

Application Site Address	Former St Kilda's Residential Home 15 Drew Street Brixham TQ5 9JU
Proposal	Partial demolition of existing care home and development of 23 'later living' flats with associated parking; Change of use of retained villa to single dwelling (24 units total), and minor works to retained villa.
Application Number	P/2021/0531
Applicant	TDA
Agent	KTA Architects
Date Application Valid	15.02.2022
Decision Due date	17.05.2022
Extension of Time Date	31.03.2023
Recommendation	<p>Approval: Subject to;</p> <p>Recreation pressures mitigation obligation of £3,240.00 secured via s106 legal agreement.</p> <p>The completion of the Nomination Agreement to secure 23 units of affordable housing.</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 Application and land owned by The Council.
Planning Case Officer	Scott Jones

## **Location Plan**



## **Site Details**

The site is located to the west of Drew Street close to the centre of Brixham. The town centre lies to the north of the site, and Brixham Hospital can be found within the site's immediate context.

The site consists of two vacant buildings which were formerly used in combination as a retirement home. The first building, St. Kilda's, is a large two and three storey 1970's brown brick building with areas of cream render, green hung tiles and a brown tile roof. This building is sited to towards the rear of the plot. The second building, 15 Drew Street, is an early C19th 2-storey Grade II listed building, with cream rendered walls, timber windows and a slate roof. This building is sited at the front of the plot and addresses Drew Street. The site has one point of vehicular to the side of 15 Drew Street, with pedestrian access to 15 Drew Street from the front of the building.

To the east of the buildings the site is primarily hard landscaped and used for vehicular access and parking. Vegetation is principally low-quality scrub growth around the borders to the north and west of the buildings. Trees to the north and western fringes appear to have been removed within the last few years.

In terms of context the area is predominantly residential in character with interspersed commercial and public buildings in the area.

In terms of topography there is a gentle gradient with land levels dropping from the entrance to the watercourse at the rear of the site. The northern fringe of the site adjacent to this watercourse is identified as having a high risk of flooding with the remainder of the site having a low risk of flooding.

In terms of heritage context as detailed the villa at the front of the site is a listed building. In addition the adjacent buildings (No.s 17-19) are also listed. The front of the site and villa sit in the Higher Brixham Conservation Area but the rear building and most of the site sit outside the defined boundary of the conservation area.

### **Description of Development**

The proposal is to demolish the large 2/3 storey modern building to the rear of the site and the modern link to the listed building and provide a new over 55s affordable housing development of 23 new flats, with communal bin, bicycle and buggy storage, over a broadly similar footprint to the current building. The listed building to the front of the site is proposed to be changed in use to a single dwelling (open market) with remedial works proposed to remove the existing link corridor to the wider care home and some repair works to address its deteriorated state.

The accommodation within the new build is to be 15x 1-bed and 8x 2-beds. 6 parking spaces are proposed to serve the apartments of which 2 will be disabled and 1 being demarked as a drop off space. The conversion of the listed building to a dwelling will be served by 2 car parking spaces immediately adjacent to the building.

The proposed new apartment building will present a similar 'H' shaped building that will cover a similar but amended footprint. The building line to the south towards the listed building will be regressed by approximately 4m and the building line to the east that addresses the parking area will be regressed between 4m-6m. The northern building line addressing the watercourse is principally unchanged as is the western building line.

The scale of the apartment building is a uniform 3-storeys with pitched roof wings bookending a slimmer recessed central link. The wings are pitched and are set approximately 1m above the current ridge heights of the existing pitched roof wings. The central recessed link will be flat roofed, similar to the existing link, but will be one storey (3m) higher. The wing close to the listed building will be cut into the slope of the site which principally facilitates the additional floor being provided in this area of the building.

Materials are a mix of two bricks with grey tones within the elevations with elements of natural oak cladding. The pitched elements of the roof will be 'slate-grey' metal seamed. Windows and rainwater goods are cited as being bronze in colour however the applicant has indicated that a colour change to grey is requested to match the revised colour palette for the building.

Revised plans have been submitted through the course of the application to include the listed building within the application and thus provide a holistic redevelopment of the plot, and to address officer concerns on design and potential neighbour amenity impacts. Also, further detail has been submitted that has sought to address concerns raised by the Environment Agency.

### **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 Brixham Peninsula Neighbourhood Plan 2012-2030 (BNP)

#### 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.
- Listed building and setting of listed building\*
- Conservation Area\*

\*The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in considering this application, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

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

DE/2020/0058: Construction of 23 1 and 2 bed apartments – General Support.

#### **Relevant Planning History**

P/2021/0532/LB: Listed Building Consent for works related to this application, associated with the partial demolition of existing care home and development of 23 'later living' flats with associated parking; Change of use of retained villa to single dwelling (24 units total), and minor works to retained villa. Pending consideration.

#### **Summary of Representations**

3 submissions, 2 objections.

The concerns raised are summarised as follows:

- Potential loss of light from a higher building.
- Loss of privacy from overlooking.
- Wouldn't wish to see maintenance access lost.

#### **Summary of Consultation Responses**

##### **Brixham Town Council:**

No comment on current scheme. Original scheme advertised and consulted on BTC offered no objection.

**Drainage Engineer (Torbay Development Agency)**

Providing the surface water drainage is constructed in accordance with the submitted Flood Risk and Drainage Assessment dated 19th October 2021, I have no objections on drainage grounds to planning permission being granted for this development.

**Environment Agency**

Update comments 27.02.2023: We consider that the information contained within the Case Consultants letter dated the 9th Feb 2023 (and associated drawing SITE SECTION ADJACENT TP WATERCOURSE C716/FRA02 REV P) and revised cross sectional drawing 'Proposed Sections' SK-KT-XX-XX-DR-A-2013-SK210-S0-P4 dated 24/02/2023 are sufficient to enable us to remove our objection to this proposal. However, we suggest the inclusion of a planning condition to secure that there will be no land raising in the flood corridor adjacent to the watercourse. The suggested wording for this condition provided, together with advice regarding flood risk informatives.

**South West Water**

No objection Stated. SWW can provide water and foul sewerage services. The applicant should contact SWW if development is within 3m of any public sewer. The surface water disposal is considered acceptable and accords with the local hierarchy of disposal.

**Conservation Advice (internal – Torbay Council)**

The significance of the listed building has been somewhat compromised by previous development within its setting and by past insensitive extensions. The proposals to remove the rear 1970s link and to sensitively repair the listed building would have a positive impact on the existing character and appearance of the listed building and, if carried out appropriately, would contribute to the enhancement of its significance as a designated heritage asset.

The removal of the existing structures within its setting is to be encouraged, and whilst the replacement development is larger with regards to its scale and massing, it is located further away from the listed building which would gain a small defensible garden area to the rear.

Whereas it can be considered that the development, when viewed in isolation, would cause a degree of harm to the significance of the heritage asset due to its size and proximity to the listed building, this level of harm can be outweighed by the heritage gains of the proposals and the benefit of replacing the existing structures in this location. To help achieve this, it is essential that the proposed development is constructed using high quality materials commensurate with their sensitive setting to mitigate its visual impact.

It is also considered that the proposals would allow the optimum viable use of the building to be achieved by reinstating it as a single dwelling.

**Police Designing Out Crime Officer**

It is welcomed that Secured By Design has been a key consideration for the design process.

It is recommended that access to the building is via the use of a security encrypted key such as a fob or card and include the ability to permit remote access from each apartment.

Access into the communal areas of the building via the bin store and the bike store should also be via the access control system to prevent unauthorised access into the building.

It is recommended that low level lighting is installed for during the hours of darkness to cover all entrance and exit that the residents have access to. We would not recommend the use of PIR lighting due to the fear of crime that can be caused by repeat activation.

It is also recommended that 24-hour internal lighting (switched using a photoelectric cell) is installed to communal areas of the property.

It's requested that further details are submitted for rear boundary treatments. A boundary rear treatment should be installed to vulnerable areas such as exposed side and rear gardens. It is noted that the proposal is to use the existing boundary treatments however these must be a minimum height of 1.8m.

It is recommended that utility meters can be read remotely.

It is welcomed that the mail delivery system is inside the lobby area, we would recommend that the lobby is made into a secure area to prevent onward movement and access within the property. The mail delivery system should be of robust construction and have anti fishing properties, to prevent theft of mail.

A clear management and maintenance plan must be in place before the first residents occupy the development.

### **Waste and Recycling Officer (Swisco)**

Access to the site must be kept clear of parked vehicles and safe with room to turn and clear of any obstructions when angling in behind number 15. I note that SWISCo will need to drive on to unadopted highway to collect recycling and waste from this development, SWISCo will not drive on to unadopted highway to collect recycling and waste unless formally indemnified against any damage caused. An indemnity would need to be in place before collections can commence.

The bin store will need to level with no steps as the bins will need to be wheeled to the vehicle. A drop curb and level surface from bin store to the vehicle loading area will be needed.

I would like to request waste management contributions for this development in line with the table below. As communal bins will be used at this site there will be a reduced capacity to recycle.

Further comment (22.02.2022): Torbay Council and its previous contractors have collected from here in the past. Collections were made by reversing onto site and then pulling out back onto Drew Street in forward gear. SWISCo are happy to make collections in this way for the new development, however it should be noted, access from the entrance of site to the bin store must be kept clear. Historically, vehicles would park at the entrance and then leading to the building which prevented refuse vehicles being able to make collections.

### **Torbay Council Community Protection**

No objection subject to a construction management plan condition being attached to any grant of consent, in the interests of protecting the amenity of surrounding occupiers during construction.

### **Highways Authority**

In conclusion, the following information is required before a recommendation can be made on highways grounds in respect to this application:

- Swept path analysis demonstrating that refuse vehicles are able to safely manoeuvre within the site and exit in a forward gear.
- Clarification over the number of disabled spaces is required\*.
- Electric vehicle charging points should be considered\*\*.
- Swept path analysis is required for the parking spaces in the northern extent of the site\*\*\*.

\* Chapter 7 of the Design and Access Statement demonstrates that 4 disabled spaces are to be provided, whilst the proposed site layout sets out only 2 spaces. Clarification is required; however, either is considered acceptable in line with the Torbay Local Plan (2012-2030).

\*\* Consideration of electric vehicle charging points is also required. In accordance with the Torbay Local Plan (2012-2030), a minimum requirement of 20% of all spaces should have access to charging points.

\*\*\* The 8 parking spaces are clearly demonstrated in the proposed site layout, and swept path analysis has been demonstrated on 2 of these parking spaces. However, swept path analysis is required on the spaces in the northern extent of the site which appear to require a tight manoeuvre.

### **Green Infrastructure Manager (Swisco)**

No comments received.

### **Devon County Council Ecologist**

No objection subject to conditions and securement of a recreational pressures financial obligation inline with the council's adopted SPD.

- Construction and Ecological Management Plan.
- Landscape and Ecological Management Plan.
- Post-construction pollution control measures.
- Lighting Plan.
- No External Lighting unless approved.
- Compliance with the Ecological Impact Assessment.
- No vegetation clearance within the nesting season.

### **Planning Officer Assessment**

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 key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of Development.
2. Affordable Housing
3. Design and Visual Impact.
4. Impact on Heritage Assets.
5. Impact on Residential Amenity.
6. Access, Movement and Parking
7. Ecology and Biodiversity.
8. Drainage and Flood Risk.
9. Designing out Crime
10. Low Carbon Development.
11. Other Considerations.

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

The site is a long-vacant brownfield site located in the established urban area of Brixham relatively close to the town centre and various shops, services and transport options. It sits in an area where there is a strong residential character with interspersed community and commercial uses.

In terms of its brownfield character and central location the principle of residential development is supported within the Development Plan. Policy BH4 of the BNP cites that subject to compliance with the other policies of the Neighbourhood Plan, residential development on brownfield (or previously developed) sites in preference to greenfield sites will be encouraged and supported. The policy furthers that brownfield sites within the defined settlement boundaries are the preferred locations for development. These policies support the principle of residential development on this previously used and central site.

Within the Torbay Local Plan Policy H1 states that proposals for new homes within the built up area will be supported subject to accordance with the other policies contained within the Local Plan, and Policy SS12 supports a sustainable pattern of housing provision with an emphasis on brownfield sites and provision being made for affordable housing. These policies support the principle of residential development on this previously used central site for an affordable housing scheme.

In terms of site-specific policy guidance relevant to the principle of redevelopment the site is an allocated housing site under Policy H3 of the BNP. The proposed development is deemed to be aligned with this BNP housing allocation. Notwithstanding this St Kilda is also allocated for assisted living (not open market) housing in accordance with Policy HW1 of the BNP. Policy HW1 guides the retention of current health and social care estates and includes guidance that the site must not be lost to developments that are unrelated to health and social care need. Drawing together the guidance of Policies BH3 and HW1 of the BNP the development proposals do present some policy tension. There is alignment in terms of delivering housing, and in terms of delivering specialist non open market housing, as the development seeks to deliver over 55s affordable housing units within the new build element. There is however tension in terms of the housing use not being related to health or social care. The application is supported by a policy assessment that also covers this policy tension but presents some context to support the merit of the current proposal. This includes the wider policy support for affordable housing and specialist over 55s housing, and the benefits of this



being a 100% affordable unit scheme. The statement also outlines that the BNPs Housing Site Assessment states that, in regard to St Kilda specifically, “The current facility is scheduled to close with the services, in part, being moved to another location”. This suggests the services were not lost and hence suggests the current loss is acceptable as the services were provided elsewhere. Linked to this point Policy HW1 does reference that where the current locations of facilities cannot be retained, an alternative facility within the Brixham Peninsula with as good accessibility will need to be provided. It is suggested that the historical closure relocated services at the time which in turn lessens the policy tension and strengthens the broad policy support for the current form of development proposed.

Considering the policy landscape in the round there is deemed to be a supporting policy framework for the provision of a residential use on the site. The policy support is clear within Policies BH3 and BH4 of the Brixham Peninsula Neighbourhood Plan and the current shortfall in housing land supply strengthens this support. There is some tension with Policy HW1 of the BNP but considering the sites long-standing closure it is not considered to present a loss of services per se. There is also support across Local Plan Policies SS12 and H1.

Pertinent to the judgment on principle it is pertinent to recognise that the Council cannot currently demonstrate a 3- or 5-year housing land supply. For decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan are considered to be out of date and therefore should be afforded limited weight within the current decision-making process. The ‘tilted balance’ in favour of sustainable housing development therefore applies subject to the detailed wording of the NPPF Para 11 and the associated footnotes. This principally means that for permission to be withheld either (a) the application of policies in the NPPF that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development or (b) harm would significantly and demonstrably outweigh benefits. This current context therefore increases the prospect of planning permission being granted because it ‘tilts’ the balance in favour of approving an application for housing.

Considering the policy context above, including the housing land supply position, it is concluded that the principle is considered acceptable for the form of housing proposed. This position is however subject to wider policy considerations that are relevant to the development proposal, which will be discussed in the Officer Assessment below.

## **2. Affordable Housing**

Policy H2 (Affordable housing) of the Local Plan requires a development of this scale and on brownfield land to provide 20% affordable housing. Policy BH2 (Occupation of new affordable homes) of the BNP states that new affordable homes in the Peninsula shall only be occupied by persons (and their dependants) whose housing needs are not met by the market and:

- who have had a minimum period of 5 years in the last 10 years of permanent and continuous residence in the Peninsula and are currently living in the Peninsula; or
- who have lived in the Peninsula for at least 5 years and whose parents or children are currently living here and have at least 10 years continuous residency; or
- who are a key worker as defined by the UK Government and are working within the Peninsula.

The applicant (TDA) has stated that the scheme will be delivered as a 100% affordable housing within the new build element. This will present 23 units which deemed to present a significant public benefit over the policy position of 5 units. The converted listed building is proposed as an unrestricted open market dwelling.

Council planning policy is that 20% of the units delivered on this site should be affordable, of which, at least 1/3 should be for social rent, 1/3 affordable rent and up to 1/3 shared ownership. This tenure mix is not being provided as part of this application although this is mitigated by the fact that 100% of the homes being delivered are affordable rather than only 20%. The additional numbers of affordable units is a significant benefit. Given the scheme will deliver 18 additional units over and above the policy position and in total 23 units of over 55s specialist affordable units, there is sufficient mitigation to allow support and permit flexibility on type of tenure, which is not detailed in the application.

The level of affordable housing is considered a significant public benefit over and above policy expectations and the development is considered in broad accordance with Policy H2 of the Torbay Local Plan and BH2 of the Brixham Peninsula Neighbourhood Plan.

### **3. Design and Visual Impact**

The National Planning Policy Framework (2021) states that one of the core land-use planning principles that should underpin decision taking is to always seek to secure high quality design. In addition, it 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'. New development should be sympathetic to local character and quality. Achieving good design is a central thread within government guidance and Part 12 of the NPPF (Achieving well-designed places) offers key guidance. Paras 126, 127, 130, and 134 are particularly relevant and cumulatively guide that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and the importance of design being sympathetic to local character (built environment and landscape setting). Para 134 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

Policy DE1 (Design) of the Torbay 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 DE4 states that the height of new buildings should be appropriate to the location, historic character and the setting of the development. New development should be constructed to the prevailing height within the character area in which it is located unless there are sound urban design or socio-economic benefits to justify a deviation from this approach.

The redevelopment to the rear of the plot replaces the existing poorly detailed slightly deteriorated 1970s building with a modern apartment building of a broadly similar size. The footprint of the proposed building is similar to that which exists but is smaller, where the existing building lines are regressed in two of the four as directions. The existing layout and building sits as a material consideration and the proposals are considered a betterment, with the reduced footprint and regressed building lines providing scope for an enhanced layout that

offers an improved relationship with the listed buildings to the south and increased scope for landscaping to present a more balanced and softened form of development.

In terms of scale the proposed building height is comparable to the existing and presents only a minor rise to the eaves and ridge heights of the northern and southern wings compared to the current building. The rise in heights being approximately 1m. The central section of the building does present an additional storey to that which existing rising from 2-storeys to 3-storeys, however this section is slim and recessed between the wings, which lessens the central section's prominence and any impact of the additional bulk. In terms of scale the building adequately respects the existing building which has stood for many decades within the site. The minor rise in height also retains adequate respect for the adjacent listed buildings and the increased gap between the building and the listed building offsets the minor rise in height.

The general design of the building is of sufficiently good quality, with staggered building lines and pitched and flat roofing breaking up the massing, which takes direct reference from the current building.

In terms materials the building will present a mix of two bricks with grey tones within the elevations with elements of natural oak cladding. The pitched elements of the roof will be 'slate-grey' metal seamed. Windows and rainwater goods are cited as being bronze in colour however the applicant has indicated that a colour change to grey is requested to match the revised colour palette for the building. The materials are considered appropriate for the context and will present a modern building that is finished in materials that respond to the stone and slate finishes that are locally present. The use of timber cladding will help break up the building and the natural tones will soften and help bed the building within the garden setting and re-landscaped surrounds.

Bearing the above points in mind the proposal is deemed to comply with Policy BH5 of the BNP and DE1 of the Local Plan which, amongst other criteria, requires development to be uncluttered and attractive, acknowledge local character and develop distinctive character in townscape and landscape terms, relate to the surrounding built environment in terms of scale, height and massing and have a clear urban structure and grain that integrates with the surrounding context.

It is considered that the proposed appearance, landscaping, layout and scale 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 demonstrate a satisfactory form of development.

The proposal is deemed to be in broad accordance with Policies DE1, DE4, SS10 and H1 of the Torbay Local Plan, Policy BH5 of the Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF in terms of good design.

#### **4. Impact on Heritage Assets**

On terms of heritage assets the 19<sup>th</sup> Century building at the front of the site (15 Drew Street) is a designated Grade II Listed Building and the remainder of the terrace, outside of the site boundary, is similarly listed. This building and part of the site is also within the boundary of

the designated Higher Brixham Conservation Area. The large 20<sup>th</sup> century care home building and its surrounds deeper within the plot are not listed and sit outside of the conservation area boundary but are within the setting of the conservation area.

The accompanying Listed Building Consent being considered (P/2021/0532) identifies and seeks express LB Consent for associated physical works to the listed building.

In terms of the Local Development Plan it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policies SS10 and HE1 of the Local Plan and Policy BE1 of the BNP). These policies are aligned with the duties on local planning authorities as required by sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, for decisions to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, and for applications that affect a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

The titled balance requires an assessment of the NPPF policies that protect heritage assets. NPPF (2021) provides guidance as to when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance (Para 199). The NPPF further states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification (Para 200). It guides that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use (Para 202).

A Heritage Impact Assessment (Avalon Planning & Heritage: 18-08-2022) has been submitted with the application, which assesses the current context and the impacts of the proposed development. The key heritage considerations are as follows.

In terms of use the change of use of the listed building to a private residential dwelling is considered an appropriate use and returns the building to its original use. The proposed use of the listed building as a single dwelling is considered more appropriate than the care use and I considered a positive aspect of the development. The proposed use is considered to present a viable for the building moving forward and would present an attractive living environment for future occupiers that is likely to help safeguard the building in the long-term. The internal layout and space will present an acceptable level of amenity with outdoor space and parking engrained within the proposed layout.

The removal of the single storey link and making good the exposed elevation will be beneficial to the listed building and its' setting and would positively influence the buildings contribution to the character and appearance of the Higher Brixham Conservation Area. The link is a modern unsympathetic structure, and its removal will improve the spatial arrangement within the setting of the listed building. The restoration of the original appearance of the lime washed

stonework will improve the rear elevation of the listed building and overall presents a positive aspect of the development.

A number of works are also proposed which will address damp issues and water ingress to ensure the building does not suffer from deterioration during the period where it is unoccupied. Addressing external aspects of the building that are failing is considered a positive aspect of the development in terms of the heritage considerations. External works should be secured by a planning condition tied to the occupation of the wider development to ensure the delivery of the improvements. The supporting heritage information details a number of measures however clarity on repair works, including methods for repair, requires greatly clarity secured by a planning condition.

Away from the listed building the existing large 20<sup>th</sup> century building to its rear is of a poor design and is in a deteriorated condition. It is considered to negatively impact on the setting of St Kilda and the adjacent listed buildings (Numbers 17& 19 Drew Street) and the setting of the Higher Brixham Conservation Area. The replacement building is of a similar scale and footprint to the existing but is slightly smaller in footprint and is positioned further away from the listed building and conservation area boundary. The increased space afforded the listed building will improve the relationship and the improved design and materials of the proposal replacement building will present a more sympathetic form of development. The introduction of a defined boundary will separate the proposed building from the listed building, detailed as a proposed boundary wall is detailed in the Heritage Statement as being finished in a stone facing similar to that found on the existing south west wall (rubble coursed sandstone) and topped with hedging to provide greater privacy without an overbearing sense of enclosure. There is however some conjecture with annotation on the proposed layout plan differing from this description. The introduction of a sympathetic boundary between the retained listed building and the new building will introduce an improved sense of plot enclosure for the listed building and is supported as a positive aspect, subject to detail. Stone rather than brick is considered an appropriate detail, as suggested in the Heritage Statement. Overall, the development will present a positive impact upon the listed building, the setting of the listed buildings and the character and appearance of the conservation area and its' setting.

It is considered that the proposal presents enhancement to the listed building, the setting of the listed buildings or the setting of the Higher Brixham Conservation Areas, and thus accords with Local Plan Policies SS10 and HE1 and Policy BH3 Of the Brixham Peninsula Neighbourhood Plan, and advice contained within the NPPF.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 (Sections 66 and 72) in terms of listed buildings and conservations areas, and their settings.

## **5. Impact on Residential Amenity**

The NPPF guides (Para 130) 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. Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding uses.

#### Quality of living accommodation for future occupiers

Policy DE3 of the Local Plan requires that new residential provides a good level of amenity and that units provide adequate floor space to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity but does cite expectations for outdoor amenity space. Policy DE3 sets out guidelines for minimum floor space standards for new dwellings and apartments, which reflect the Government's National Space Standards.

The proposal seeks to provide 23 units within the new build element, with 15x1-bed units and 8x2-bed units. The two bed apartments will have an internal space of circa 65sqm and one bed apartments will have an internal space of circa 50sqm. The internal spaces accord with the national space standards engrained within Policy DE3 of the Local Plan.

In addition to the size of the space the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. In this regard all apartments provide a good level of both light and outlook with adequately sized windows to all key spaces and suitable open outlooks.

Policy DE3 also seeks secure the provision of usable outdoor amenity space where apartments should deliver 10sqm per unit either individually or communally. The development has a landscaped setting of around 700sqm to the north and west of the building and some apartments are afforded private balconies. The provision exceeds the Local Plan expectation and will provide adequate outdoor amenity space for the new apartments.

In terms of key ancillary elements Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. Communal bin storage areas have been provided within the building, located on the corner which aids access for collection services. The proposed bin storage facilities are considered acceptable and compliant with Policy W1.

The development also includes the change of use of the listed building to a single dwelling, which would have been its historic use. The building will present an attractive and pleasant habitable space which would be supported by a rear garden for outdoor amenity and bin storage. Parking is also provided for 2 cars adjacent to the building. Overall, the created unit will present a suitable residential environment.

Considering the various aspects that influence a good living environment development is considered to provide a good standard of living accommodation for future occupiers, in accordance with policy guidance, notably Policy DE3 of the Torbay Local Plan and advice contained within the NPPF.

#### Adjacent neighbouring amenity

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

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a

Construction Method Statement and detail of practices and compliance can be secured through the suggested planning condition.

In terms of the finished development the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance.

In terms of light and outlook afforded adjacent occupiers the proposed building will be a similar scale and over a similar footprint to that of the existing building and the minor changes in height and location will not present a demonstrable change to the light or outlook afforded adjacent occupiers. The increased gap to the listed building will also afford sufficient space for the future use of Number 15 as a dwelling when considering layout and elevation treatment to the rear, which has limited openings. Concern has been raised by a neighbour to the east over the impact on light afforded their garden with the building changing from 2-storeys to 3-storeys on the slightly higher part of the site, however the increased number of floors is largely achieved through setting the building into the slope of the site and the overall heights are similar and present limited change. The main rise in height is within the central section, which is one storey higher, however the building line of this central section is recessed which limits any impact and is circa 15m from the boundary of the site with the plot of the concerned resident.

In terms of privacy and overlooking although the proposed building will be a similar scale and over a similar footprint to that of the existing building it will present a different form of residential occupation and different elevation treatments regarding windows etc, and hence due assessment is necessary. Concern has been raised regarding the impact across the southwest boundary due to the change in use and the proposed treatments of windows/doors and balconies. Discussions with the applicant were undertaken to highlight areas of concern and revised plans have been submitted that seek to address concerns. In terms of amendments within the southwest elevation the 1<sup>st</sup> floor balcony has been removed within the southern wing and the door/window combination has been reduced to a window. Obscured reeded glass has been introduced to the lower half of the resultant window and the matching window above. The removal of the balcony is welcomed however the upper sections of the first and second floor windows would introduce views to private gardens in very close proximity to the joint boundary (less than 5m). In the context and in line with Officer aspirations it is retained that the windows should be fully obscured unless they were high level, which these are not. To overcome this a planning condition is proposed to secure obscure glazing through the two windows to protect neighbour amenity. The end elevation of the northern wing facing southwest is further away and the current elevation presented extensive glazing towards the boundary. Considering this context, and that the adjacent plot has a tarmacked parking area rather than garden immediately adjacent the elevation treatment proposed is considered to present an acceptable relationship.

To the northwest obscure reeded glass has been introduced to lessen the perception of overlooking across the adjacent watercourse and towards the rear of neighbouring plots. Considering the distances involved and the ability for future landscaping to offer some softening of views, the relationship is considered to present no undue impacts on privacy. The northeast relationships are similar to the existing but with slightly recessed building lines offering some mitigation for the change in use and elevation treatment. There are no balconies

on the wings facing east. Considering the context the relationship to the east will not present any undue loss of privacy.

All matters considered, and having received revised plans that improve certain aspects relating to amenity impacts, subject to the condition noted above regarding additional obscure glazing, in terms of amenity and for the reasons above, the proposal is considered to comply with Policy DE3 of the Torbay Local Plan and advice contained within the NPPF, as it would present good quality living environments and would not unduly impact the amenities afforded neighbouring occupiers.

## **6. Access, Movement and Parking**

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

Vehicular access to the site will be retained via the existing access from Drew Street, which is considered acceptable. This access would have previously served the care home facility. There is no objection from the highway authority on the safety of the access and in accordance with Policy TA2 of Local Plan.

Policy TA1 of the Torbay Local Plan and advice contained within the NPPF principally seeks to develop a sustainable model of travel. This baseline aspiration is there to try and meet the travel needs of everyone, whilst also reducing the need for travel and thus the environment impact of movement from development. The site is centrally located and sits in an established urban environment characterised by residential properties and commercial activities. As a centrally located brownfield site it is considered a good location for residential development, and one that could meet the travel needs for occupiers equally, not just car owners, whilst also presenting options for sustainable modes of local travel for all. The development of the site for housing presents a basis for development that accords with the broad policy direction for sustainable travel patterns.

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided. The Brixham Peninsula Neighbourhood Plan is largely silent on access and highway matters beyond guiding that, to encourage use of sustainable forms of transport seeking to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists (Policy T1). The application is in a sustainable location as stated above. In terms of on-site facilities, the apartment development includes integral cycle storage facilities that exceed the Development Plan policy guide of 1 space per apartment. These facilities will facilitate and encourage cycle ownership and use. The proposed change of use of 15 Drew



Street to a dwelling should be afforded cycle storage for 2 cycles, which should be evolved and secured through a planning condition in the absence of submitted detail.

In terms of the proposed site layout the change of use of 15 Drew Street to a dwelling is supported by 2 parking spaces. This accords with parking standards within the Development Plan and is considered commensurate parking facilities for the dwelling. The apartment development is to be supported by 6 parking spaces, 2 of which are disabled spaces. These are set to the east of the building in a convenient location close to the entrance to the building. Development Plan parking standards seek 1 space per 5 apartments for age restricted units, which means that the parking provision is deemed adequate. To provide facilities for visitors it is proposed that one of the spaces should be clearly demarked and purposed for visitors, which can be secured by a planning condition. The level of parking is, for the reasons above, considered acceptable and there is no objection from the highway authority on the level of parking proposed. It is noted that the highway authority has requested swept path evidence for all the parking space, stating that swept paths are only shown for two spaces. The swept paths currently provided show manoeuvring for the two turning areas serving the general area rather than spaces. On plan the space is considered to provide adequate manoeuvring to serve the layout without presenting undue reversing.

The proposed layout does not identify electric charging facilities. The Development Plan seeks 20% provision within apartment developments and hence at least one charging point should be development within the proposed layout. This can be secured by a planning condition together with one charging point for the dwelling at the front of the plot. The details for the dwellings EVC point should be submitted and approved due to the sensitive context in the setting of the listed building.

In terms of waste collection, the highway authority has requested swept path detail showing that a refuse vehicle can access and egress the site. Notwithstanding this the Council's waste and recycling team has confirmed that previous collections were undertaken by reversing into the site and it is expected that Swisco will undertake previous manuring for the development. It is noted that the waste storage area is located within the corner of the building nearest to Drew Street which will limit the need for refuse vehicles to manoeuvre deep within the site. With support from the Council's Waste and Recycling Team it is not considered necessary to further the Highway Authority's request for further information however further detail has been submitted confirming that a large waste vehicle can reverse in to the site.

Considering the developments broad accordance with the Development Plan and advice contained within the NPPF the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1, TA2 and TA3 of The Local Plan and guidance contained within the NPPF.

## **7. Ecology and Biodiversity**

Policy NC1 of the Torbay Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Guidance within the NPPF provides similar guidance to the above and notably Para 180 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity.

Policy C4 of the Torbay Local Plan seek the retention of trees and other natural features. Policy E1 of the BNP states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and that new development will respect these qualities and wherever possible enhance them, and Policy E8 requires that internationally important sites and species will be protected.

The site comprises a former care home site with a large building dominating the site and large expanses of tarmac service space and hardstanding. Landscaped areas are contained to scrub areas along the northwest border with the watercourse and the southwest border and a small, enclosed area behind the listed building. Trees are absent from the site however there is mapping and survey detail that suggests tree removal has taken place within the past few years. Therefore, in terms of ecology the site character has limited value in terms of flora and fauna. Contextually the site is within the Berry Head Sustenance Zone for greater horseshoe bats which requires due consideration.

The application is accompanied by an Ecological Impact Assessment and this has been reviewed by a Devon County Council ecologist as a consultee to the Local Authority.

The submitted ecology report concludes that the site is of relatively low ecological interest. However, a bat roost of low conservation significance was found, and the report confirmed that a licence from Natural England would be required once planning permission was granted and prior to commencement of works. The report also confirmed that a nesting herring gull was found states the potential for other nesting birds, concluding that works will need to be timed to avoid actively nesting birds. In addition, a breeding population of slow worms was identified and although translocation has been undertaken the report states that further translocation visits are required to remove reptiles from the site due to lack of vegetation management. The report concludes no adverse impacts are predicted on other protected species.

Proposed mitigation includes application for a Bat Mitigation Class Licence from Natural England as the consultant ecologists believe an offence cannot be avoided. i.e. there is a bat roost in the building to be demolished that requires consent. In this situation prior to the grant of permission the authority must consider whether the proposal meets the three derogation tests of the Conservation of Habitats and Species Regulations 2017 (as amended), and accordingly whether Natural England are likely to grant a license which would permit the proposal to lawfully proceed. In terms of the first test the redevelopment of an unused building and site to provide 23 units of affordable housing provides public benefit and social/economic reasons. In terms of the second test the roost is within the disused building that sits in middle of the site and there is no obvious satisfactory alternative to redevelop the site. In terms of the third test the DCC ecologist considers with the mitigation proposed, which includes the creation of a compensatory bat box, and the low numbers of a common species to be impacted, it is deemed that the development will not be detrimental to the maintenance of the population of the species concerned. Considering the three tests it is reasonable to conclude that Natural England would grant an EPS licence.

In terms of off-site matters the report highlights that new residential development at St Kilda has potential to increase recreational pressures on designated Sites, and specifically the calcareous grassland and European dry heath at Berry Head. The report confirms that a

financial contribution to off-set recreational pressures would be required. This should be secured via a legal agreement prior to the formal grant of planning permission.

The conclusion of the Devon County Ecologist is that the development is acceptable on ecology grounds subject to conditions to secure appropriate construction and operational ecological practices and protections, mitigation and biodiversity measures, and financial mitigation being secured to offset additional pressure on the calcareous grassland at Berry Head. The council's adopted SPD states on obligation level of £135 per new dwelling, which for a scheme of 24 units in total would present an obligation of £3,240.00.

In light of the conclusions above the development is considered aligned with the aims and objectives of Policies NC1 and C4 of the Torbay Local Plan, Policy E8 of The Brixham Peninsula Neighbourhood Plan, and guidance contained within the NPPF.

## **8. Drainage and Flood Risk**

The NPPF's key guidance (Para 167) is when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere, and where appropriate applications should be supported by a site-specific flood-risk assessment. It further states that development should only be allowed in areas at risk of flooding where, in the light of this assessment (and the sequential and exception tests, as applicable) it can be demonstrated that: a) within the site, the most vulnerable development is located in areas of lowest flood risk, unless there are overriding reasons to prefer a different location; b) the development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment; c) it incorporates sustainable drainage systems, unless there is clear evidence that this would be inappropriate; d) any residual risk can be safely managed; and e) safe access and escape routes are included where appropriate, as part of an agreed emergency plan.

In terms of context most of the site sits within Flood Risk Zone 1 (Low Risk) with a small strip adjacent to the Eden River within Flood Zone 2 & 3 (Medium & High Risk). The entire site sits within the Torbay Critical Drainage Area (CDA), which is designated due to critical surface water drainage problems, and as such there is a need for surface water to be managed to a higher standard than normal to ensure any new development will contribute to a reduction in flooding risks in line with NPPF.

The application is supported by a Flood Risk and Drainage Assessment and an addendum that responded to an Environment Agency objection on the risk of flood posed by the adjacent watercourse. The addendum provided further clarification on the ground levels adjacent to the watercourse and the finished floor levels responding to the 100-year flood event. The addendum and additional sectional detail has been considered by the Environment Agency and their objection has been removed (consultation memo dated 27.02.2023). The development is considered acceptable in terms of its resilience and risk from potential flooding.

In terms of surface water the submitted Flood Risk and Drainage Assessment confirms that the existing buildings surface waters are discharged into the adjacent watercourse in an unrestricted manner and the development will replace this with an attenuated and controlled discharge based on a greenfield run-off rate to the watercourse. This will provide betterment on the current drainage regime and accords with the CDA guidance to reduce flood risk from

surface water run-off. The discharge to the watercourse is considered aligned with the Development Plan hierarchy where on-site SUDS testing has shown soakaways to be unsuitable due to high groundwater levels. The drainage design has been considered by the Council's drainage engineer and is supported. There is also no objection from South West Water.

It is relevant to note that as the site has been allocated for housing within the Brixham Peninsula Neighbourhood Plan, which has undertaken the process of public scrutiny and is an adopted document that forms part of the Development Plan, the sequential test does not need to be satisfied as part of the application process and the key tests are the developments flood resilience and safety and whether it would increase the risk of flooding elsewhere. As detailed above these matters are considered acceptable following the receipt of the Food Risk Assessment Addendum and the removal of the Environment Agency's objection.

For the reasons above the development is deemed acceptable on flood risk and surface water drainage grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained within the NPPF.

### **9. Designing out Crime**

Policy BH5 of the BNP requires that the design of major housing schemes should adequately take into account the safety and security of the users of the facilities and that of neighbouring residents. Policy SS11 of the Local Plan includes guidance that development should help reduce and prevent crime and the fear of crime.

No objections were raised by the Devon and Cornwall Police and they welcomed that Secured By Design has been a key consideration for the design process. The Police furthered aspects of operational detail and management that could improve the safety and security. A condition is suggested to deliver details on the finer operational detail, in accordance with Policy SS11 of the Local Plan and Policy BH5 of the BNP.

### **10. Low Carbon Development**

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. Policy ES1 seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

The submitted Energy Statement includes options assessed to reduce the energy needs of the development, including onsite provision of renewables.

The fabric of the building was modelled to the specification provided and the resultant u-values matched or improved notional dwelling values.

Decentralised and Communal utilities was modelled with a communal air source heat pump. A Mitsubishi Electric air-to-water heat pump was selected and will be based in a ground floor plant room, and will provide heating to both the apartments and the corridor areas, as well as providing hot water. This option is cited as reducing the carbon emissions greatly compared to direct electric or gas heating.

On site renewables has been considered with a modelling of a photovoltaic array added to the flat roof, facing south with an elevation of 30 degrees from horizontal.

A condition is suggested to require detail to evolve and provide certainty on design elements for low carbon development and for these measures to be engrained within the development.

The development is, for the reasons above, considered suitable for approval subject to satisfactory condition to secure the measures outlined within the applications Energy Statement. The development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF.

## **11. Other Considerations**

The Council is unable to demonstrate a 3- or 5-year supply of deliverable housing land. The 5 year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

Considering the current housing supply position, it is advised that in determining the application, the tilted balance is in favour of sustainable development as set out in Paragraph 11 of the NPPF must be applied. Paragraph 11 of the NPPF states that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were Members of a different judgment and were to consider the proposal to be in conflict with the Development Plan it should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused the application of policies in the NPPF that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development or where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

## **Sustainability**

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

### **The Economic Role**

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

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

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

### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional housing, which are intended to be 100% affordable housing within the new build element for older people. Given the NPPF priority to significantly boost the supply of housing, in particular affordable housing, the additional dwellings to be provided must carry significant weight in this balance.

Impacts on neighbour amenity have been discussed above where it is concluded that the proposal does not cause significant harm to residential amenity.

On balance, the social impacts of the development weigh strongly 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 heritage, townscape, ecology, biodiversity and surface and foul water drainage. These matters have been considered in detail above.

The proposed development is in a sustainable location with a range of public transportation links. It is considered a high-quality redevelopment of a brownfield site, minimising the impact on the listed building, setting of listed buildings, setting of the conservation areas and street scene. It provides betterment in terms of replacing uncontrolled surface water discharge into a watercourse with a controlled discharge. In respect of the environmental element of sustainability, the balance is considered to be in favour of the development.

### **Sustainability Conclusion**

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

## **S106 / Local Finance Considerations**

### **S106**

Recreational pressures mitigation payment will be required in accordance with the Council's adopted SPD at a level of £135 per dwelling created. This will be required via a legal agreement (unilateral or bilateral). This presents an obligation requirement of £3,240.00

The applicant will be required to enter into a Nominations Agreement with the Council which specifies that 100% of the new build dwellings to be constructed shall be Affordable Dwellings and shall not be Occupied other than as Affordable Housing. The Nominations Agreement will need to be completed prior to planning permission being granted.

### **Community Infrastructure Levy**

Not applicable to affordable housing.

## **EIA/HRA**

### **EIA**

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

## **HRA**

The development has been reviewed by a DCC ecologist as consultant for the authority and this included HRA matters. See ecology and biodiversity section. As detailed provided mitigation is secured to counter potential recreational pressures on the calcareous grassland at Berry Head there is not likely to be a Significant Effect on the Annex I habitats - alone or in combination with other proposals or projects.

## **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing and regeneration of a long-standing empty site. Applying the tilted balance, the heritage policies in the NPPF do not provide a strong reason for refusing development and the benefits of the development outweigh any harm.

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

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

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

## **Proactive Working**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant. The Council works with applicants/agents in a positive and proactive manner by:

- offering a pre-application advice service,
- open discussions to resolve design and neighbour amenity concerns and where possible suggesting solutions.

## **Conclusions and Reasons for Decision**

The proposal is considered a good use of a redundant brownfield site and would provide much needed housing to help meet local need. The provision of 23 affordable housing units is significantly above the policy threshold and provides a significant public benefit.

The proposal is in overriding accordance with the provisions of the Development Plan and the 'Tilted Balance' adds significant weight in favour of the development in the absence of significant harm being identified.

The proposal is considered acceptable in principle, would provide positive benefits to heritage assets, and would provide an adequate standard of living accommodation which would not unduly impact local amenity. The development is acceptable in terms of access, ecology and flood risk matters.

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

The Officer recommendation is therefore one of conditional approval with measures to secure the 100% affordable housing and the necessary funding for identified ecological mitigation.

### **Officer Recommendation**

Approval: Subject to;

Recreation pressures mitigation obligation of £3,240.00 secured via s106 legal agreement.

The completion of the Nomination Agreement to secure 23 units of affordable housing.

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**

#### **Land levels and flood risk**

The development shall proceed in full accordance with the submitted and approved 'Site Section Adjacent to Watercourse (C716/FRA02 REV P) plan and the revised cross sectional drawing 'Proposed Sections' (SK-KT-XX-XX-DR-A-2013-SK210-S0-P4) dated 24/02/2023, and at no time shall there be any raising of ground levels between the footprint of the building and watercourse or within Flood Zone 2 as part of the development thereafter.

Reason: To safeguard a potential flood flow corridor alongside the watercourse and in order to guard against an increased risk of flooding, in accordance with Policies ER1 of the Torbay Local Plan 2012-2030 and the NPPF.

#### **FRA / Drainage**

The development shall be carried out in accordance with the approved Flood Risk and Drainage Assessment and Addendum document, which shall be implemented in full prior to the first occupation of the development and retained and maintained for the lifetime of the development.



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

### **Affordable housing**

At all times not less than 20% of the residential units hereby approved shall be occupied (or where vacant) available for occupation as affordable housing for rent as defined in the Glossary to the NPPF (July 2021). Thereafter the affordable units shall remain as such in perpetuity. The affordable units shall be provided in accordance with details submitted to and agreed by the Council's Affordable Housing Manager and shall be constructed at least in accordance with the minimum quality and design standards set by Homes England.

Reason: In accordance with Policy H2 of the Torbay Local Plan 2012-2030.

### **Obscure Glazing**

Notwithstanding detail on the plans hereby approved prior to the first occupation of the relevant apartments the first and second floor windows within the southwest elevation of the 'southern wing' of the apartment building shall be fully obscure glazed to an equivalent of Pilkington Level 3 or higher. The windows shall at all times thereafter be maintained as such.

All other obscure glazing detailed on the plans hereby approved shall be installed prior to the first occupation of the associated apartment and shall be maintained as such at all times thereafter.

Reason: To protect neighbour amenity in terms of undue loss of privacy and overlooking, to comply with Policy DE3 of the Torbay Local Plan and advice contained within the NPPF.

### **Materials**

The apartment building hereby approved shall be finished strictly in accordance with the stated materials schedule.

Notwithstanding detail and reference to bronze within the plans hereby approved the windows and guttering within the apartment building shall be coloured grey.

Reason: To secure an appropriate form of development in accordance with Policy DE1 of the Torbay Local Plan 2012-2030, BH5 of the Brixham Peninsula Neighbourhood Plan and the NPPF.

### **Construction Management Plan (pre-commencement)**

Prior to the commencement of development a Construction Management Plan shall be submitted to approved in writing by the Local Planning Authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of construction traffic, noise and 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 subject to specified exceptions.

- 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 and other air-borne pollutants.
- Details of construction traffic and vehicle management
- Details of the storage of materials, plant and equipment and;
- Location and details of any construction workers compound and/or facilities building.

Development shall take place in strict accordance with the approved plan.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users, having regard to Policies TA2 and DE3 of the Torbay Local Plan 2012-2030. This condition needs to be a pre-commencement condition to ensure the impacts of the development are mitigated from the beginning of the development.

#### **Schedule of Repair/Vegetation Removal – External (semi pre-commencement)**

Prior to the commencement of development, excluding demolition and works pertaining to the approved 'Method Statement for the removal of the 1970s link from the rear wall of St Kilda', or site clearance, a detailed schedule of repair work and vegetation removal, including methods and materials, shall have been submitted to and approved in writing by the Local Planning Authority.

Thereafter the work shall be carried out only in accordance with the approved details and shall be completed prior to the occupation of any part of the development.

Reason: To safeguard features of special architectural and historical interest and preserve the character and appearance of the building in accordance with Policy HE1 of the of the Adopted Torbay Local Plan 2012-2030 and Policy BE1 of the Brixham Neighbourhood Plan. This is a pre-commencement condition because the works have the potential to harm retained historic fabric and therefore these details need to be agreed before work commences.

#### **Schedule of Repair – Internal**

Prior to the first occupation of the development a detailed schedule of internal repair and remedial work for Number 15 Drew Street, including methods and materials, shall have been submitted to and approved in writing by the Local Planning Authority. Thereafter the work shall be carried out only in accordance with the approved details and shall be completed prior to the occupation of any part of the development.

Reason: To safeguard features of special architectural and historical interest and preserve the character and appearance of the building in accordance with Policy HE1 of the of the Adopted Torbay Local Plan 2012-2030 and Policy BE1 of the Brixham Neighbourhood Plan.

### **Demolition Method Statement**

The works to remove the existing link as shown within the plans hereby approved shall be carried out in accordance with the 'Method Statement for the removal of the 1970s link from the rear wall of St Kilda' received 01.09.2022. The works shall be carried out prior to the occupation of any part of the development and shall be permanently retained thereafter in accordance with the approved details.

Reason: To safeguard features of special architectural and historical interest and preserve the character and appearance of the building in accordance with Policy HE1 of the of the Adopted Torbay Local Plan 2012-2030 and Policy BE1 of the Brixham Neighbourhood Plan.

### **Door Joinery Details**

Notwithstanding the approved plans and details prior to the installation of new doors within 15 Drew Street, the following shall be submitted to and approved in writing by the Local Planning Authority:

- Broken sections at a scale of 1:1 and elevations at a scale of 1:10, of all new doors
- Reveal sections, drawn to a scale of 1:1-1:10

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: To safeguard features of special architectural and historical interest and preserve the character and appearance of the building in accordance with Policy HE1 of the of the Adopted Torbay Local Plan 2012-2030 and Policy BE1 of the Brixham Neighbourhood Plan.

### **Boundary Wall Sample Panel**

Notwithstanding detail shown on plan reference SK200-S0-P5 (proposed layout) all proposed boundary and garden walls within the immediate setting of the listed building shall be finished in natural stone. Prior to the first occupation of the development and prior to the construction of the walls detailed design drawings and a sample panel of all new facing stonework shall be provided on site showing the proposed - stone types, sizes, colour, texture, and face-bond, pointing mortar mix, joint thickness and finish profile, and height and form of all walls.

Approval of the materials and methods shall be confirmed in writing by the Local Planning Authority prior to installation of the materials and development shall then take place in accordance with the approved details. The approved sample panel shall be retained on site until the work is completed.

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: To safeguard features of special architectural and historical interest and preserve the character and appearance of the building in accordance with Policies DE1 and HE1 of the of

the Adopted Torbay Local Plan 2012-2030 and Policy BE1 of the Brixham Neighbourhood Plan.

### **Nesting season**

The demolition and 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 wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

### **Bat Licence (Pre-commencement)**

Prior to the commencement of development the following shall be submitted to and approved in writing by the Local Planning Authority:

- a) a copy of the licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorising the development to go ahead; or
- b) a statement in writing from the licensed bat ecologist to the effect that he/she does not consider that the specified development will require a licence.

Reason: In the interests of the strict protection of European protected species and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the NPPF. This is a pre-commencement condition to ensure that a Licence is in place, if required, before development commences and because initial works to commence development have the potential to harm protected species and therefore these details need to be agreed before work commences.

### **Pollution control measures**

Prior to the first occupation of the development details of ongoing pollution control measures post-construction will be submitted to and approved in writing by the Local Planning Authority, including mitigation against waterborne pollutants entering the SAC and mitigation for the increased demand on foul water systems. The development shall proceed in full accordance with the approved details at all times thereafter.

Reason: In the interests of protected habitats and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, Policy E8 of the Brixham Peninsula Neighbourhood Plan and the NPPF.

### **Construction and Environmental Management Plan (pre-commencement)**

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

construction phase of the development shall proceed in full accordance with the approved detail.

Reason: To secure a satisfactory form of development in accordance with Policies DE1, SS8, C4 and NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

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

Prior to the first occupation of the development a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in BS42020; clause 11.1, shall be submitted to and approved in writing by the Local Planning Authority. The LEMP shall include, but not be limited to, the following.

- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: To secure a satisfactory form of development in accordance with Policies DE1, SS8, C4 and NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

### **Lighting Plan**

Prior to the first occupation of the development a Lighting Plan shall be submitted to and approved in writing by the Local Planning Authority which shall detail measures and design to avoid any light spill (maximum 0.5lux) onto wildlife habitat (stream, trees, scrub, vegetation etc). The Plan shall accord with the requirements set out in the submitted Ecological Impact Assessment.

The development shall proceed in full accordance with the lighting details approved and no further or varied external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority.

Reason: To secure a satisfactory form of development in accordance with Policies DE1, SS8, C4 and NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

### **Ecological Impact Assessment**

The development shall be carried out in accordance with the actions set out in the Ecological Impact Assessment and any measures required under licence from Natural England.

Prior to the first occupation of the development details of compliance shall be submitted by a suitably qualified ecologist to the Local Planning Authority and acknowledged.

Reason: To secure a satisfactory form of development in accordance with Policies DE1, SS8, C4 and NC1 of the Torbay Local Plan 2012-2030 and the NPPF.

### **Landscaping**

Prior to the first occupation of the development a detailed hard and soft landscape plan shall be submitted to and approved in writing by the Local Planning Authority. The submitted plan shall seek to maximise the biodiversity value of the site.

The approved hard landscaping shall be implemented prior to the first occupation of the development and the approved soft landscaping shall be implemented in full within the first available planting season. The scheme shall be managed for the lifetime of the development in accordance with the approved landscaping scheme.

In the event of failure of any trees/plants, planted in accordance with any approved scheme, to become established and to prosper for a period of 5 years from the date of the completion of implementation of that scheme, such trees/plants shall be replaced in the next planting season.

Reason: In the interests of visual amenity and in accordance with Policies DE1, DE3, SS8 and C4 of the Torbay Local Plan 2012-2030 and the NPPF.

### **Parking Provision**

Prior to the first use of the development the parking facilities hereby approved shall have been provided in full. These elements shall thereafter be retained as parking facilities for the exclusive use of the development for the life of the development.

At all times the two parking spaces demarked on the approved plans for '15 Drew Street' shall be retained and solely for the use of the dwelling approved (15 Drew Street).

Reason: To secure an appropriate form of development in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

### **Electric Charging Facilities**

Prior to the first occupation of the apartment building at least one Electric Car Charging point shall be provided within the approved car parking area and shall be made operational and available for use by occupants of the apartment development. Once provided facility shall be retained for the life of the development for such purposes.

Prior to the first occupation of 15 Drew Street details of the form and location of one Electric Car Charging point shall be submitted and approved in writing by the Local Planning Authority, which seeks to limit its visual impact and impact upon the listed building or its setting. The approved facility shall be made operational and available for use by occupants of the dwelling

prior to its first occupation and once provided facility shall be retained for the life of the development for such purposes.

Reason: In interests of amenity and in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

### **Cycle Provision (apartments)**

Prior to the first occupation of the apartment building the cycle storage facilities, as detailed within the approved plans, shall be completed and made available for the purpose of cycle storage to serve the development. Once provided, the storage arrangements shall be retained for the life of the development for such purposes.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030.

### **Cycle Parking (15 Drew Street)**

Prior to the first use of the dwelling hereby approved details of safe and secure cycle parking facilities for at least 2 cycles shall be submitted to and approved in writing by the local planning authority. The approved facilities shall be implemented prior to the first occupation of the dwelling and retained at all times thereafter.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030.

### **Refuse and Recycling**

Prior to the occupation of any dwelling hereby approved, the refuse and recycling facilities shown on the approved plans to serve that dwelling shall be provided in full. Once provided the storage arrangements shall be retained for the life of the development.

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

### **Detailed design**

Prior to installation detail shall be submitted to and approved in writing by the Local Planning Authority including, but not limited to:

- a) Window and door materials, colours and profiles showing sections at a scale between 1:1 and 1:10.
- b) Reveal sections, drawn to a scale of 1:1-1:10;
- c) Sill and stone surround sections, drawn to a scale of 1:1-1:10.
- d) Details of all fencing and other mains of enclosures including balconies.
- e) Rainwater goods.
- f) Details of parapet cappings.
- g) Details, including materials and colour, of the 'lift overrun'.

The development shall proceed in full accordance with the approved detail and shall be retained as such for the lifetime of the development.

Reason: In order to protect visual character and heritage assets in accordance with Policies C2, DE1, SS10 and DE1 of the Torbay Local Plan 2012-2030, Policy BH5 of the Brixham Peninsula Neighbourhood Plan and advice contained within the NPPF.

### **Low Carbon Development**

The construction of the development shall be carried out in strict accordance with the energy reduction measures proposed in the Energy Statement hereby approved and shall be maintained as such for the lifetime of the development.

Reason: In the interests of sustainable development and in accordance with Policies SS14 and ES1 of the Torbay Local Plan 2012-2030, Policy BH7 of the Brixham Peninsula Neighbourhood Plan and the NPPF.

### **Secured by Design**

Prior to the first use of the development evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable. Development shall take place in accordance with the approved details and shall be retained and maintained as such for the lifetime of the development.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Torbay Local Plan and Policy BH5 of the Brixham Peninsula Neighbourhood Plan.

### **Informative/s**

1. The Environmental Permitting (England and Wales) Regulations 2016 require a Flood Risk Activity Permit to be obtained for any activities which will take place:
  - on or within 8 metres of a main river (16 metres if tidal)
  - on or within 8 metres of a flood defence structure or culvert (16 metres if tidal)

For further guidance please visit <https://www.gov.uk/guidance/flood-risk-activities-environmental-permits> or contact [SW.Exeter-PSO@environment-agency.gov.uk](mailto:SW.Exeter-PSO@environment-agency.gov.uk)

A permit is separate to and in addition to any planning permission granted. The applicant should not assume that a permit will automatically be forthcoming once planning permission has been granted.

2. 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.
3. 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**

### **Local Plan**

Policy SS3 Presumption in Favour of Sustainable Development

Policy SS8 Natural Environment

Policy SS9 Green Infrastructure

Policy SS10 Conservation and the Historic Environment

Policy SS11 Sustainable Communities

Policy SS12 Housing

Policy HE1 Listed buildings

Policy TA1 Transport and Accessibility

Policy TA2 Development Accessibility

Policy TA3 Parking Requirements

Policy C4 Trees, Hedgerows and Natural Landscape Features

Policy NC1 Biodiversity

Policy H1 New Homes

Policy DE1 Design

Policy DE3 Development Amenity

Policy DE4 Building Heights

Policy ER1 Flood Risk

Policy ER2 Water Management

### **Brixham Peninsula Neighbourhood Plan**

Policy BH1 Affordable housing site allocations

Policy BH2 Occupation of new affordable homes

Policy BH3 Delivery of new homes

Policy BH4 Housing development – brownfield and greenfield sites

Policy BH5 Good design

Policy BH6 Roofscape and dormer management

Policy BH7 Sustainable construction

Policy BH8 Access to new dwellings

Policy E8 Internationally and nationally important ecological sites

Policy BE1 Heritage assets and their setting

Policy T1 Linking of new developments to travel improvements

Policy HW1 Retention of current health and social care estates