, and should be supported.”

RSPB – No comment

Senior Environmental Health Officer: No objection

DCC Archaeology – No objection

DCC Ecology – No objection, subject to suitable conditions.

Natural England –No objection..

SWW – no objection, advice on asset protection provided.

Climate Emergency Officer - “There is a clear and compelling rationale to mitigate and adapt to a changing climate, which is why Torbay Council declared a climate emergency in June 2019 and committed, to becoming a Carbon Neutral (CN) council and working with others to create a carbon neutral community by 2030 (Torbay Community and Corporate Plan (2019-2023)).

Nationally the UK is committed to achieving net zero by 2050, and to a 78% reduction in greenhouse gases by 2035. A raft of policies and strategies highlight the importance of generating clean low/zero carbon energy in meeting these targets. Locally this is also reflected in the adopted Torbay Energy and Climate Change Strategy (2014-19).

In order to achieve national and local net zero and carbon neutral targets, one of the key things we will need to do is to change the way we power our homes and businesses. This will mean rapidly increasing the amount of low carbon and renewable energy generated across the UK, including, where appropriate, in Torbay. This will be from a range of sources including solar energy.

Currently renewable energy production in Torbay is limited, and mainly from small roof mounted solar photovoltaic panels which provide just 1.6% of Torbay’s current electricity consumption. This proposed solar scheme on land at Nightingale Park is predicted to generate over 3 megawatts of clean electricity through a ground mounted solar array. It is proposed that Torbay Hospital will use this electricity onsite, with any surpluses fed to the National Grid. Such a scheme will increase the amount of clean renewable energy generated and consumed locally.

At present our national energy system is decarbonising but is not yet fully powered by renewable energy sources. This results in carbon dioxide being emitted at the point of electricity generation. By generating over 3 megawatts of clean electricity,

this proposed scheme will therefore help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

However, it should be noted that this scheme will need to meet policy ES2 Renewable and Low-Carbon Infrastructure of the adopted Torbay Local Plan (2012-2030) which states that the Council will support, in principle, proposals for new renewable and low-carbon energy generating systems at all scales, including district heat and power and community projects. The wider environmental, community and economic benefits of proposals of these systems will be given great weight. Proposals for renewable and low carbon infrastructure will be considered against other Policies in the Local Plan. Development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme. In particular, provision of new renewable energy infrastructure will only be approved where the Council has ascertained that it would not have an adverse effect on the integrity of any site protected under European legislation.

Noting the results of various ecological assessments and studies, it is suggested that planning conditions be placed on the development to ensure biodiversity net gain of at least 13% is achieved as well as fully implementing the proposed Landscape and Ecology Management Plan.

It is also suggested that where possible the solar panels installed have the lowest environmental impact possible and can be recycled/reused once they come to their end of life."

Police Liaison Officer – no objection

Torbay Council Highways Consultant – No objection

Fire Safety Officer - "From a statutory Fire Safety perspective and if the proposal will be subject to Building Regulations, then the Regulatory Reform (Fire Safety) Order 2005 will likely apply, as such, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority at that time. Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building Regulations.

I have however, forwarded your email onto my colleagues in the operational risk team, who will respond accordingly, if they have any comments to make about fire risks.”

Key Issues/Material Considerations

Planning Officer Assessment

1. Principle of Development
2. Visual Impact and Landscaping
3. Impact on Residential Amenity.
4. Impact on Highway Safety.
5. Ecology and Biodiversity
6. Low Carbon Development and Climate Change

1. Principle of Development

A key issue in considering the principle of this development is the Local Plan and Neighbourhood Plan designations for the site.

The Local Plan allocates the site as ‘An Area of Search for Sports Facilities in Torquay’ (Policy SC2.1 - Sports facilities at Brown’s Bridge (The Willows)), this allocation draws from the findings presented in the Torbay Play Pitch Strategy (2013). This document sets out the strategic direction and site specific priorities for the future delivery of playing pitches across Torbay until 2021.

Policy SC2 sets out the criteria for the loss of recreational facilities and states that there will be a 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.

The Play Pitch Strategy has now reached the end of its plan period and no applications have been forthcoming on site. A new Playing Pitch Strategy is being prepared which will set out the likely need for improvement of existing and additional new sports (pitch) facilities.

The submitted Design and Access statement advises that searches of the area have shown there are four alternative play pitches within the 'Area of Search for Sports Facilities in Torquay', including the recently approved play pitch at Combe Pafford School, Torquay (Ref: P/2018/0996).

Whilst the proposal does not accord with Policy SC2.1, the solar panels only occupy the central area of the site. Therefore, considerable levels of recreation are to be retained and enhanced as part of this proposal.

The Torquay Neighbourhood Plan (TNP) allocates the site under Policy TSL2: Sport and Leisure – Nightingale Park. This policy advises that the provision of new community sports, leisure and recreation facilities will be encouraged at Nightingale Park and that new facilities should take into account the environmental quality of the existing park.

The development proposed the retention of the site for recreational means and provides enhancements to the main existing pathways. These enhancements include providing a permeable gravel surface and widening the existing circular paths to a width of 1.8m, currently this is only gravel surfaced along a limited stretch of the path network and are relatively narrow in width. These proposals will provide enhanced, all-weather access to Nightingale Park.

A number of exercise areas with appropriate equipment are proposed adjacent to the gravel surfaced paths to provide enhanced recreational opportunities for users of the park.

Having regard to the enhancement measures proposed, it is considered that the proposal partially accords with Policy TSL2 of the TNP insofar as it improves the

existing formal footpaths and provides ecological gains. The Torquay Neighbourhood Forum have provided a consultation response in favour of the proposal.

The site doesn't form part of the employment land allocated by Policy TJ1 of the Neighbourhood Plan which is further to the south/south-west however the proposal would also provide jobs during the construction phase and as part of the ongoing management and monitoring of the site.

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources.

Local Plan Policy ES2 states that the Council will support, in principle, proposals for new renewable and low-carbon energy generating systems at all scales, including district heat and power and community projects. The wider environmental, community and economic benefits of proposals of these systems will be given great weight. Proposals for renewable and low-carbon infrastructure will be considered against other Policies in the Local Plan. It goes on to advise that development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme.

Chapter 14 of the NPPF relates to meeting the change of climate change, para 152 states that the planning system should support renewable and low carbon energy and associated infrastructure. Torbay Council declared a climate emergency in June 2019 and committed to becoming a Carbon Neutral council and working with others to create a carbon neutral community by 2030 (Torbay Community and Corporate Plan (2019-2023)).

The Council's Climate Emergency Officer has advised that renewable energy production in Torbay is currently limited and mainly from small roof mounted solar photovoltaic panels which provide just 1.6% of Torbay's current electricity consumption. The proposed solar scheme is predicted to generate 3.2 megawatts of clean electricity through a ground mounted solar array. The generation of clean

electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

As previously noted there is conflict with Policy SC2.1 of the Local Plan however in principle, the proposal accords with the development plan and TNP taken as a whole and the Climate Emergency and related policies in the Local Plan as well as Chapter 14 of the NPPF represents material considerations which tip the balance in favour of the proposal in principle. This broad position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the forthcoming sections of this assessment.

2. Visual Impact and Landscaping

Policy SS8 states that development proposals outside of the AONB designation (the AONB is some 8.7km to the south) will be supported where they conserve or enhance the distinctive character of Torbay, or where the impact is commensurate with the landscape importance.

The submitted LVIA stated that the site lies wholly within the Torbay Landscape Character Assessment Local Landscape Character Type 9, Main Cities and Towns and being within an urban area which comprises a mixture of retail, commercial and residential buildings interspersed with areas of allotments and cemeteries.

The LVIA describes the development site as having a country park character comprising of areas of grassland with scattered scrub and enclosing areas of woodland and shrubs. It forms part of a network of local green spaces which are identified as an urban wildlife corridor within the Torbay Green Infrastructure Project.

The sites is set on low lying land and local views from publicly accessible locations towards the Site from outside its boundaries from the north-west, north, west, south-west and east are either fully screened or limited by the surrounding woodland vegetation.

Views to the Site from adjacent roads are limited to the boundary vegetation. There are views from upper storey windows into the northern part of the Site for a limited

number of residential properties located in Orkney Close and filtered views of the Site over the shrub belt along the north-eastern boundary from the taller residential properties on Orchid Way and to a lesser extent from the commercial units near the southern boundary who have filtered views into the southern part of the Site.

Views from the Public Right of Way (PROW) extending from south to north adjacent to the western boundary of the Site are limited to that of bordering wooded vegetation. Views to the Site from this PROW further north are screened by intervening vegetation.

The LVIA informs that there are no views gained of the site from the lower lying publicly accessible locations to the east, south-east, south and north-west from mid distance and distant land, due to intervening vegetation, built development or intervening topography.

There are highly filtered views into the interior of the Site gained from publicly accessible locations from elevated land to the north, but these potential viewpoints offer only partial, glimpsed views which are restricted by intervening vegetation and buildings.

Clearer views are gained from elevated land to the north-east to the Site from publicly accessible areas. Partial views are possible from some residential areas on elevated land to the north-east, notably from within the Barton district but these potential views are generally afforded from private dwellings.

Partial, glimpsed views are possible from elevated land to the west and south-west although few are from publicly accessible locations.

Overall the LVIA advises that the proposed scheme will result in a moderate change to the landscape character of the site. However due to the low height of the proposed security fencing, lighting columns, solar array and cabins and the proposed planting measures, there will be no noticeable loss to the distinctive local and wider context landscape character areas as a result of the proposed development.

The LVIA includes measures of mitigation and advises that whilst the development would integrate into the local landscape character setting and is screened from much of the local area, some new hedgerow planting is proposed. This is primarily to provide screening of views of the solar arrays and associated security fence from the adjacent footpaths. The hedge would be a 1.5m wide native species hedgerow which will be allowed to grow up to a height of 3m to ensure that the security fence and solar arrays are concealed from view from the circular permissive path once the hedgerow has become established. The area within the security fence where the solar arrays are proposed will be seeded with a wildflower grassland mix.

The kiosk cabins have been carefully sited close to the near the southern edge of the solar arrays area of the Site where they will be well screened by proposed hedgerow in time.

The proposal would result in the loss open space/amenity land in the central area of the site, this land does not appear to be formally used as amenity land and consists of large areas of bramble. Nonetheless this would have an impact on open character of the area experienced by users of the recreational paths around the site. This is somewhat mitigated by additional hedge planting and improvements to the existing pathways. Although there would be some harm caused by the loss of the open character, it is not considered to cause an unacceptable level of loss of character to the area.

There is a requirement to pay special attention to the desirability of preserving or enhancing the setting of listed buildings, and in terms of this development there is a Grade II Listed Building (163 Newton Road) some 400m to the south and a small group of Grade II Listed Buildings located within the southern part of the Torquay Cemetery which is some 440m to the south-east of the site. Given the distance, topography and intervening vegetation and roads, it is considered that the proposals would result in no harm to the significance of the Grade II Listed Buildings, in accordance with the NPPF.

It is considered that the proposed appearance, landscaping, layout and scale of the development would not result in unacceptable harm to the character of the area. Based on the information provided, the proposed development is, for the reasons above, considered to provide a satisfactory form of development in accordance with Policies SS8 and C1 of the Torbay Local Plan, Policy TE4 of the TNP and the NPPF.

3. Impact on Residential and Local Infrastructure Amenity

Policy DE3 of the Torbay Local Plan states that development should not unduly impact upon the amenity of neighbouring occupiers and surrounding users, the closest of which are to the north and north-east of the application site.

A Glint and Glare Assessment has been submitted with the application which assesses the possible effects of glint and glare from the proposed solar panels on surrounding dwellings and road users. This concluded that there would be no significant impacts and so subsequently no mitigation measures were required.

In terms of roads, the assessment advises that the glint and glare modelling has shown that any solar reflections are geometrically possible along a 1km section of Riviera Way. However given the topography and intervening vegetation, there are no effects predicted to be experienced to any road users along this section of Riviera Way.

The glint and glare modelling has shown that solar reflections are geometrically possible towards 9 dwellings. However, the assessment predicts that no effects will be experienced by an observer in any of the dwellings in practice due to intervening screening in the form of existing intervening vegetation.

The proposed development would be monitored externally and would not require permanent staff to operate it. The Fire Brigades Fire Safety Officer has advised that from a statutory Fire Safety perspective and if the proposal will be subject to Building Regulations, then the Regulatory Reform (Fire Safety) Order 2005 will likely apply, as such, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority at that time. Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building

Regulations. The fire safety aspect of the proposal will therefore fall outside of the considerations of this planning application.

The construction phase will naturally result in some temporary impacts however this can be reduced by a condition requiring the submission of a Construction Method Statement which includes a restriction on the hours of construction and requires details of delivery and construction movement and parking to be submitted and approved by the Local Planning Authority prior to development.

In summary the proposal is deemed to provide a satisfactory form of development in terms of protecting the amenities of neighbouring occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

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 108). It also furthers (Para 109) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

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.

Access to the site from the adopted public highway is currently achieved via a gated entrance in the north eastern corner off Barton Hill Way. The access is shared with the existing businesses premises located of Barton Hill Way.

Access to the fenced off solar panel area of the site will be required for maintenance purposes only, both for grounds maintenance (grass cutting, hedge trimming etc.) and equipment maintenance. The wider area of public open space is to remain accessible to the public throughout the construction and operational phases.

The Councils Highways consultant have advised that the applicant has submitted a drawing which illustrates an 'X' distance of 2.4m and a 'Y' distance of 33m which extends to the junction of Barton Hill Way. Considering the small and infrequent quantum of trips generated by the site this is considered acceptable.

The applicant has submitted a drawing which illustrates an HGV accessing and egressing the site in a forward gear. This is considered acceptable. It is noted that the HGV is larger than an emergency service vehicle, therefore the swept path analysis for the HGV is acceptable for the emergency service vehicle. The applicant has also submitted a drawing which illustrates an HGV 4 Axle Rigid Lorry (32T) accessing the site in a forward gear, utilising a turning head within the site layout and egressing the site in a forward gear which is considered to be acceptable.

The proposal is considered acceptable on highway and movements grounds, and in accordance with the Policy TA2 of the Torbay Local Plan and the NPPF.

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.

One statutory designated site is located within 2km of the Site, namely Lummaton Quarry Site of Special Scientific Interest (SSSI). Lummaton Quarry SSSI is located c.620m east of the Site and is designated for its palaeontological interest.

The Site lies outside of the Sustainance Zone (core foraging area) or Landscape Connectivity Zones for Greater Horseshoe bats associated with South Hams SAC.

A Phase 1 habitat survey was undertaken of the application site in September 2020 and updated in June 2021. Potential for a range of protected species was noted and subsequent Phase 2 surveys undertaken.

Part of the site forms Barton West UWS (unconfirmed wildlife site). The eastern areas of the Site, including woodlands on the eastern margin and south-eastern area of grassland and scrub forming part of the proposed solar farm area, was identified as a UWS, however it is not considered by the consultant ecologist to meet criteria for selection as a CWS (county wildlife site).

An appropriately detailed UK Habitat Classification survey was carried out to classify the grassland, which assessed the grassland as having greatest affinity to NVC MG1 and MG10 which are not the types of grassland that would meet the criteria in the CWS selection guidelines in Devon.

The central areas of the Site are dominated by relatively species-rich neutral grassland established on previously disturbed ground including the landfill cap. Whilst grasses and Hard Rush dominate the sward, there is a good range of herbs present. The proposed development would result in the loss of the majority of semi-improved grassland established on the landfill cap in the central area of the Site – approximately 3.85ha.

The landscape scheme for the solar farm includes the establishment of species-rich native grassland across the majority of the solar farm footprint and the enhancement of the surrounding woodland habitats. Much of the central area of the landfill cap is regularly damp due to impeded drainage and, therefore, an appropriate wet meadow seed mix is proposed. The loss of semi-improved grassland habitat units are to be mitigated for by enhancement and creation of habitat elsewhere on site.

Areas of dense scrub and scattered woody shrubs occur throughout the Site. The scrub is considered to be in poor condition, with bramble the most abundant species forming dense stands of scrub encroaching from the margins of woodland and spreading into areas of open mosaic and grassland habitats in the central and northern areas of the Site, 1.85ha of this habitat will be lost to development.

It is proposed to enhance the broadleaved plantation woodland habitats on the margins of the Site and wider Management Area within Nightingale Park to improve their structure and diversity and the creation of a new species-rich native hedgerow along the perimeter fence surrounding the solar farm.

Habitats in the northernmost area of the Site include species-rich grassland supporting 5 Devon notable plant species and, therefore, meet criteria for selection as a County Wildlife Site. This area meets criteria as 'open mosaic habitats on previously developed land' *Habitat of Principal Importance* as it supports a mosaic of early-successional habitats (species-rich grassland) and bare ground. The proposed development would result in the loss of c.812m² of this habitat around the northern edge of the landfill cap. This small area, however, contributes little to the overall value of the whole habitat being mostly trampled grassland and bare ground with rougher grassland along edges where scrub is encroaching.

The areas of highest value of this habitat will be retained and managed appropriately. Retained habitats will be adequately protected during construction using suitable fencing and/or clear signage where appropriate to prevent damage to vegetation and soil by vehicles/ machinery. All construction materials will be stored in designated areas, such as the site construction compound.

Bat activity surveys were undertaken between April and October 2020 in line with published national guidelines. Boundary features are to be retained and enhanced, alongside the implementation of complimentary new native hedge banks. Species rich wet grassland creation in the central areas of the Site will maintain and potentially improve the quality of habitat for bat species over the landfill capped area.

The ecology net gain proposed consists of:

- New hedgerow planting within the on-site area (none existing) will result in an increase of 7.36 hedgerow units.
- Proposed enhancement of 3.28ha of woodland habitat within the wider Nightingale Park ownership boundary, will result in an off-site unit surplus gain of 11.42 units. This enhancement will be achieved through the implementation of a long-term

management strategy for the Site. This offsite land is owned by the applicant and within the blue line boundary.

- It is expected that the grassland type to be provided between the solar panels (Other Neutral Grassland of 'medium' distinctiveness) can achieve 'moderate' condition as the criteria that need to be passed to achieve this condition generally relate to characteristics that can be modified through correct management which has been adequately detailed in the submitted LEMP. With the prescribed management measures, 'good' condition may even be achievable, this is deemed appropriate by the LPA ecologist.
- The area of species-rich grassland meeting CWS selection criteria will also be retained and subject to long-term management to maintain its high ecological value – given the existing value of this habitat, this habitat cannot be 'enhanced' under the metric, but its retention and management for 30 years will offer biodiversity benefits.

Overall, the submitted Biodiversity Net Gain report (Burton Reid Associates) states this will result in a net gain of 5.99 habitat units (13.72% gain) and 7.36 hedgerow units (100+ %) at the Site. The LPA ecologist supports the habitat creation and enhancement measures proposed.

Whilst it is noted that there is an objection from the Devon Wildlife Trust on the information provided, further information has been submitted which the LPA's ecologist considers to be acceptable. The mitigation measures proposed have been deemed acceptable and provide an acceptable level of management and biodiversity net gain to the site.

In light of the foregoing the proposal's ecological impacts are considered acceptable, having regard to Policy C4 and NC1 of the Torbay Local Plan.

6. Low Carbon Development and Climate Change

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources.

As noted earlier in this report, Local Plan Policy ES2 states that the Council will support, in principle, proposals for new renewable and low-carbon energy generating systems at all scales, including district heat and power and community projects. The wider environmental, community and economic benefits of proposals of these systems will be given great weight. Proposals for renewable and low-carbon infrastructure will be considered against other Policies in the Local Plan. It goes on to advise that development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme.

The proposal is predicted to generate 3.2 megawatts of clean electricity which will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

The development is in accordance with Policy SS14 and ES2 of the Torbay Local Plan, Policy TS1 of Torquay Neighbourhood Plan and advice contained within the NPPF.

Other matters

There is no clear evidence to suggest that electro-magnetic radiation or fire risk present a significant risk to health and safety and are not reasons which could reasonably be used to refuse the grant of planning permission.

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

Energy produced by the solar farm will be fed back into the grid to provide clean energy for Torbay Hospital, reducing its energy costs.

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 through providing lower cost energy to the hospital.

The Social Role

The generation of clean electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

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

The Environmental role

With respect to the environmental role, the proposal would provide clean electricity to aid in fighting climate change. The proposal also includes ecological and landscape improvements. The generation of clean electricity provided by this scheme will help play a role in reducing Torbay's carbon emissions and help achieve its carbon neutral 2030 target.

It is concluded that the environmental impacts of the development weigh positively within the planning balance.

Sustainability Conclusion

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

EIA

As the site is over 5ha in area an Environment Impact Assessment screening was undertaken, the result of this was that the proposal did not require an EIA.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It should be noted that the local plan does not allocate specific sites for developments such as this and so inevitably there is likely to be some conflict when the proposal is considered against other policies. Instead Policy ES2 requires that the wider environmental, community and economic benefits of proposals be given

great weight and that development will not be permitted where the negative impacts of the proposal outweigh the benefits of the scheme.

It is considered that the scheme would address the Development Plan aspiration towards sustainable development and the Councils Climate Emergency status and notwithstanding some conflict with Policy SC2 of the Local Plan, would produce a positive impact overall and help with the supply of clean energy thus reducing Torbay's carbon emissions.

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.

Conclusions and Reasons for Decision

The proposal is considered acceptable in principle and would not result in unacceptable harm to the character of the area, local amenity, heritage assets, biodiversity or highway impacts. It will have positive environmental benefits including the provision of renewable energy and biodiversity net gain.

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

Officer Recommendation

Approval: Subject to;

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

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

Conditions

Siting, form and materials

Solar Panels and the associated infrastructure shall only be located in the area of the site as indicated on the approved drawings and the details of the solar panels, security fencing, lighting columns, solar array and cabinets including height and materials shall accord with the approved details at all times.

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

CMS

No development shall take place until a site specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust. The plan should include, but not be limited to:

- Procedures for maintaining good neighbour relations including complaint management.

- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:

08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and at no time on Sundays and Bank Holidays.

- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development and in accordance with Policy DE3 of the Local Plan. This information is required prior to development in order to ensure that the construction phase of the development does not have an adverse impact on residential amenity.

Removal of Redundant Equipment

After the 25 year project period the solar panel apparatus and associated structures hereby approved shall be permanently removed from the site and the land shall be reinstated to its former condition or in accordance with details to be previously agreed with the Council.

Reason: To comply with Policy C1 of the Torbay Local Plan 2012-2030.

Landscaping

Notwithstanding the approved landscaping strategy, prior to the first use of the development hereby approved, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion of the development and any trees or

plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within 8 weeks of the development being brought into use and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

Reason: In the interests of the amenities of the area and in accordance with Policies SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030.

Ecology - Nesting season

The removal of vegetation shall be undertaken outside of the bird nesting season (March-September inclusive). If not practicable demolition and/or vegetation removal shall be undertaken only immediately following an inspection of the site by a suitably qualified ecologist to confirm the absence of nesting birds. If nests are found no works shall be undertaken until the birds have fledged and a buffer zone of at least 5 metres must be established around the nest and an effective barrier put in place to ensure this remains undisturbed

Reason: To ensure due protection is afforded to wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

Tree Protection Measures

Prior to the commencement of development, the tree protection measures outlined in approved tree protection plan shall be implemented in full. The approved protection measures shall be maintained in full throughout the construction phase of the development.

Reason: In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policies DE1

and C4 of the Torbay Local Plan 2012-2030. These details are required to be implemented prior to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

Arboricultural Method Statement

Prior to the commencement of development an Arboricultural Method Statement (AMS) pertaining to but not exclusively, excavation works in the RPA, the sequence of operations and site inspection frequency, timings of site visits, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved AMS.

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

Ecology Accordance

The development shall be carried out in accordance with the actions set out in the Ecological Impact Assessment (Burton Reid Associates, March 2022) and the submitted Landscape and Ecology Management Plan (Burton Reid Associates, March 2022) The assessment and the management plan shall ensure a biodiversity net gain of at least 13% is achieved and be implemented in full for the lifetime of the development.

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

Grassland Seed Mix

The areas of species-rich grassland shown on the approved landscaping strategy will be prepared and sown with seed/ green hay collected grassland from within the Site supplemented by an additional species-rich grassland mix of local provenance if not enough seed can be collected. The seed mix used will be agreed in writing by the Council.

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

Lighting

Notwithstanding the approved scheme, no external lighting shall be installed at the application site at any time without the written permission of the Council. Any future lighting design must be provided in writing to the Council by an appropriately experienced ecologist and the approved scheme shall be retained as such throughout the lifetime of the development.

Reason: To ensure due protection is afforded to wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

Boundary Treatment for Hedgehogs

Prior to the installation of the solar panels hereby approved, details of boundary features which include suitable mitigation for hedgehogs will be submitted to the Council for approval in writing. Development shall take place in accordance with the approved details.

Reason: To ensure due protection is afforded to wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

CEcoMP

Prior to the commencement of development (including ground works, vegetation clearance) a Construction Ecological Management Plan (CEcoMP) shall be submitted to and approved in writing by the local planning authority. The CEcoMP shall be prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of 'biodiversity protection zones'.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

- d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEcoMP, and the actions that will be undertaken.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEcoMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: To secure a satisfactory form of development in accordance with Policies SS2 and NC1 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure appropriate mitigation at all stages of development.

Badgers

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 the amenities of the area and in the interests of biodiversity in accordance with Policy NC1 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure appropriate mitigation at all stages of development.

Drainage

The development shall be undertaken in accordance with the submitted flood risk assessment received 20.10.2021, unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to

the commencement of development. Once provided the drainage scheme shall be retained and maintained for the life of the development.

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

Exercise Equipment

Prior to the first use of the development hereby approved, full details of the locations and types of exercise equipment proposed to be provided within the site shall be submitted to the LPA for approval in writing. The approved exercise equipment shall be provided within 8 weeks of the development being brought into use and shall be retained and maintained for the life of the development.

Reason: In order to provide suitable recreation equipment in accordance with Policy TSL2 of the Torquay Neighbourhood Plan.

Contaminated Land

No development approved by this planning permission shall commence until a remediation strategy to deal with the risks associated with contamination of the site in respect of the development hereby permitted, has been submitted to, and approved in writing by, the local planning authority. This strategy will include the following components:

1. A preliminary risk assessment which has identified:
 - all previous uses
 - potential contaminants associated with those uses
 - a conceptual model of the site indicating sources, pathways and receptors
 - potentially unacceptable risks arising from contamination at the site

2. A site investigation scheme, based on (1) to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site

3. The results of the site investigation and the detailed risk assessment referred to in (2) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.

4. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (3) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

Any changes to these components require the written consent of the local planning authority. The scheme shall be implemented as approved.

Reason: The proposed development site is located on an area mapped as a historical landfill site. The supporting documentation does not include any assessment of risks associated with development on the historic landfill site and therefore, the proposed development will only be acceptable if the aforementioned planning condition is included on any permission granted, requiring the submission of a remediation strategy. This should be carried out by a competent person in line with paragraph 183 of the National Planning Policy Framework. This is required prior to development in order to ensure the proposal accords with paragraph 174 of the National Planning Policy Framework and to ensure that the development will not be put at unacceptable risk from, or be adversely affected by, unacceptable levels of water pollution.

Relevant Policies

SS3 - Presumption in favour of sustainable development

SS9 - Green Infrastructure

SS14 - Low Carbon Development and Adaptation to Climate Change

TA1 - Transport and accessibility

TA2 - Development access

DE3 - Development Amenity

ER3 - Contamination

ES1 - Energy

ES2 – Renewable and low-carbon infrastructure

C1 - Countryside and the rural economy

C4 - Trees, hedgerows and natural landscape features

NC1 - Biodiversity and Geodiversity

DE3 - Development Amenity

SC1 - Healthy Bay

SC2 - Sport, Leisure and Recreation

HE1 – Listed Buildings

TSL2 – Sport and Leisure