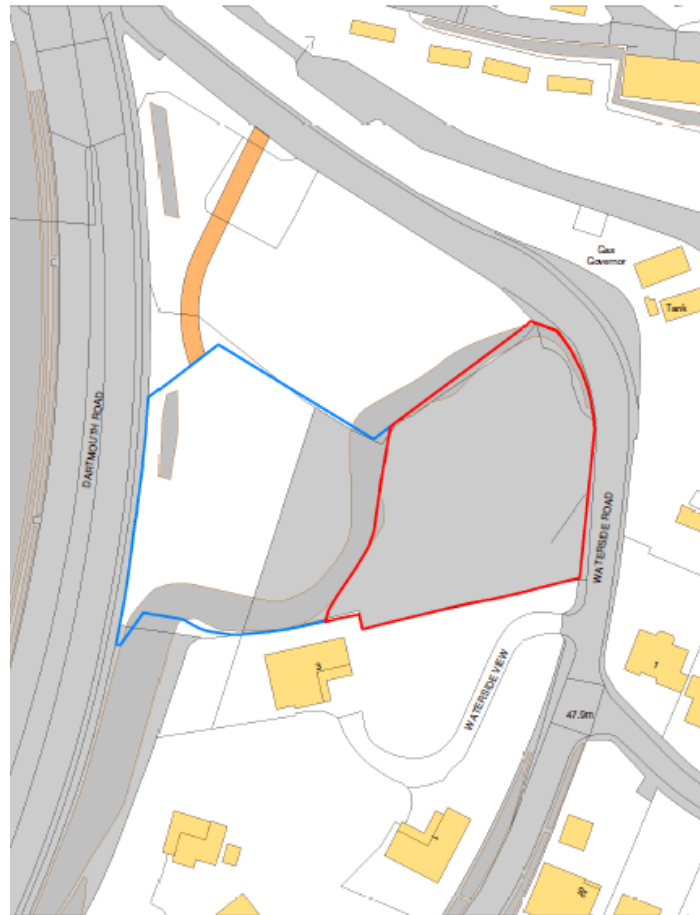


Application Site Address	Site at Waterside Quarry Paignton TQ4 6LJ
Proposal	Reserved Matters Application relating to Outline Application P/2019/0520 (Three new dwellings with vehicular access). Matters for approval: (i) Layout, (ii) Scale, (iii) Access, (iv) Appearance, (v) Landscaping.
Application Number	P/2023/0520
Applicant/ Agent	Mr. Adam Billings
Date Application Valid	29/06/2023
Decision Due date	24/08/2023
Extension of Time Date	TBC
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;</p> <p>The completion of a s106 agreement to ensure the retention of the calcareous coastal grassland in accordance with the LEMP and to ensure that the HRA avoidance and mitigation measures set out in the Stage 2 Appropriate Assessment are secured and complied with.</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	The Divisional Director of Planning, Housing and Climate Emergency has referred the application to the Planning Committee in the interest of transparency as the applicant is a Councillor.
Planning Case Officer	Verity Clark

## **Location Plan:**



## **Site Details**

The site is an expanse of land within the upper section of Waterside Quarry that is adjacent to Waterside Road. The site was formerly a limestone quarry (until the 1960s) and there remains an exposed quarry wall face to the northern and western boundaries. The site is located within the Waterside, Goodrington Urban Landscape Protection Area (ULPA) and is within 250 metres of Saltern Cove SSSI. The exposed quarry face which forms the northern and western boundaries is designated as a Regionally Important Geology Site (RIGS) and County Geological Site (CGS) for its Middle Devonian (Givetian) limestone.

The site is on the west side of Waterside Road within an urban location on the southern edges of Paignton close to the main Paignton/Brixham Road (A379 - Dartmouth Road). Waterside Road is a cul-de-sac off Dartmouth Road which links housing and terminates in Waterside Holiday Park. The site was sold as one of five plots by Torbay Council in 2014 (3 sold as development land, 2 including this site as amenity land).

## **Description of Development**

This planning application is for a Reserved Matters Application relating to Outline Application P/2019/0520 (Three new dwellings with vehicular access). Matters for approval: (i) Layout, (ii) Scale, (iii) Access, (iv) Appearance, (v) Landscaping.

The proposal details three two-storey dwellings accessed from Waterside Road. The dwellings feature two storeys to the east and one storey to the west, as they are built into sloping ground. The proposed dwellings incorporate flat roofs, expansive areas of glazing, grey UPVC window frames and roof eaves, feature areas of timber effect cladding and rendered walls and feature front projecting two storey elements with front balconies.

The dwellings will be served by hardstanding parking and turning areas and unit 3 will feature a detached flat roof garage. Each dwelling is served by a front and rear garden and terrace areas and a shared bin store is located adjacent to the highway.

## **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.

### **Development Plan**

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

### **Material Considerations**

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

## **Summary of Consultation Responses**

### **Devon RIGS Group:**

Looking at the site map, the access to the development appears to cut through the present relief to gain access to the site. This 'face' is part of the designated site and

would have to be removed prior to any construction. There might be the opportunity to retain (or even create) access to the face in the Devonian (fossiliferous) limestone. The site needs a visit to confirm what can be done.

### **Natural England:**

Natural England has previously commented on this proposal and made comments to the authority. The advice provided in our previous response applies equally to this proposal. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

#### Previous advice received via application P/2023/0084:

Natural England has no comments to make on this reserved matters application.

Natural England has not assessed this application for impacts on protected species. Natural England has published Standing Advice which you can use to assess impacts on protected species or you may wish to consult your own ecology services for advice.

Natural England and the Forestry Commission have also published standing advice on ancient woodland, ancient and veteran trees which you can use to assess any impacts on ancient woodland or trees.

The lack of comment from Natural England does not imply that there are no impacts on the natural environment, but only that the application is not likely to result in significant impacts on statutory designated nature conservation sites or landscapes. It is for the local planning authority to determine whether or not this application is consistent with national and local policies on the natural environment. Other bodies and individuals may be able to provide information and advice on the environmental value of this site and the impacts of the proposal to assist the decision making process. We advise local planning authorities to obtain specialist ecological or other environmental advice when determining the environmental impacts of development.

### **Devon County Council's Ecologist:**

Having looked at the amended scheme, there doesn't appear to be anything which changes my comments from application P/2023/0084 – I believe those comments remain valid for this application.

The proposed alteration to the design to the building will likely lead to lower light levels than previously modelled due to the proposed reduction in size of the dwellings.

No further ecology comments from me compared with what was originally sent through for application P/2023/0084.

#### Comments made via P/2023/0084:

Acceptable in terms of LEMP, lighting assessment and CEMP. As long as the condition from the approved HRA concerning the removal of permitted development for micro wind turbines on the development site is included within any decision notice, then conclusions of the previously approved HRA remain valid for this submitted reserved matters application. As a further requirement the Ecologist states:

“The applicant is to use a positive obligation on future occupiers to retain the calcareous coastal grassland to serve a dual purpose; both to prevent an alternative use of the land which could lead to loss of neighbour amenity, and to conserve ecological benefits over the lifetime of the development. Accordingly, the applicant has proposed that the retained calcareous coastal grassland be incorporated within private property boundaries, but future owners become legally liable for observing the management activities in the LEMP – i.e., retaining the calcareous grassland as an ecological habitat in an undeveloped form –via a chain of positive indemnity covenants. This will create a legally binding obligation on the owners which can be enforced by each of the adjacent properties.”

#### **WSP on behalf of the Local Highway Authority:**

##### **1.0 Background**

1.1 This Reserved Matters Application is to approve matters of access relating to three new dwellings at Upper Eastern Site at Waterside Quarry which were previously approved in July 2020 under planning application P/2019/020 in July 2020. The proposed development uses the access proposed in the outline scheme.

##### **2.0 Site Access**

2.1 This reserved matters application addresses matters of layout, scale, access, appearance and landscaping. Matters relating to the proposed access were addressed by the Applicant in a letter dated 22 June 2020 which was in reference to the previously consented planning application (P/2019/020). This letter details an ATC survey which was undertaken on Waterside Road in the vicinity of the proposed access for a seven-day period between 12-18th June 2020. It is noted that these surveys were undertaken whilst England was under movement restrictions relating to the COVID-19 pandemic, and as such the observed traffic flows cannot be taken as representative of typical conditions. Vehicle speeds observed at this time however should not have been considerably impacted by movement restrictions and thus can be considered representative.

2.2 The observed 85th percentile speed was 22.9mph for southbound vehicles and 25.8 mph for northbound vehicles. Based on this observed vehicle speeds, the

required visibility as is set out in Table 7.1 of Manual for Streets is 2.4 X 30m to the left and 2.4m x 35m to the right.

2.3 The applicant has submitted a drawing (ref. PL4 Rev B) which illustrates visibility splays of 2.4m by 34m to the left and 35m to the right. This is considered acceptable.

### **3.0 Site Layout**

3.1 The applicant will require a License (vehicle crossover) to work on the Highway as part of the proposed works are on an existing Highway Maintainable at Public Expense (HMPE).

3.2 From reviewing the submitted site layout plans the Highway Authority requests that the applicant, northbound from the site access, amends the area adjacent to the site to provide grassland / low vegetation. This is to discourage pedestrians from walking along the kerb line and trying to cross the carriageway at a dangerous point on the bend of the road. The grass / vegetation will be required to be maintained to not block the visibility splay from the site access.

### **4.0 Conclusion**

4.1 The Highway Authority offers no objection to the proposed development, subject to the following Conditions:

- The applicant will be required to illustrate the area adjacent to the site (north of the access) to be amended to identify provision of grassland/ low vegetation. This must be maintained so that it does not block the visibility splay to the north of the site access; and
- The Applicant will require a Licence (Vehicle crossover) to work on the Highway as part of the works are on existing Highway.

### **Broadsand Churston and Galmpton Neighbourhood Forum:**

No response received.

### **Drainage Engineer:**

I can confirm that providing the surface water drainage and soakaway are constructed in accordance with the submitted design, I have no objections on drainage grounds to planning permission being granted for this development.

### **Senior Tree Officer:**

The proposed soft landscaping requires minor alteration to provide scope for structural tree planting to frame views from the site.

The use of invasive non-native species such as Chery Laurel and Bay should be revised in the species mix to alternative species which are salt and wind hardy. The remainder of the soft landscape and maintenance specification is broadly acceptable.

#### Officer Report

Statutory Designations (Trees): – Tree Preservation Order – Not Applicable.  
Conservation area – Not applicable.

#### Recommendations

Incorporate two Black Pine (*Pinus nigra*) in the north-east roadside frontage to replace the proposed Cherry Laurel.

*Pinus mugo* is a suitable replacement for Cherry Laurel and Bay and is in keeping with the coastal theme and design objective. Tamarisk may also be a suitable alternative.

### **Summary of Representations**

6 objections received. Issues raised:

- Site history
- Site removed from Neighbourhood Plan by independent examiner
- Impact on ULPA
- Impact on wildlife
- Highway safety
- Ecology and wildlife impacts

### **Relevant Planning History**

P/2023/0084: Reserved Matters Application relating to Outline Application P/2019/0520. Matters for approval: (i) Layout, (ii) Scale, (iii) Access, (iv) Appearance, (v) Landscaping. Refused 22/03/2023. Appeal pending.

P/2021/1256: Reserved Matters Application relating to Outline Application P/2019/0520. Matters for approval: (i) Layout, (ii) Scale, (iii) Access, (iv) Appearance, (v) Landscaping. Appeal for non-determination pending.

P/2019/0617/OA: Three new dwellings with vehicular access. Refused 09/06/2020.

P/2019/0520/OA: Three new dwellings with vehicular access. Approved 15/07/2020.

P/2016/0824/PA: Formation of a 2 storey dwelling with parking (revised documents inc revised layout received April 2017). Permission with legal agreement 06/04/2018.

P/2016/0822/RM: Reserved Matters Application for approval of the details for appearance, layout and scale of two no. two storey residential dwellings with associated parking and garages in relation to Outline approval P/2014/0045. (revised documents inc revised layout received April 2017). Permission with legal agreement 16/03/2018.

P/2014/0045/OA: 3 No. Detached dwellings and associated access/parking provision. Approved 23/01/2015.

## **Planning Officer Assessment**

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

The key issues to consider in relation to this application are:

1. Principle of Development
2. Impact on the Character of the Area
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Impact on Ecology, Geology and Trees
6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change

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

The proposal is for reserved matters with regards to all matters (layout, scale, access, appearance, and landscaping) for three dwellings. The principle of development was established and considered acceptable at the outline consent stage.

#### **2. Impact on the Character of the Area**

Paragraph 126 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 134 states that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Brixham Peninsula Neighbourhood Plan states that all new



development should demonstrate good quality design and respect the character and appearance of the surrounding area.

The surrounding area outside of the ULPA designation is somewhat urban in character but development is at a lower density than in some other parts of Torbay. Waterside Road consists of large, detached, two-storey, 1930s dwellinghouses within spacious plots. Such dwellinghouses have an appearance typical of their time with painted rendered walls and pitched roofs. The outline consent sought all matters reserved. However, the outline consent provided some indicative detail that sought to show the potential positioning of the plots, with the submitted Design and Access Statement indicating the potential for two-storey development, with the lower floors being cut into the sloping ground to present two storeys to the east but only one storey to the west. Flat roofs were also indicatively shown, similar to those dwellinghouses at Waterside View. As all plans were indicative at the outline application stage and the indicative plans put forward were silent on the extent of the two storey form of development, it was considered at the outline consent stage that the indicative positioning of the footprints would provide an active and positive street frontage from Waterside Road and as a result the reserved matters would need to consider the detailed design to ensure the detailed acceptability of the proposal.

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

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

In terms of landscape impact, it is relevant to consider the cumulative effects of the dwellinghouses previously approved - three dwellinghouses have been granted planning permission under planning references P/2016/0822 and P/2016/0824 – two of which have been constructed. These are located north-west in relation to the current application site. Three other dwellinghouses have been approved to the south west of the site at Waterside View under various applications including P/2008/1350, P/2010/024 and P/2020/0139 all located within the ULPA.

Whilst the site benefits from outline consent, it should be noted that an informative was included within the decision notice that related to a plan indicatively showing the height of the future development. This linked to the following condition which was agreed by the planning committee but was incorrectly not added to the decision notice:

*The development hereby approved shall not exceed the height indicated on plan reference '1927 PL3 B (site sections)' received 4th June 2020.*

*Reason: In the interests of visual amenity in accordance with Policies DE1 and C5 of the Torbay Local Plan 2012-2030 and Policy PNP1(c) of the Paignton Neighbourhood Plan.*

Plan '1927 PL3 B (site sections)' of the outline application details the following roof datum heights:

Dwelling 1: 55000

Dwelling 2: 56000

Dwelling 3: 57000

Plan 'PL215' of the current reserved matters application details the following datum heights to the highest ridge level of the roofs:

Dwelling 1: 55300

Dwelling 2: 56299

Dwelling 3: 57299

This demonstrates that the maximum ridge height is higher by 0.29m to 0.3m on all proposed dwellings than the indicative plan submitted at the outline stage.

It is considered that the application site is mainly screened when viewed from Dartmouth Road, given the topography of the land. The site would however be visible from Waterside Road.

There are other notable development in the area, including the adjacent site; Waterside View which appears less densely developed given the siting and massing of the three dwellings. Two of the three of these dwellings are significantly set back from Waterside Road and whilst these are visible within the streetscene, particularly when stood further to the east along Waterside Road, given their set back nature on the site and the landscaping in front of the two units, their impact is reduced and the setting of the ULPA is considered to be preserved.

The two constructed dwellings to the north-west of the application site are prominent within the streetscene. Even with their level in relation to the adjacent road and the subsequent lack of need for underbuild, these dwellings appear dominant within the streetscene with a resultant loss in the landscape characteristic of the ULPA. It is considered that this development has undermined the ULPA designation and highlights the need for a greater landscape led approach, lower density of development and greater variety in the design, particularly above ground floor level, to create more space within the development site. Whilst it is acknowledged that these dwelling have been approved, the resultant harmful impact on the ULPA designation is not one which should be exacerbated by further harmful development.

The proposal portrays the three dwellings as being two storeys to the east and one storey to the west, as they are built into sloping ground. The proposed dwellings incorporate flat roofs, expansive areas of glazing, grey UPVC window frames and roof eaves, feature areas of timber effect cladding and rendered walls with feature front projecting two storey elements with front balconies. This modern design approach takes reference from the nearby development.

The applicant has provided a proposed section/streetscene plan (plan reference PL203 Rev A) and site plan (plan reference PL202 Rev B). The separation distances between the proposed dwellings are approximately 5.45m between house 1 and 2, and approximately 5.8m between house 2 and 3. There is an approximate separation distance from house 3 to the site boundary with Waterside View of 3.75m and a separation distance of approximately 0.95m between the garage of house 3 and the site boundary with Waterside View.

The indicative footprints of the proposed dwellings were detailed at the outline stage as the following:

Dwelling 1 – 121.4m<sup>2</sup>  
Dwelling 2 – 120.65m<sup>2</sup>  
Dwelling 3 – 121.45m<sup>2</sup>

The footprint of the current dwellings detailed at the reserved matters stage are as follows:

Dwelling 1 – 139m<sup>2</sup>  
Dwelling 2 – 140.6m<sup>2</sup>  
Dwelling 3 – 162m<sup>2</sup>

The footprints of the proposed dwellings are therefore larger than envisaged when relating back to the outline proposal.

The current application follows on from refused reserved matters application P/2023/0084. This proposal featured similar footprints to that put forward in the current proposal but included significantly greater development at first floor level and smaller separation distances between dwellings. It was considered that the overall siting, scale and massing of the proposed dwellings of this refused application would be highly prominent and visually obtrusive when viewed from Waterside Road and potentially other public vistas and this was exacerbated by the levels and retaining structures required in this location. The three proposed dwellings were considered to result in a starkly dominating visual appearance exacerbated by their proximity to the road frontage when compared to the adjacent Waterside View.

The current application has attempted to address the reasons for refusal by employing techniques to create a more spacious characteristic and appearance, namely by the significant reduction in the first-floor floor area but also by increasing the separation distances between the proposed dwellings. This has significantly reduced the bulk and massing of the three dwellings, resulting in a less dominant visual appearance which allows for a more landscape led visual appearance and one that mimics the positive design put forward at the adjacent site; Waterside View. The form of the development and the massing allows for articulation and breaks up the visual appearance, thereby not appearing as blocky dominating buildings. Whilst the height of house 1 is 0.3m higher and house 2 and 3 are 0.29m higher than the indicative plan at outline, these higher ridge levels relate to a section of the first floor roof and not the entirety of the first floor roof level. Given the height is only exceeded by a maximum of 0.3m and this does not span the entirety of the dwellings, the overall height is considered to be visually acceptable, and the size, scale, massing and appearance of the development as a whole is considered to fit comfortably within the streetscene. The single storey flat roof garage is considered to appear as a subservient structure at the front of the site which is considered to be visually acceptable.

For the reasons noted above, it is considered that the two storey scale, design and footprint of the development would have an acceptable impact on the ULPA and would not undermine the value of the ULPA as an open or landscaped feature within the urban area.

It is considered that the proposed development in terms of visual amenity and impact on the ULPA is acceptable and accords with Policies DE1 and C5 of the Local Plan, Policy BH5 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

Policy DE3 of the Local Plan states that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Brixham Peninsula Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 130 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy DE3 of the Local Plan states that development proposals should be designed to provide a good level of amenity for future residents and will be assessed in terms of the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution, provision of useable amenity space, and an adequate internal living space.

Policy DE3 of the Local Plan which relates to development amenity requires that new residential units provide adequate floor space in order to achieve a pleasant and healthy environment. Policy DE3 of the Local Plan states that all new dwellinghouses should provide a minimum of 55 square metres of outdoor amenity space, which are useable and relatively private. Each dwelling has their own individual outdoor amenity space, which comprises of a section of lawn to the frontages, a first-floor balcony to the eastern elevation, a patio area to the rear and a garden beyond. This provision is considered to be acceptable.

Internal floor standards are set out from the DCLG technical housing standards document. Table 23 of the Torbay Local Plan 2012-2030 sets the dwelling space standards for Torbay which are taken from the Government's Nationally Described Space Standards. The proposed residential units have the following approximate internal floor areas:

Unit 1 = 198.8 square metres (4 bedroom, 7 bed space, 2 storeys)

Unit 2 = 197.95 square metres (4 bedroom, 7 bed space, 2 storeys)

Unit 3 = 228.6 square metres (4 bedroom, 8 bed spaces, 2 storeys)

All the units comply with the Government's Nationally Described Space Standards. The proposed residential units are considered to provide an adequate and suitable environment for future occupiers in terms of outlook and natural light levels. It should be noted that a number of bedrooms on the ground floor to the rear of the dwellings, are within 3-4 metres of a retaining wall, therefore these rooms will have somewhat limited outlook and natural light levels, but overall given the layout and other bedrooms within the dwellings, the proposals are considered to be acceptable.

Given the proposal's siting, design and orientation in relation to adjacent neighbours it is considered that the proposed development would not have a detrimental impact on the amenity of neighbours, in terms of their outlook, privacy, or access to natural light. All three dwellings include a first-floor balcony on the eastern elevation. Given the staggered siting of the three dwellings, the balconies would not cause any intervisibility between future occupiers. The proposal is considered to be in accordance with Policy DE3 of the Local Plan.

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

Paragraph 110 of the NPPF guides that when assessing developments 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; (c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and (d) 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.

Paragraph 111 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals 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. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Brixham Peninsula Neighbourhood Plan states that all new development should comply with the relevant adopted standards.

At outline, the Local Highway Authority stated that given the junction with Waterside Road, the proposed access would be required to have a visibility of 43 metres x 2.4 metres x 43 metres, which is the recommendation for a 30mph road. The Local Highway Authority previously assessed the submitted information at outline and stated that they had no objections. The Engineer noted that the wing walls at the access should be clear of landscaping obstructions and the walls ideally kept to 600mm to 800mm high so there is clear visibility when sat in a vehicle exiting the access.

At this reserved matters stage, the Local Highway Authority have confirmed that the visibility splays are acceptable. They have also noted that the applicant will be required to illustrate and amend the area adjacent to the site to provide grassland / low vegetation. This is to discourage pedestrians from walking along the kerb line and trying to cross the carriageway at a dangerous point on the bend of the road. The grass / vegetation will be required to be maintained to not block the visibility splay from the site access. It is also noted that the applicant will require a Licence (Vehicle crossover) to work on the Highway as part of the works are on existing Highway.

The proposed site plan has been amended in line with the above request to detail low level grassland/vegetation in the area to the north of the access. A condition requiring the maintenance of this area as low grassland/vegetation is recommended to ensure pedestrian safety and to ensure the visibility splay is not blocked.

Policy DE3 and Appendix F of the Torbay Local Plan states that 2 car parking spaces should be provided for a dwelling and the parking spaces should be 4.8 metres by 2.4 metres when not adjacent to a highway. The proposal includes driveway parking for houses 1 and 2 which allows for parking of more than two cars per unit. House 3 has

a detached garage in front of the proposed dwelling and a driveway. The proposed garage is also proposed to house the bicycle storage. The proposed garage for house 3 meets the minimum standard for a double garage with bicycle storage and the parking provision as a whole is considered to be acceptable.

A planning condition is recommended to ensure that the parking provision and manoeuvring areas are provided prior to the occupation of the dwellings and retained for the lifetime of the development. A further planning condition is recommended to secure one electric charging point per dwelling prior to the first occupation of the dwellings in line with the requirements of Appendix F of the Local Plan.

Appendix F of the Torbay Local Plan also states that new residential units should provide two covered and secure bicycle storage space per dwelling. The submitted plans indicate bicycle storage within the garage of house 3 but does not detail provision for house 1 and 2. A planning condition should be employed to ensure that the bicycle storage is provided prior to the occupation of the dwellings and retained for the lifetime of the development.

Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes. The submitted proposed plans indicate bin storage within the curtilage of each dwelling, as well as a provision alongside Waterside Road to enable the waste operator to collect the future occupiers waste, as the vehicles cannot drive onto an unadopted highway. A planning condition is recommended to ensure that the bin storage is provided prior to the occupation of the dwellings and retained for the lifetime of the development.

Subject to the aforementioned planning conditions, the proposal would comply with Policies TA2, TA3 and W1 of the Local Plan and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

## **5. Impact on Ecology, Geology and Trees**

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built-up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the Brixham Peninsula Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally

protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms with Policy NC1 of the Local Plan.

The application site is approximately 5.5km north-west of the Berry Head to Sharkham Point component of South Hams Special Area of Conservation (SAC). The site is within the Berry Head roost Sustenance Zone.

The outline application was supported by an Extended Phase 1 Habitat Survey & Ecological Appraisal (Sunflower International, August 2019); a Habitats Regulations Assessment Screening Report incorporating Ecological Management and Enhancement Plan (Professor John Altringham, dated March 2018; and a Habitats Regulations Assessment Screening Report, Lower Western Site (Adam Billings, dated May 2019). A Habitat Regulations Assessment (HRA) was commissioned and undertaken by Devon County Council, which led to a number of details required at reserved matters – CEMP, LEMP and lighting assessment.

The habitats within the site boundary comprises of approximately 0.3 hectares of damp limestone grassland and quarry face. The site was cleared of scrub during the winter of 2015/16 and is currently managed by mowing and scrub cutting. The site slopes upwards to the western and northern boundaries of the application site to the exposed quarry wall face. The proposed works would result in the permanent loss of improved and semi-improved grassland and scattered scrub.

At outline Natural England concurred with the conclusion of the Appropriate Assessment that the proposals will not result in adverse effects upon the integrity of the South Hams SAC. Natural England have confirmed via this application that the proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

The DCC Ecologist has considered the proposal and commented on the submitted information. They have confirmed that the submitted LEMP, CEMP, landscape and planting specification and lighting assessment are acceptable and adherence to these documents can be secured by condition. Providing the condition from the approved HRA concerning the removal of permitted development for micro wind turbines on the development site is included within any decision notice, which is therefore recommended, the conclusions of the previously approved HRA remain valid for this submitted reserved matters application.

The DCC Ecologist has stated in respect of the LEMP that “the applicant is to use a positive obligation on future occupiers to retain the calcareous coastal grassland to serve a dual purpose; both to prevent an alternative use of the land which could lead to loss of neighbour amenity, and to conserve ecological benefits over the lifetime of



the development. Accordingly, the applicant has proposed that the retained calcareous coastal grassland be incorporated within private property boundaries, but future owners become legally liable for observing the management activities in the LEMP – i.e., retaining the calcareous grassland as an ecological habitat in an undeveloped form –via a chain of positive indemnity covenants. This will create a legally binding obligation on the owners which can be enforced by each of the adjacent properties. This is deemed acceptable by the LPA ecologist.”

The Council considers that a chain of positive covenants as suggested by the applicant would be cumbersome and difficult to enforce. It is not clear why this has been suggested rather than the usual Section 106 planning obligation. The Council’s Solicitor has recommended that the above requirement is secured by a s106 legal agreement. The legal agreement should set out the specific requirements for future owners.

The applicant has agreed to enter into a s106 legal agreement to ensure the retention of the calcareous coastal grassland in line with the LEMP and to ensure that the HRA avoidance and mitigation measures set out in the Stage 2 Appropriate Assessment are secured and complied with. With the agreement of a suitably worded s106 agreement, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

The exposed quarry face which forms the eastern boundary is designated as a Regionally Important Geology Site (RIGS) and County Geological Site (CGS) for its Middle Devonian (Givetian) limestone, which contributes to understanding the unique and internationally important marine Devonian geology of the Geopark territory, and the sites value towards retaining the UNESCO status for Torbay. The RIGS Group were consulted on the outline application, noting:

*“Our RIGS sites in the area sit alongside those with Statutory Protection (as GCR or SSSI sites), with many contributing to the definition of the Devonian System, which was in 1840 created to include many of the rocks in Torbay - including the limestones in particular. Indeed, it was the content of fossils (corals, brachiopods, bryozoa. etc.) in these limestones that characterized the succession.*

*We would certainly be prepared to meet, discuss and demonstrate the importance of the RIGS site and we feel that the Applicant should fund a full survey of the site, including any remedial measures that would be needed to retain a geoconservation use for the site. Looking at the plans, this does not seem to restrict the development in any way and could provide a win;win situation for both the site and the geoconservation value.”*

The RIGS Group have provided the following comment on this reserved matters application:

*Looking at the site map, the access to the development appears to cut through the present relief to gain access to the site. This 'face' is part of the designated site and would have to be removed prior to any construction. There might be the opportunity to retain (or even create) access to the face in the Devonian (fossiliferous) limestone. The site needs a visit to confirm what can be done.*

The following planning condition should have been employed to secure a structural geological survey prior to the commencement of development as agreed by the planning committee:

*No development shall take place, until a structural geological survey is undertaken by a geologist with specialist/credible knowledge on the Marine Devonian and submitted to and approved in writing by the LPA. The approved structural geological survey shall be adhered to and implemented throughout the development strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.*

*Reason: In the interests of the visual amenity and geology, and in order to accord with Policies DE1 and NC1 of the Torbay Local Plan 2012-2030. These details are required prior to commencement of development to ensure geological features are not harmed.*

A structural geological survey has not been provided with this reserved matters submission and therefore a condition should be employed to ensure the proposal retains, protects and provide for the appropriate management of the RIGS and CGS site in accordance with Policy NC1 of the Local Plan.

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm, either directly or indirectly, protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. Policy C4 goes on to state that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

The proposed development would result in the loss of insignificant vegetation. At outline, the proposal was supported by an assessment of the tree stock supported with a tree protection plan. The application is supported by a Landscape and Planting Specification. This is the same landscaping plan which was provided for application P/2023/0084 and which the Council's Green Infrastructure Manager confirmed was acceptable. The Council's Senior Tree Officer has confirmed general support for the

landscaping scheme but has recommended the substitution of the Cherry Laurel. Given the landscaping scheme was previously found to be acceptable it is not considered reasonable to require an alteration to the planting scheme. A planning condition securing the landscaping scheme as detailed is therefore recommended.

## **6. Flood Risk**

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. The Council's Drainage Engineer has been consulted on the application and has confirmed that providing the surface water drainage and soakaway are constructed in accordance with the submitted design, there are no objections on drainage grounds to planning permission being granted for this development. A condition securing the drainage is therefore recommended to ensure that the proposal would maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere in accordance with Policy ER1 of the Local Plan.

## **7. Low Carbon Development and Climate Change**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks 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 proposed site plan details solar panels and heat pumps on the roofs of each dwelling. A condition to secure these low carbon measures is therefore recommended to ensure compliance with Policy. With the addition of this condition the development is in accordance with Policy SS14 and ES1 of the Torbay Local Plan and advice contained within the NPPF

## **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. The development would see the development of 3 additional dwellings. Once the development is occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwelling to be provided must carry significant weight in this balance.

The use of the site for housing would provide an appropriate use and offer 3 additional dwellings within a sustainable location. On balance, the social impacts of the development weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development, the elements that are considered especially relevant to the proposed development are impacts on ecology, biodiversity, geology and drainage. These matters have been considered in detail above and have been found to be acceptable. The proposal will include bicycle storage, and the proposed development is in a sustainable location within the existing urban area.

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

### **Sustainability Conclusion**

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

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

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

expressed through third party interests / the Development Plan and Central Government Guidance.

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

### **Local Finance Considerations**

#### **Affordable Housing:**

Not applicable.

#### **S106:**

Not applicable in relation to Local Finance Considerations but see comments below under HRA.

#### **CIL:**

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule. The CIL liability for this scheme is Nil.

### **EIA/HRA**

#### **EIA:**

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

#### **HRA:**

A Habitat Regulations Assessment (HRA) was commissioned and undertaken by Devon County Council at the outline application stage.

The HRA Screening Opinion concluded that the development is likely to have a Significant Effect on the greater horseshoe bat features of South Hams SAC alone or in combination with other proposals or projects because of the loss of a year round functionally linked roost of 1 to 2 greater horseshoe bats and its associated foraging and commuting habitat, inside a Sustainance Zone with a potential risk of the development undermining the SAC's Conservation Objectives. The potential effects

on the SAC without mitigation are not considered 'de minimis'. A Stage 2 Appropriate Assessment was required.

The Stage 2 Appropriate Assessment concluded that the development, with all the avoidance and mitigation measures secured by condition and/or obligation, being implemented in full, would not adversely affect the integrity of South Hams SAC or the functionally linked supporting habitat associated with this either alone or in combination with any other plans or projects. It concluded that there is no requirement to progress to Stages 3 and 4 of the HRA process.

The avoidance and mitigation measures to be secured by condition and/or obligation are as follows:

- Works to proceed in accordance with the recommendations of the Ecological Management and Enhancement Plan [dated March 2018] and Habitats Regulations Assessment Screening Report [dated May 2019] including ("Restricted Lighting' 'Restricted Lighting during Construction', 'New Planting to increase biodiversity' p.25-27)
- Provision of a Construction Environment Management Plan
- Provision of a Landscape and Ecological Management Plan
- Lighting Assessment and Design Strategy by an accredited Lighting Consultant to be brought forward as part of reserved matters stage. This shall include a 'dark areas' plan and demonstrate how there shall be no light spill within 10 meters of the top of the quarry face and adjacent tree line (at the northern boundary of the application site)
- Condition to be attached removing permitted development of micro wind turbines on the development site.
- At Reserved Matters stage an Integrated Landscape and Lighting Design Strategy for the 'dark areas' shall be submitted to and approved in writing by the local planning authority. The strategy shall support lighting measures incorporated into the development of the adjacent land (Waterside Road, Lighting Impact Assessment, Illume Design dated 31 August 2018)

The DCC Ecologist has confirmed that as long as a condition from the approved HRA concerning the removal of permitted development for micro wind turbines on the development site is included within any decision notice, alongside adherence to the submitted documentation, then conclusions of the previously approved HRA remain valid for this submitted reserved matters application.

The Council accept that the HRA avoidance and mitigation measures were not secured at the outline permission stage. The Council submit that compliance should be secured at the reserved matters stage by means of a S106 Agreement to ensure that, having been omitted from the outline permission, compliance with these measures is secured.

### **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.

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

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, ULPA or local amenity; would provide an adequate standard of living accommodation and provide acceptable arrangements in relation to access, flood risk, and ecological constraints. On balance, the proposed development is considered acceptable, having regard to the Torbay Local Plan, the Brixham Neighbourhood Plan, and all other material considerations.

### **Officer Recommendation**

Approval: Subject to;

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

The completion of a s106 agreement to ensure the retention of the calcareous coastal grassland in accordance with the LEMP and to ensure that the HRA avoidance and mitigation measures set out in the Stage 2 Appropriate Assessment are secured and complied with;

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**

#### **1. Geological Survey**

No development shall take place, until a structural geological scheme and survey of the site is undertaken by a geologist with specialist/credible knowledge on the Marine Devonian and submitted to and approved in writing by the LPA. The survey shall include a scheme to ensure the proposal retains, protects and provides for the appropriate management of the Regionally Important Geology Site (RIGS) and County Geological Site (CGS). The approved structural geological survey and scheme shall be adhered to and implemented and retained for the lifetime of the development strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of the visual amenity and geology, and in order to accord with Policies DE1 and NC1 of the Torbay Local Plan 2012-2030. These details are required prior to commencement of development to ensure geological features are not harmed.

## **2. LEMP**

Development shall take place strictly in accordance with the hereby approved 'Landscape & Ecological Management Plan June 2023'.

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

## **3. Lighting Assessment**

Development shall take place strictly in accordance with the hereby approved 'Lighting Design Strategy June 2023'.

Reason: In the interests of the amenity in relation to neighbouring properties and biodiversity, and in order to accord with Policies DE3 and NC1 of the Torbay Local Plan 2012-2030.

## **4. CEMP**

Development shall take place strictly in accordance with the hereby approved 'Construction Environment Management Plan June 2023'.

Reason: In the interests of protected species and residential amenity and in accordance with Policies NC1 and DE3 of the Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

## **5. Parking provision**



The dwellings hereby approved shall not be occupied or brought into use until the hardstanding parking areas and garage detailed on approved plans 'PL202 Rev B' and 'PL209' have been provided in full. The hardstanding and garage shall thereafter be permanently retained for the use of parking for the associated dwelling for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030.

## **6. Waste**

Prior to the first occupation of the dwellings hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection in accordance with approved plan 'PL202 Rev B'. 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.

## **7. Landscape plan**

All proposed planting as detailed within plan reference 'Landscape and Planting Specification June 2023' shall be planted in the next planting season following the commencement of the development and completed in full prior to the occupation of the development. The landscaping scheme shall thereafter be maintained for a period of 5 years.

In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of five years from the date of the completion of implementation of that scheme, such trees/plants shall be replaced in the next planting season. The planting shall be maintained in accordance with plan reference 'Landscape and Planting Specification June 2023'.

Reason: To secure a landscape scheme that will complement the development in the interests of visual amenity, in accordance with Policies SS8 and C4 of the Torbay Local Plan 2012-2030.

## **8. EV charging points**

Prior to the occupation of the dwellings hereby approved, the electric vehicle charging points detailed on approved plan 'PL202 Rev B' shall be installed and made available for use for the associated dwelling. The electric vehicle charging points shall be thereafter maintained and retained for the lifetime of the development.

Reason: To ensure the parking provision of the new residential units in accordance with the requirements of Policy TA3 of the Torbay Local Plan.

## **9. Permitted Development – Micro Wind Turbines**

Notwithstanding the provisions of Class H of Part 14 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking or re-enacting that Order with or without modification), no installation of wind turbines shall take place to the approved dwellings, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

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

## **10. Sustainability**

The solar panels and heat pumps detailed on approved plan 'PL202 Rev B' shall be installed and made available for use for the associated dwelling prior to the first occupation of the associated dwelling.

Reason: In interests of low carbon development and in accordance with Policy SS14 and ES1 of the Adopted Torbay Local Plan 2012-2030.

## **11. Construction and delivery hours**

The delivery of goods and building materials during the construction period for the approved development and construction/building works on the site shall not take place outside the hours of 08.00 to 18.00 Mondays to Fridays, 08.00 to 13.00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason: To safeguard the residential amenities of nearby residential properties in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

## **12. Bats and Breeding Birds**

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

harmed and/or that there are appropriate measures in place to protect nesting birds on the site. The development shall then be carried out in accordance with the details submitted.

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

### **13. Surface Water Drainage**

Surface water drainage shall be provided in accordance with the approved 'Surface Water Drainage Design January 2023' and 'Storm Percolation Test & Soakaway Design' prior to first occupation of the dwellings hereby approved. Once installed the surface water drainage scheme shall be maintained and retained for the life of the development.

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

### **14. Visibility Splay**

The development hereby approved shall not be brought into use until the visibility splay shown on approved plan 'PL202 Rev B' has been provided. The area indicated as 'grassland/low vegetation' shall be permanently retained as such and there shall be no obstruction exceeding 600mm above ground level within the visibility splay. The visibility splay shall be retained as such for the lifetime of the development.

Reason: To ensure sufficient visibility is provided in the interests of highways safety in accordance with Policies TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030.