

TORBAY COUNCIL

Application Site Address	Land Off St Mary's Road Brixham TQ5 9NH
Proposal	Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.
Application Number	P/2023/0553
Applicant	Westcountry Land Enterprises (South West) Ltd
Agent	Mr R Dodge
Date Application Valid	05/07/2023
Decision Due date	04/10/2023
Extension of Time Date	11/12/2023
Recommendation	Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site, land off St Mary's Road, comprises of two parcels of land that contain several buildings to the northern and southern flanks of St Mary's Road, Brixham. The site comprises a site area of 0.54ha.

The northern buildings ("St Marys Industrial Estate") are located within the South Devon Area of Outstanding Natural Beauty, while the buildings ("Old Dairy") to the south abut the South Devon Area of Outstanding Natural Beauty. The Levelling Up and Regeneration Act gained Royal Assent in October 2023, this has renamed the Areas of Outstanding Natural Beauty as National Landscapes. The term Area of Outstanding Natural Beauty is still used in guidance, and this report will continue to use that term here, with the caveat that it is formally now the South Devon National Landscape.

The site is allocated in the Brixham Peninsula Neighbourhood Plan as a housing site for 25 units (St. Mary's/Old Dairy, Policy H11 of the Neighbourhood Plan). The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustainment Zone for such. The application site lies within a curlew bunting consultation zone. The site is designated as Flood Zone 1. There is a group Tree Preservation Order (1999.015 G1) north of the application site.

The northern parcel of land is bounded by:

- To the north: Residential development that falls within the South Devon National Landscape.
- To the east: Open countryside located within the South Devon National Landscape.
- To the south: St Mary's Road which is an adopted public highway and beyond is the southern parcel of the application site.
- To the west: St Mary's Road which is an adopted public highway and beyond is residential development.

The southern parcel of land is bounded by:

- To the north: St Mary's Road which is an adopted public highway and beyond is the northern parcel of the application site.
- To the east: Orchard House which is a detached private residential dwelling and other large detached dwellings beyond and South Bay Holiday Park. The South Bay Holiday Park falls within the South Devon National Landscape.
- To the south: Springdale Close a residential close which contains a number of dwellings, beyond is open countryside.
- To the west: Springdale Close is an adopted public highway directly abutting the application site and beyond is residential development.

Despite nearby development, the character of the site cannot be fully appreciated from

a top-down map and the existing historic traditional stone buildings serve a gateway function into the much more rural area designated as an Area of Outstanding Natural Beauty/National Landscape.

Description of Development

The proposal seeks permission for the demolition of the existing industrial buildings onsite and the erection of 28no. residential dwellings (22no. open market and 6no. affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.

The proposed 28no. residential units would include the following mix:

Affordable housing:

- 2no. x 1-bed apartments; and
- 4no. x 2-bed apartments.

Open market housing:

- 10no. x 2-bed apartments;
- 2no. x 2-bed dwellinghouses (terraced);
- 7no. x 3-bed dwellinghouses (terraced, semi-detached); and
- 3no. x 4-bed dwellinghouses (semi-detached and detached).

The northern parcel of the application site is proposed to be occupied by 13no. residential units, which are in the form of flatted, detached, semi-detached and terraced development. The vehicular access would be from the northern side of St Mary's Road and 20no. unallocated parking spaces are proposed.

The southern parcel of the application site is proposed to be occupied by 15no. residential units, which are flatted, semi-detached or terraced development. The vehicular access would be from the southern side of St Mary's Road and 28no. parking spaces are proposed, 8no. of which are included within integral garages, but the remainder are unallocated.

Across the proposed development, the residential units vary in two to three storeys in height. The proposed design incorporates a variety of gabled and hipped roofscapes. The proposed material palette includes natural stone, red brick, vertical timber cladding, standing seam metal cladding, and slate roofs. As well as metal fenestrations, balconies, and rainwater goods.

Relevant Planning History

Application site formed part of a wider planning applications:

P/2021/0890: Construction of 130 residential dwellings with access roads, infrastructure and public open space in outline, the proposal includes the demolition

of existing buildings on the site. This application is accompanied by an Environmental Statement. The application is a departure from the Local Plan. Refused 30/06/2022 for the following reasons:

1. This proposal for major development would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon AONB that is not mitigated by exceptional circumstances in the public interest. The proposal is therefore contrary to Policies SS8, C1, SDB1, SDB3 and DE1 of the Torbay Local Plan, 2015 and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the National Planning Policy Framework, 2021 in particular paragraphs 176 and 177.
2. The site contains distinctive landscape features and characteristics, some of which would be permanently lost or degraded and the adverse landscape effects are considered to be significant and adverse and irreversible. The LVIA does not fully consider effects of the proposals on the special qualities and valued features of the AONB and its conclusions therefore cannot be relied upon. As such the proposed development is contrary to C1, SS8 of the Torbay Local Plan, 2015 and Policies E1, E6 & E7 of the Brixham Peninsular Neighbourhood Plan and para 174 of the National Planning Policy Framework, 2021.
3. The layout does not enable refuse vehicles safe or acceptable access and egress to and within the site. There is no gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road. In addition insufficient information has been submitted to confirm that the proposal would not have an impact on highways safety for all road users including cyclists and pedestrians (in particular the RSA identifies concerns in relation to pedestrian access and visibility splays within the wider highway network which have not been addressed) nor as to whether the proposal would provide internal roads which would be to the level of quality suitable for the Local Highways Department to adopt, or for the residential units to be served by refuse vehicles. As such the proposal is considered to be contrary to Policy TA2 of the Torbay Local Plan, 2015, Policy BH8 of the Brixham Peninsular Neighbourhood Plan and guidance within the NPPF in particular paragraphs 8, 130,104, and 110.
4. The lack of safe pedestrian access to local facilities and services is likely to result in a development over-reliant on the private car. The development will result in adverse environmental and social impacts, it fails to provide quality housing in a sustainable location, it is not well connected and accessible and does not include safe walking and cycling access. The number of dwellings in this location represent an overdevelopment of the site and the undersized gardens will inevitably result in increased footfall and pressure to the AONB and wider Special Area of Conservation. The development therefore does not accord with the development plan when considered as a whole and material considerations do not indicate that

a decision should be made counter to the development plan. This conclusion is made in accordance with guidance contained within the NPPF, notably Paras. 11, 12 and 14. As such it is considered that the development presents a clear level of conflict with Policies SS1 and SS11 of the Torbay Local Plan ,2015 and Policy T1 of the Brixham Peninsular Neighbourhood Plan.

5. The number of dwellings in this location represents an overdevelopment of the site. The increase in scale to the north and south of St. Mary's Road here is not considered to be a sensitive addition to the character and appearance of the area. The layout is substantially dominated by the road network with proportions of parking located to the front of dwellings emphasising the urban character of the development contrary to Policies C1, SDB1, SDB3, DE1 and DE3 of the Torbay Local Plan, Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and contrary to the National Planning Policy Framework, 2021, in particular paragraphs 130 and 176.
6. Insufficient arboricultural information has been submitted to confirm that the proposal would not have a significant impact on the current trees on site and those potentially impacted by the development off site which contribute to the surrounding street scene character. As such the proposed development is contrary to Policy C4 of the Torbay Local Plan, 2015 and the National Planning Policy Framework, 2021 in particular paragraph 131.
7. The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of sustainable development, Public Open Space, Sport and Recreation, ecological mitigation, Education. Lifelong Learning Obligations, waste disposal and health contributions, provision and maintenance of the public open space, play areas, public access routes and allotments, and affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.
8. In the absence of sufficient ecology assessment information, it has not been possible for the Council to undertake the necessary appropriate assessment exercise in accordance with the Habitats Regulations, and therefore to conclude whether or not the proposal would have acceptable effects in relation to ecology. As such, the proposal is considered to be contrary to Policy NC1 of the Torbay Local Plan, and the guidance contained in the National Planning Policy Framework.
9. The proposed development results in the loss of employment and loss of a tourism facility on a site where it has not been demonstrated that it is not viable to continue in tourism use. As such it is contrary to Policies TO1 & TO2 of the Torbay Local Plan 2015-2030 and Policy TO1 of the Brixham Peninsula Neighbourhood Plan.

P/1989/0566: Change Of Use Of Existing Camp Site To Static Caravan Site. Refused 11/05/1989.

Appeal relating to P/1988/1135 and P/1988/2393 was dismissed 11/12/1989.

P/1988/2392: Change Of Use Of Existing Camp Site To Touring Caravan Site. Refused 23/01/1989.

P/1988/1135: Erection Of 150 Dwellings (In Outline). Refused 15/08/1988.

Application site formed part of a wider area involved in a pre-application enquiry:

Pre-application enquiry - DE/2019/0049: Formation of 145 dwellings. Summary: Development within the BPNP allocation is suitable in principle, however it is considered that the layout for this area would need to be revised to consider its visual impact and be a landscape led scheme. The principle of development beyond the BPNP allocation is not considered to be acceptable based on the information provided. If an application is to be submitted that it would need to be supported by suitable levels of ecological and landscape impact surveys.

No pre-application enquiry was submitted for this proposal.

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"); and
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan").

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024
- Published Standing Advice; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Summary of Representations

The application was publicised through a site notice, newspaper advert and neighbour notification letters. At the time of writing approximately 39 letters of objection, 2 letters of representation and 1 letter of support have been received. The following provides a summary of the main issues identified:

Objections include:

- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Privacy/overlooking
- Drainage
- Traffic and access
- Impact on infrastructure, services and welfare facilities
- Noise
- Sets a precedent
- Trees and wildlife
- Impact on the Area of Outstanding Natural Beauty
- Construction impacts
- Pedestrian permeability and accessibility
- Air pollution
- Impact on climate change
- Loss of traditional stone buildings
- Impact on historic landscape
- Height of development
- It's shown in the Local Plan
- Lack of affordable housing
- Quantum of development
- Marine pollution
- Residential amenity
- Loss of employment uses
- Loss of light
- Housing mix
- Sewage

Comments in support include:

- It removes an eyesore
- It provides houses

Summary of Consultation Responses

Brixham Town Council:

Response not dated

Objection. Brixham Town Council considers the number of dwellings in this location represents overdevelopment of the site.

National Health Service Devon:

Response dated 23/08/2023

Introduction:

This document provides a summary of the impacts of new housing developments on the primary care's capacity to provide health services, as well as, a calculation of the contribution sought to mitigate the impact of the development on the local primary care infrastructure. It explains:

- The role and responsibility of Integrated Care Boards (ICBs) and Health and Wellbeing Boards;
- How GP facilities are funded;
- The planning policy context and decision-making process;
- The Impact created by the proposed development and;
- How the impact on the capacity to provide primary healthcare services can be mitigated by way of developer contribution and Community Infrastructure Levy (CIL) compliance

Integrated Care Board (ICB):

The ICB plans and commissions health care services from providers and has delegated responsibility for commissioning primary health care services. ICBs exist to maintain and improve the health of their registered population and are, therefore, concerned with preventing as well as treating ill-health.

Integrated Care Partnership (ICP):

The Local Authority together with the ICB, have an obligation to prepare joint strategic needs assessments. These strategies then inform joint health and wellbeing strategies to meet the assessed needs¹. Both the needs assessments and wellbeing strategies **must** then be taken into account when an ICB and the responsible Local Authority exercise **any** of their functions.²

¹ s. 116A of the 2007 Act and the Health and Social Care Act 2012

² S116B of the Health and Care Act 2022

Commissioning Health Care Services/Facilities Through NHS Funding

In a given year, central government through the Comprehensive Spending Review process sets the level of NHS funding. The process estimates how much funding the NHS will receive from central sources. The NHS receives about 80% of the health budget, which is allocated in England to NHS England/Improvement (NHSE/I), the governing body of the NHS in England. In turn, NHSE/I allocate funds to Integrated Care Boards (ICBs) which are clinically-led, statutory NHS bodies.

NHS-funded primary care services are delivered by independent contractors, usually GP partnerships, through General Medical Services (GMS), Alternative Provider of Medical Services (APMS) or Personal Medical Services (PMS) Contracts. GMS and PMS contracts are in perpetuity whereas APMS are a fixed-term, generally 5-10 years.

General Practices are funded using a weighted capitation formula based on existing registered patients which is updated quarterly in arrears. In addition, practices get income from achieving quality indicators as part of the Quality Outcomes Framework (QOF) and participating in nationally commissioned Direct Enhanced Services (DES) and ICB commissioned Locally Commissioned Services (LCS).

The projected ICB allocations by NHS England makes an allowance for growth in the number of people registered with GP practices. This population growth is based on mid-year estimates from the ONS age-sex specific population projections. Local housing projections, local housing land supply or existing planning permissions are not taken into consideration. The population projections only consider natural trends based upon births, deaths and natural migration and make a number of assumptions about future levels of fertility; mortality and migration based previously observed levels. The funding for ICB is reactive and the funding received from the Central Government is limited. In the case of patient movement, the funding does not follow the patient in any given year.

Infrastructure Facilities Funding:

NHS England does not routinely allocate any additional funding to the ICB in the form of capital or revenue towards infrastructure projects to cater for the impact from new residential developments.

Within the service contracts between the ICB and GP practices, practices are required to provide premises which are suitable for the delivery of primary care services and meet the reasonable needs of patients within their catchment area.

The Regulations governing GP contracts require ICBs to reimburse the practices for their premises through rents payable for lease property or pay a “notional rent” (a market rent assessed by the District Valuer on the assumption of a “notional” 15-year lease) in respect of a GP-owned building³. For new builds or extensions, the ICB needs to agree the additional rent from a limited revenue budget. If the ICB has no

ability to reimburse then the project to increase the capacity by way of alteration extension, or building a new facility will be at risk.

3 <https://www.kingsfund.org.uk/publications/gp-funding-and-contracts-explained>

Premises Development in Primary Care:

Delivering GP services in a new location represents a challenge for the ICB as no new GMS service contracts are now available. Therefore, for the new location to operate, either:

- the existing GMS service providers will have to relocate/expand; or
- a new (APMS or PMS) contract will need to be created and procured for the new premises' location

At the moment the ICB does not hold capital and does not own buildings, the procurement of new premises is either by:

- a Third-Party development (where a third-party developer funds the capital to build a new building, owns it and charges a commercial rent via a normally 25-year lease that represents the developer's return on capital, with the ICB reimbursing that rent); or
- a GP owner-occupied scheme (where the GPs own and develop but receive a notional rent, as described above), to fund the cost of the build.

Either way, such developments are most likely to occur for occupiers who hold an existing GMS or PMS contract, as APMS contract holders will not have a sufficient contract term to either enter a 25-year lease or invest in a new GP premises development.

The Decision-Making Process and Planning Policy Context:

Decision-Making

The starting point for the determination of planning applications is the development plan. Section 70(1) of the Town and Country Planning Act 1990 ("TCPA 1990") provides that a Local Planning Authority (LPA) may grant planning permission unconditionally or subject to such conditions as it thinks fit. Section 70(2) of the TCPA 1990 provides that in determining an application for planning permission, the LPA; "shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration. Section 38(6) Planning Compulsory Purchase Act 2004 states that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Whether or not a particular factor is capable of being a material consideration is a matter of law albeit that its factual context and weight are matters for the decision-maker. The health of communities has been a key element of government policy for many years and is reflected in adopted development plan.

Development Plan Policy:

The Torbay Council Local Plan 2011 to 2031 (adopted 29th October 2018.) states that:

“Policy SS11 Sustainable Communities

Development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay....

Development proposals will be assessed according to whether they achieve the following criteria, insofar as they are relevant and proportionate to the development:

- 1. Meet the needs of residents and enhance their quality of life;...*
- 4. Promote social inclusion, and seek to eliminate exclusion based on access to housing, health, education, recreation or other facilities;...*

Policy SC1 Healthy Bay

“All development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.

To achieve these requirements, applicants should demonstrate that they have had regard to the following:

- 1. Consideration of the opportunities available to address the cause of ill-health in the local area;*
- 2. Promotion of healthy, safe and active living for all age groups, including healthy living, options for older people; and*
- 3. Improvement of access to medical treatment services, including the provision of healthcare clusters where appropriate”.*

National Planning Policy Framework (NPPF):

Paragraph 2 of the NPPF states:

The National Planning Policy Framework (NPPF) must be considered in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements. Please also see paragraph 3 above.

The ICB is delivering primary care services at the point of demand through General Practice under the statutory requirement. Paragraph 2 of the NPPF contains an imperative upon the decision makers to reflect statutory obligations.

In addition, the health of communities has been a key element of government policy for many years and is, as stated above, reflected in adopted development plans. Please see NPPF Section 2 paragraph 8, Section 8 paragraphs 91 and 93.

The developer contributions are only sought from new development applications proposals where the contribution requested complies with the Community Infrastructure Levy (CIL) Regulation 122 tests:

1. This regulation applies where a relevant determination is made which results in planning permission being granted for development.
2. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
3. In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation.

The Impact Created by the Proposed Development:

The proposed development is for 28 dwellings and this will create an estimated of population of 61 new residents within the development based an average household size of 2.17.

The closest GP surgeries to the proposed development are:

- Compass House Medical Centre - Compass House Medical Centre
- Compass House Medical Centre - Brixham Hospital
- Mayfield Medical Centre - Brixham Hospital
- Compass House Medical Centre – Galampton Surgery

It is envisaged that the vast majority of the residents of the proposed development will register as patients with these practices.

The current combined medical centres providing primary care are up to their capacity and will not be able to absorb the increased patients arising from the proposed development.

The only way to mitigate the impact is to increase the physical capacity of the existing surgeries. The ICB has carefully calculated the space needed to mitigate the impact, drawing upon the document “*Devon Health Contributions Approach: GP Provision document*” (<https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance>) which was agreed by NHS England. The detailed calculation is attached to this document as Appendix 1. The calculation is directly linked to the proposed development and is fairly and reasonably related in scale and kind to the development.

Compass House Medical Centre in Brixham has no room to expand on its present site and the Compass House and Mayfield branch surgeries at Brixham Hospital are at their maximum size.

Compass House Branch surgery at Galampton has advanced plans to expand the surgery building on to land adjacent to the surgery building. Funds have been raised

to help support this expansion and s106 contributions from this potential planning development could be used to be part of the pooled funding to support the surgery 's expansion

The contribution requested is necessary. Without the contribution to increase the physical capacity, the proposed development will put too much strain on the said health infrastructure, putting people at risk. Waiting times would increase and access to adequate health service would decline, resulting in poorer health outcomes and prolonged health problems. Such an outcome is not sustainable as it will have a detrimental socio-economic impact.

In addition, having no or limited access to the primary care will have a knock-on effect on secondary healthcare, in particular on A&E services, as those people who cannot access their primary care usually will present themselves at the A&E adding additional pressure on the already stretched secondary care.

The development directly affects the ability to provide the health service required to those who live in the development and the community at large. Without securing such contributions, the ICB would be unable to support the proposals and would object to the application because the direct and adverse impact that the development will have on the delivery of primary health care.

Torbay Council's Affordable Housing Officer:

No response received.

Torbay Council's Principal Policy and Project Planner:

Response dated 02/08/2023

I refer to application P/2023/0553 for the demolition of existing barns and erection of 28 dwellings, land to the north and south of St Marys Road, Brixham. The northern buildings (industrial buildings) are located within the South Devon AONB; the buildings to the south (Old Dairy) abuts the AONB. The site is close to the South Hams SAC.

The site is allocated for 25 dwellings in the Brixham Peninsula Neighbourhood Plan (H3-I2). It was formerly allocated in the Torbay Local Plan 1995-2011. The BPNP housing site assessment does not in my view have the force of Section 38(6) but is still a material consideration as it sets the background to the housing allocation. This states that "*The current buildings at the St Mary's Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversions of existing buildings or demolition and new build to provide a more efficient use of land*". The Torbay Local Plan Site Options Consultation (October 2022) suggested a reduced number based on retaining the existing buildings (H2B06), but I would emphasise that this plan is at an early stage and only minimal weight.

The BPNP settlement boundary (E3) appears more tightly drawn to the buildings than the Torbay Local Plan countryside area boundary (Policy C1 area). Happily, the application appears to be within the BPNP settlement boundary, which extends directly north from the boundary of the Old Dairy with Orchard House.

Despite the proposal being proposed for development (of 25 homes) in the development plan, it does raise a number of strategic issues.

The main issue is likely to be the impact on the Berry Head SAC. The BPNP and its site assessment document (as well as Policies SDB1, SS8, NC1 etc of the Local Plan) note the possible impact on bats, particularly greater horseshoe bats. The application will also increase recreational pressure on calcareous grassland element of the SAC. I note that the application is supported by an ecological assessment by Tyler Grange, and that Natural England have made detailed comments. It seems to me that the proposal will rely on mitigation measures in relation to the SAC, and therefore an HRA Appropriate Assessment is likely to be required. However, this is a legal matter. In any event, I would flag up the need for S106 Obligations towards mitigating the recreational impact on the grassland. If the development does not pay CIL, these would be a site deliverability matter.

The development is partly within the South Devon AONB and paragraphs 174-177 of the NPPF give great weight to conserving landscape and scenic beauty in such areas (in addition to the development plan considerations in Local Plan Policy SS8 and E1 of the BPNP). Although the proposal is a "major application", only the northern half of the site is within the AONB (13 units). This part of the AONB is also within the built up area. The site is allocated for housing (at 25 dwellings) in the development plan. On this basis, it appears to me that the proposal is unlikely to constitute major development in the AONB as defined by footnote 60 of the NPPF, despite the application being for 3 more dwellings than the allocation. An alternative way of looking at it would be to say that the tests at paragraph 177 are met by virtue of the site's allocation.

Thirdly, the barns and former dairy have heritage value. They are not listed or within a designated conservation area, and appear to be undesignated heritage assets (paragraph 203 of the NPPF applies). They could be said to affect the setting of Monks Cott, but the main heritage value is likely to be in association with serving as a gateway to the AONB. St Marys Road has a much more rural feel on the ground than appears from a map. The applicant's own Heritage Assessment classifies the impact on heritage assets as "Moderate Adverse". This is a detailed consideration for yourself. I note that Brixham Town Council has objected to the proposal and are currently preparing an updated Neighbourhood Plan, but it will be material that the current BPNP countenances the demolition of the buildings (subject to an assessment of

impact on bats). If approved, the application will need to be subject to archaeological investigation and recording in light of its long use.

Torbay Council has a significant housing shortfall and is only able to demonstrate around 2.2 years' supply. Brixham is heavily constrained by AONB, the South Hams SAC, as well as designated heritage assets and the sea. As you are aware, there is housing pressure on unallocated sites within the AONB. Significant weight must be given to boosting housing supply, particularly given that the site is allocated for housing. The proposal will provide 6 affordable dwellings which is in accordance with Policy H2 of the Local Plan. Under Policy BH2 of the BPNP they would be prioritised for Peninsula residents or key workers. The provision of local needs affordable housing is a further consideration in favour of the application.

I note that the NHS Foundation Trust has made detailed comments in relation to the application, including a request for NHS gap funding. The site is allocated, albeit for 25 dwellings rather than 28, and the council is unable to support such requests on allocated sites. However, Brixham does have an acute shortage of primary care facilities (i.e. GP Capacity) and I would be inclined to be supportive of requests aimed at addressing a specific shortfall either on a whole development basis or for the 3 units additional to the development plan allocation.

My colleagues or WSP will comment on the application's highways and transport matters separately.

Subject to HRA matters being addressed, I have no policy objection to the proposal. I appreciate though that there are site specific details that you will need to take into account in the planning balance.

Updated response dated 13/03/2024

I have updated my earlier comments from 2nd August 2023 in the light of the levelling Up and Regeneration Act, December NPPF and other policy changes.

The key policy changes since August 2023 relevant to the current proposal are:

The Levelling Up and Regeneration Act (LURA) gained Royal Assent in October 2023. This has renamed the AONBs as National Landscape. The term AONB is still used in guidance, and I will continue to use that term here, with the caveat that it is formally now the South Devon National Landscape. More significantly the LURA has amended S85 of the Countryside and Wildlife Act. The former "duty of regard" is replaced with a stipulation that authorities "***must seek to further the purpose of conserving and enhancing the natural beauty***" of the AONB. This change has come into force.

The government published an updated NPPF in December 2023. This amends paragraph 14 which confers additional protection from the tilted balance to the Brixham Peninsula Neighbourhood Plan until June 2024. The December 2023 Framework also contains additional text about building for beauty and making the best use of urban areas. Paragraph 130 has been added to state that *“significant uplifts in density may be inappropriate if the resulting built form would be wholly out of character with the existing area”* Such circumstances should be evidenced through authority-wide design codes which are adopted or will be adopted as part of the development plan. This must be tempered by other advice in the Framework about making best use of urban land (e.g. inserted paragraph 125 and pre-existing paragraph 128 and 129). It is also noteworthy that the new paragraph 130 text has been “demoted” from the December 2022 Draft NPPF where it was initially included as part of the “Presumption” text. Other changes to the NPPF relate to boosting housing supply e.g. paragraph 1 and chapter 5.

Micheal Gove also issued a detailed Written Ministerial Statement in December 2023 (and wrote to LPAs in September 2023). This reiterates that the presumption will apply to areas without an up to date plan, but also highlights the importance of “heritage, beauty and community”, and that the character of existing areas is respected by development. It also promotes brownfield regeneration. The government published an updated Housing Delivery Test in December 2023. Torbay must apply the presumption in favour of sustainable development due to its score of 55%. However, my previous comments stated that the presumption in Favour of Sustainable Development must be applied, and this situation has not changed.

Most recently (February 2024) DLUHC has reiterated its support for brownfield regeneration and published a consultation on further revising the NPPF to introduce changes to 129 (c) of the NPPF to give significant weight to the benefits of delivering as many brownfield homes as possible. However, the consultation does confirm the government’s commitment to beauty.

The flurry of government announcements since my August 2023 comments can be said to “pull in different directions”. As a general principle, they seek to boost housing particularly on brownfield sites and allocated sites. They confirm a number of routes by which the “presumption in favour of sustainable development” applies to Torbay. However, the LURA’s amendments to the CROW Act and increased emphasis on building of beauty and resisting uplifts in density “wholly out of character with the existing area” pull in an opposite direction. In my assessment the change to the legislative duty on AONB is the more significant issue and is enshrined in primary legislation rather than policy “guidance”. Changes of this nature are frequently challenged in the Courts, but until such elucidation is available we need to take the words at face value. This imposes a higher test on AONBs/National Landscapes, but does not, in my view, go so far as to prohibit development in such areas.

Turning to the current application. The northern buildings (“St Marys Industrial Estate”) are located within the South Devon AONB; the buildings to the south (Old Dairy) about the AONB. The site is close to the South Hams SAC, and Berry Head to Sharkham Point area that is covered by multiple environmental designations.

The site is allocated for 25 dwellings in the Brixham Peninsula Neighbourhood Plan (H3-I2) (BPNP). It was previously allocated for housing in the previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan 2012-30. In this context I would not regard the 3 additional dwellings as a departure from the development plan, although may be relevant to wider layout, design and built-form issues. The BPNP Housing Site Assessment does not have the force of Section 38(6) but is still a material consideration as it sets the background to the housing allocation in the main plan. The housing site assessment document states that *“The current buildings at the St Mary’s Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversions of existing buildings or demolition and new build to provide a more efficient use of land”*.

The BPNP settlement boundary (E3) *appears more tightly drawn to the buildings than the Torbay Local Plan countryside area boundary (Policy C1 area). The application appears to be within the BPNP settlement boundary, which extends directly north from the boundary of the Old Dairy with Orchard House.*

On that basis, Paragraph 11 (c) of the NPPF indicates that development proposals that accord with an up-to-date development plan should be approved without delay. There would need to be significant issues to overturn this assessment. However, despite the proposal being proposed for development in the development plan, it does potentially raise a number of important issues relating to NPPF “footnote 7” matters.

The first such matter is the impact on the South Hams SAC. The BPNP and its site assessment document (as well as Policies SDB1, SS8, NC1 etc of the Local Plan) note the possible impact on bats, particularly greater horseshoe bats. I understand from Tom Whitlock’s email of 7 February 2024 that the greater horseshoe bat impact is unlikely to require mitigation. However, biodiversity net gain remains an issue. The application will also increase recreational pressure on calcareous grassland element of the SAC. The application is supported by an ecological assessment by Tyler Grange. Natural England’s comments do not appear to have directly addressed the grassland element of the SAC, but I understand for Local Plan preparation work that there is ongoing concern about recreational pressure on the SAC and the likely need to identify additional mitigation measures to safeguard it. Because the application is proposed in the development plan (and part of the anticipated growth in the Peninsula), it seems to me likely that a recreational contribution should be sought. The December 2022 Planning Contributions and Affordable Housing SPD seeks this as £135 per dwelling as a site deliverability matter. I note that the development may be

CIL liable, but since councils are no longer required to identify a Reg123 list, my view is that a S106 obligation is needed to make development acceptable in planning terms.

The development is partly within the South Devon AONB/NL. The northern buildings being within the AONB and the southern ones abutting the AONB boundary. Whilst the buildings are in the built up area and have development on three sides, the area has a much more remote and rural character than is suggested by a top down view of the site. The site serves strongly as a gateway to the AONB/NL, and reinforces the remoteness of the AONB. Paragraphs 180-184 of the NPPF give great weight to conserving landscape and scenic beauty in such areas (in addition to the development plan considerations in Local Plan Policy SS8 and E1 of the BPNP). Although the proposal is a “major application”, only the northern half of the site is within the AONB (13 units). This part of the AONB is also within the built up area. The site is allocated for housing (at 25 dwellings) in the development plan. On this basis, it appears to me that the proposal is unlikely to constitute “major development” in the AONB as defined by footnote 64 of the NPPF. An alternative way of looking at it would be to say that the tests at paragraph 183 are not applicable to local plan allocations, and assumed to be met by virtue of the site’s allocation.

Thirdly, the barns and former dairy have heritage value. They are not listed or within a designated conservation area, and appear to be undesignated heritage assets. Paragraph 209 of the NPPF applies. This requires a “*balanced judgement... having regard to the scale of any harm or loss and the significance of the heritage asset*” They could be said to affect the setting of Monks Cott, but the main heritage value is likely to be in association with serving as a gateway to the AONB. Some of the buildings appear to be early Victorian or older from the Heritage Assessment. They have been allocated for development for many years, and rolled over from plan to plan. As noted St Marys Road has a much more rural and remote character on the ground than appears from a map. The applicant’s own Heritage Assessment classifies the impact on heritage assets as “Moderate Adverse”. This is a detailed consideration for yourself and Rob Palmer’s advice on the matter will be important. I note that non-designated heritage assets are not covered in the list of NPPF footnote 7 policies, subject to footnote 72 on their archaeological value. However, their contribution to the AONB may be, both in terms of its “rural gateway” and former agricultural cultural heritage characteristic on the AONB. Clearly, the advantages of demolition and new build need to be balanced against the loss of the non-designated heritage assets.

I note that Brixham Town Council has objected to the proposal on the grounds of overdevelopment and are currently preparing an updated Neighbourhood Plan, but it will be material that the current BPNP countenances the demolition of the buildings (subject to safeguards). If approved, the application will need to be subject to archaeological investigation, recording and curation of findings in light of its long use. On that basis I would suggest that a S106 contribution towards Brixham Museum or

Library to ensure that the findings of archaeological investigation, pictures of the former diary etc. are curated for posterity. The lifelong learning contributions at pp58-59 of the Planning Contributions and Affordable Housing SPD are the best starting point for this.

I note that the NHS Foundation Trust has made detailed comments in relation to the application, including a request for NHS gap funding. The site is allocated, albeit for 25 dwellings rather than 28, and the council is unable to support such requests on allocated sites. However, Brixham does have an acute shortage of primary care facilities (i.e. GP Capacity) and consider that requests for contributions towards primary care meet the tests of lawfulness and should be supported.

The application appears to be CIL liable at £70 per sq. m. and I note that a liability assumption form and affordable housing mandatory exemption forms have been submitted. I cannot see a figure for likely CIL liability. CIL is a local finance consideration in the applications favour. The proposal will provide 6 affordable dwellings which is in accordance with Policy H2 of the Local Plan. I cannot see anything to indicate that vacant building credit is being claimed, but the best way to avoid this becoming an issue is for it to be offered as a Unilateral Undertaking. Under Policy BH2 of the BPNP they would be prioritised for Peninsula residents or key workers. The provision of local needs affordable housing is a further consideration in favour of the application.

Policy Conclusion:

The site is allocated for development in the BPBP and the starting point from a policy point of view must be to support the application. This is reinforced by the shortfall in Torbay's housing land supply and operation of the presumption in favour of sustainable development. Development should be approved unless detailed assessment identifies "(NPPF footnote 7) clear reasons for refusal, or that the adverse effects of granting permission would "significantly and demonstrably outweigh the benefits". This is a high bar, but I note that detailed assessment of the site does throw up a number of difficult technical matters, particularly in relation to the SAC, AONB/NL, design and heritage. These are a matter for detailed assessment of the proposals and relevant expert advice and must be taken into account in the overall planning balance.

Torbay Council's Principal Historic Environment Officer:

Response dated 15/03/2024

Detailed Proposals:

Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St. Mary's Road.

Relevant Policy:

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states 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”.

This statutory requirement needs to be considered alongside relevant heritage guidance contained in the National Planning Policy Framework (2023) which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance. It requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal (Para 195).

Paragraph 197 goes on to state that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 205 considers that ‘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’.

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 206).

Paragraph 208 adds 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’.

With regards to non-designated heritage assets, paragraph 209 advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Should a heritage asset be lost either wholly or in part, paragraph 210 requires local planning authorities to take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

In terms of the Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policy SS10 of the Local Plan).

Significance of Identified Heritage Assets:

With regards to heritage assets, the site contains a number of non-designated heritage assets and there is one Grade II listed building located approximately 20m to the northwest of the site, 1, 2 and 3 St. Mary's Road.

Designated:

1, 2 and 3 St. Mary's Road

This property was listed in 1975 and is believed to date from the 17th century but with a later remodelling in the early 19th century.

Its significance relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape.

It is considered that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary's Road and Upton Manor Road and from within its own curtilage.

The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

Non-Designated Heritage Assets:

There are a number of structures on the site which can be classed as non-designated heritage assets. These include both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site.

It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The site has a complex narrative which the submitted Heritage Statement suggests should be further explored.

The structures on the site are assessed to demonstrate the following heritage values:

Evidential value

The northern group of buildings appear to have been built around an earlier structure, elements of which still survive. There are many features including the former farm buildings, boundary walls and archaeological remains which have a high evidential value.

The southern group of buildings, although more heavily altered in the 20th century, share a similar value with clear evidence of significant historic fabric being present within the existing structures and potentially as archaeological remains.

Aesthetic/Architectural value

The northern group of buildings retain some architectural features of significance, such as external segmental arches with voussoirs, keystones and stonework. Although the site has been unsympathetically altered in the past, these features can still be easily read and make a positive contribution to the site.

The southern group of buildings still demonstrate some vernacular architectural details, although, 20th century development on the site has had a greater impact on its readability. However, some buildings, particularly the eastern range, do continue to make a positive contribution to the site.

Historical value

Both groups of buildings provide physical evidence of the historical agricultural use of the site and the contribution that this has made to the evolution of the site and the historical landscape of the surrounding area.

Communal value

The site has some communal value through the past employment uses of the site and its recognition as a local business. The historic structures would make a small contribution to this value.

Archaeological value

Upton Farm is recorded on the Devon Historic Environment Record (HER) as a post-medieval farm and the Site is located in a landscape of known archaeological potential. The Devon and Torbay HER records finds of prehistoric and Romano-British date in the wider area, indicating reasonable potential for widespread settlement activity. The site has demonstrable archaeological value which would benefit from further study.

Summary:

Although the buildings have been altered as a result of past unsympathetic development within the site, the site has clear demonstrable evidential, architectural and historic value.

The existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

Impact on Significance of Heritage Assets:

The wholesale demolition and clearance of the site would cause substantial harm (through complete loss of significance) to the existing historic buildings and their historic relationship with each other and the wider landscape. This would need to be assessed within the context of paragraph 203 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The current proposals for wholesale demolition appear to lack adequate justification and would also therefore be contrary to the requirements of paragraph 206 of the NPPF.

With regards to designated heritage assets, the application site is in relatively close proximity to 1,2 and 3 St. Mary's Road, a Grade II listed building. The site is currently well screened due to the presence of a band of mature vegetation and walling; however, it is considered that intervisibility between the two sites is possible.

The proposed development would remove the historic/former agricultural character of the application site and replace it with residential development of a notably different scale, massing and character to that existing.

Although the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of paragraph 208 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance. There are no demonstrable heritage benefits associated with the proposals.

With regards to the proposed replacement buildings on the site, it is not considered that the design of the proposed development adequately reflects the historic use and special characteristics of the site. Whereas the introduction of contemporary architecture can be successful within historic settings, it is not considered that the proposed development is of sufficient architectural or visual interest for this sensitive site.

The principle of residential use of the site is likely acceptable, however, it is advised that the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

Conclusions:

As a result of the above, it is clear that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified

designated heritage asset. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Torbay Council's Drainage Engineer:

Response dated 02/08/2023

1. The site is located in Flood Zone 1 and the developer has submitted a flood risk assessment and drainage strategy for the proposed development.
2. Due to the ground conditions encountered during the site investigation infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system.
3. The proposed discharge rate of 1.0l/sec complies with the requirements of the Torbay Critical Drainage Area. However, as identified within the Torbay Council SUDS design guide, where the 1 in 10year greenfield run-off rate is identified as less than 1.5l/sec the discharge rate allowed for the development is 1.5l/sec. By using 1.5l/sec the half drain down time for the proposed attenuation will be significantly reduced.
4. The only hydraulic modelling that has been submitted is for the size of the attenuation tanks. No hydraulic modelling has been submitted for the surface water drainage system discharging to the attenuation tanks or downstream of the attenuation tanks to the combined sewer system.
5. Within the drainage strategy there is a drawing showing the proposed surface water drainage for the development, however without the drainage system being included within the hydraulic modelling it is not possible to confirm whether there is a risk of flooding to properties on the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. The developer must include the surface water drainage serving the properties within his hydraulic model.
6. The developer must supply a drawing showing the proposed surface water drainage for the development which provides details of the proposed manhole cover levels, invert levels, pipe diameters, pipe gradients, pipe lengths, pipe numbering used in the hydraulic modelling, attenuation tanks, together with details

of the impermeable areas discharging to each pipe length. All of this information is required to be included within the hydraulic modelling. Without this information it is not possible to confirm whether there is a risk of flooding to properties on the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep.

7. Based on the information that has been submitted to date, the developer has failed to demonstrate that the proposed surface water drainage has been designed in order that no properties on the development are at risk of flooding for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. In addition, the surface water drainage system must be designed in order that there is no increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep.

Based on the above comments, before planning permission can be granted the applicant must supply the details requested above.

Response dated 09/10/2023:

Further to your email dated 14th September 2023 attaching revised details for the surface water drainage at the above development, I can confirm that providing the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, I have no objections on drainage grounds to planning permission being granted.

Environment Agency:

No response received.

South West Water:

Response dated 02/08/2023

Asset Protection

Please find enclosed a plan showing the **approximate** location of a public 150mm combined sewer in the vicinity. Please note that no development will be permitted within 3 metres of the sewer, and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the sewer will need to be diverted at the expense of the applicant.

Further information regarding the options to divert a public sewer can be found on our website via the link below:

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Discharge into the ground (infiltration); or where not reasonably practicable,
2. Discharge to a surface waterbody; or where not reasonably practicable,
3. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
4. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note that method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

Devon County Council's Ecologist:

Response dated 07/08/2023:

Further information required prior to determination.

Phase 1 Walkover Survey

A phase 1 walkover survey was undertaken in April 2019 by Tyler Grange, with a survey in April 2023 to update the results of the previous survey.

Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats.

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

GHB activity: single GHB recorded during building surveys, to the east of within the site. No GHB recorded during activity surveys.

No suitable habitat for foraging, and no linear commuting features present on site. The site is dominated by hardstanding. Surrounding area is predominantly urbanised.

The proposed development will not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor will it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location

of the development, in an area unfavourable to greater horseshoe bats, with no suitable foraging habitat or linear habitats.

In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), and given the above, there is unlikely to be a likely significant effect on the South Hams SAC. Appropriate Assessment is not deemed to be required. No mitigation required.

South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Torbay Local Plan states that “development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.”

In the absence of mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so Appropriate Assessment is needed.

Appropriate Assessment:

For CIL liable developments such as this, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a monetary contribution to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation.

Therefore, if approved, this development would be required to pay contributions towards mitigating in-combination recreational impacts on the SAC.

HRA Conclusion - With this measure secured, there will be no adverse effect on the integrity of the SAC. If approved, this development will be required to pay CIL contributions towards mitigating in-combination recreational impacts on the South Hams SAC.

Lyme Bay and Torbay SAC

Recreational Impacts:

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC.

The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition. There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan.

Individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project.

If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

Other habitats

Trees:

Two heavily pruned early mature sycamore in southwest of the site. Not in good condition.

Both trees to be removed for development.

New native and ornamental tree planting across the site. This is deemed suitable and sufficient to compensate for the loss of trees and to enhance the site with this habitat type.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

Ruderal vegetation:

Ruderal vegetation present at margins of hardstanding and buildings, occasionally managed.

Amenity grassland and non-native planting with species of wildlife value across the site. This is deemed suitable and sufficient to compensate for the loss of ruderal vegetation and to enhance the site for biodiversity.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

Scrub:

Small areas of scrub present on margins of the site, not subject to any regular management, some areas cut on occasion. Majority of scrub to be retained.

Enhancement of scrub to create more diverse species mix and management for biodiversity. This is deemed suitable and sufficient to enhance this habitat type.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. *This will need to be agreed with the LPA.*

Hardstanding:

Roads and parking areas present and generally well maintained. No ecological importance.

No negative impacts due to negligible ecological importance of this habitat. No mitigation required.

European Protected Species

Bat commuting / foraging:

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

Most activity recorded on habitats to the east, outside site boundary. Common pip foraging around street lighting within site. Single GHB recorded during building surveys, to the east of within the site. No linear features on site. Lack of favourable foraging habitat.

Lighting scheme implemented to follow best practice guidance from BCT and ILP. Luminaries lacking UV elements. Use of LEDs. Warm white spectrum, peak wavelengths higher than 550nm. Internal luminaires recessed. Specialist bollard or low-level luminaires. 0% upward light ratio. Security lighting on motion-sensors and short timers. Baffles, hoods, or louvres used to reduce light spill. This is deemed suitable and sufficient to mitigate against potential negative impacts on foraging and commuting bats.

Condition: No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. Reason: In the interests of nocturnal biodiversity.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Bat roosts – buildings / trees:

A ground-level tree assessment was undertaken in April 2019 and again in April 2023. The 9 buildings on site were inspected in July 2019 and again in April 2023. DNA analysis of bat droppings in 2019 and 2023.

Buildings B2-9 subject to two emergence and single re-entry survey in 2019. 2023 no access into B1, parts of B4 and B5, and B9. Emergence survey of B6 scheduled during optimal bat survey period in 2023.

B3 – scattered old and new individual BLE droppings, 2019 and 2023.

B4 – accumulations of <10 old and new LHB droppings, 2019.

B6 – accumulations approx. 20 old and new droppings in 2023, likely LHB or BLE.

B7 – scattered old and new individual BLE droppings, 2019 and 2023.

B9 – accumulation of <10 old and new LHB droppings, 2019.

Roost summary:

B2 = day roost for individual / low numbers of common pipistrelle. B3 and B7 = day or night roosts for individual / low numbers of brown long-eared bats. B4 and B9 = day or night roosts for individual / low numbers of lesser horseshoe bats. B6 = further surveys required to determine the species of this roost, current evidence suggests BLE or LHB. No trees within site boundary that have potential to support roosting bats.

Further information required: The consultant ecologist has noted that emergence surveys of B6 have been scheduled during the 2023 bat survey period. The results of these surveys are required to be submitted for the LPA ecologist prior to determination, in order to comment upon the suitability of proposed mitigation.

Prior to any works commencing that will impact existing roosts, 3x bat boxes installed within or adjacent to the site. Works only undertaken during favourable weather conditions. Check of buildings for bats by licensed ecologist immediately prior to work commencing. Roofs to be soft stripped during suitable weather conditions. Purpose built bat roost above units 25-28 to replace lost roosting opportunities, for common pip, BLE and LHB. Large space to fly within building. Adjacent to retained and enhanced scrub for access to linear habitat features. Area around roost to remain dark. 1x integrated bat box per 2x units. Conditions will be required upon receipt of requested information.

GCN:

The development site does not lie within a GCN consultation zone. No waterbodies present within or adjacent to the site. GCN considered absent. GCN are unlikely to be negatively impacted by this development. No mitigation required.

Other Protected Species

Nesting birds:

Small areas of scrub provide suitable nesting habitat. B2, 5 and 7 had nesting house sparrow and wood pigeon in 2019 and 2023.

Removal of vegetation outside bird nesting season. 1x integrated nest box per 2x units. This is deemed suitable and sufficient to mitigate against potential negative impacts on nesting birds and to enhance the site with nesting opportunities.

Condition: No vegetation clearance shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the clearance will not disturb nesting birds and a record of this kept.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Cirl buntings:

The development site lies within a cirl bunting consultation zone. No habitats suitable to support the species. Cirl buntings are unlikely to be negatively impacted by this development. No mitigation required.

Reptiles:

Reptile surveys undertaken in 2019 using refugia deployed in April and checked between May and June. Habitats remain unchanged, as such, results deemed to remain valid. Low population of slow worm within the site, peak 2x adults in scrub/ruderal in south of site.

Reptile translocation into retained scrub in north with connectivity off-site. Captured using artificial refugia. Habitat manipulation prior to works commencing to make areas unsuitable for reptiles. Post-development log piles created within translocated area. This is deemed suitable and sufficient to mitigate against potential negative impacts on reptiles and to enhance the site with refuge opportunities.

Condition: A Landscape and Ecological Management Plan, which will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Badgers:

A badger survey was undertaken in April 2019, and again in April 2023. No evidence of badger setts within site or 30m radius surround the site during 2019 and 2023 surveys. Badgers may commute across the site.

Any trenches or deep pits left open overnight covered or means of escape provided. Inspected each morning. Pipework to be capped overnight. Inspection of storage mounds. This is deemed suitable and sufficient to mitigate against potential negative impacts on badgers.

Condition: Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/ compensation measures, shall be submitted to and approved in writing by the local planning authority.

Condition: A Construction and Environmental Management Plan will be submitted prior to construction which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.

Priority species

Hedgehog:

Hedgehog may commute across the site. Any piles of leaves or brash cleared by hand. This is deemed suitable and sufficient to mitigate against potential negative impacts on hedgehogs.

Condition: A Construction and Environmental Management Plan will be submitted prior to construction which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.

Overall enhancement / net gain (as per NPPF)

Net gain:

Further information required: The Biodiversity Net Gain Report refers to a completed BNG Metric Assessment. This metric spreadsheet is required to be submitted, in its original format, for the LPA to assess the results. Details are also required to clarify who will be responsible for managing and maintaining the habitats. Conditions will be required upon receipt of requested information.

Response dated 07/02/2024

I can confirm that the bat surveys for building B6 were carried out correctly. I am satisfied that the bespoke bat loft above plot 25 is sufficient. My only comment would be that the bat access and proposed bat tubes are not visible on the elevation plans for the plots. I would like them to be added so they can be conditioned, but I do not believe it is a reason for refusal.

One other comment is that the BNG metric stated within the BNG report has not been submitted for review – I am therefore unable to state definitively that the net gain achieved as stated in the BNG report is correct. Given the site baseline habitats are ecologically poor, I believe that a net gain in biodiversity is easily achieved, however I am not yet able to fully review this.

Natural England:

Response dated 25/07/2023

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

Your authority will need to determine whether the proposal is likely to have a significant effect on the South Hams Special Area of Conservation (SAC) greater horseshoe bat population by undertaking a Habitats Regulations Assessment, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

Natural England is a statutory consultee at the Appropriate Assessment stage.

DESIGNATED SITES

The development is within a greater horseshoe bat *Sustenance Zone* and *Landscape Connectivity Zone* associated with the **South Hams Special Area of Conservation (SAC)**, designated in part due to its internationally important population of greater horseshoe bats. *Sustenance Zones* are key bat feeding and foraging areas.

As a competent authority under the provisions of the Habitats Regulations, you should have regard for any potential impacts that this proposed development may have and are required (by Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017) to conduct a Habitat Regulations Assessment (HRA) to determine the significance of these impacts on European sites and the scope for mitigation. Our guidance on the use of HRA can be found here.

The Conservation Objectives for the South Hams SAC explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts the proposal may have.

Your HRA should assess whether the proposal could result in impacts on greater horseshoe bat roosts or foraging and commuting routes, for example by removing lengths of hedgerow or from artificial lighting. We advise that you follow the detailed guidance in the *South Hams SAC – Greater horseshoe bat Habitats Regulations Assessment Guidance* (October 2019).

Impacts should be avoided wherever possible, for example by retention of hedgerows and through restricting lighting. The Institute of Lighting Professionals has produced practical guidance on considering the impact on bats when designing lighting schemes - Guidance Note 8 Bats and Artificial Lighting¹. They have partnered with the Bat Conservation Trust and ecological consultants to write this document on avoiding or reducing the harmful effects which artificial lighting may have on bats and their habitats.

Where impacts on bat habitat cannot be avoided, a detailed HRA may be required and surveys may be necessary, as set out in the guidance. Any mitigation measures deemed necessary must be secured through planning conditions or obligations.

Other protected species

We have not assessed this application and associated documents for impacts on other protected species.

Natural England has produced standing advice² to help planning authorities understand the impact of particular developments on other protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Sites of Special Scientific Interest Impact Risk Zones

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

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

SWISCo's Waste (Strategy and Performance) Team Manager:

Response dated 22/08/2023

The operational waste management plan and swept path analysis provide adequate information about recycling and waste storage and collection. I am unable to see the dimensions of the large refuse vehicle that has been used for the swept path analysis to check that it is comparable to our refuse and recycling collection vehicles, so would be grateful if you could confirm this?

I am pleased to see that the roads within the development will be built to an adoptable standard, however I must stress that collections would not commence until a formal indemnity is in place.

Based on the information provided my request for waste management contributions would be at the basic level for individual properties.

Response dated 25/03/2024

I would object to this development based on the following;

- The southern turning head will only be sufficient for our collection vehicles providing there were no parked vehicles to hinder access. Because the road will be unadopted I am unsure how parking will be managed on the site.
- The swept path analysis provided would require SWISCo to drive onto an unadopted highway, which SWISCo wouldn't do as they are not insured for such. I am not aware of an agreement to indemnify us even though I am aware that the roads will be built to adoptable standards. This means that SWISCo would not drive onto unadopted highway to collect. The nominated collection point would be the closest point on the adopted highway to each property.
- Some of the bin storage locations would be inaccessible due to closed boundaries or parked vehicles. Residents would need to bring their waste and recycling to the adopted highway for collection anyway, our staff would not collect from the storage location unless an assisted collection was arranged. Regardless of this, residents need a clear pathway to move bins/boxes etc.
- Building Regulations H6 which stipulates that;
1.8 Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority.
30m = external door to bin storage location
25m = bin storage location to nominated collection point.

As part of the highway will remain unadopted, I believe that the distance between the storage location and the nominated collection point, for some properties will not comply with Building Regulations H6, but I would suggest checking this with someone who is more familiar with Building Regulations.

Torbay Council's Senior Environmental Health Officer:

Response dated 12/07/2023

I would confirm that I have no objections subject to the inclusion of the following condition:

Construction Management Plan:

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

- Procedures for maintaining good neighbour relations including complaint management.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours:
08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust and other air-borne pollutants.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development.

Police Designing Out Crime Officer:

Response dated 18/07/2023:

From a designing out crime, fear of crime and anti-social behaviour perspective, it is disappointing to see that the DAS makes no mention to crime prevention or security measures as such it is not known if this has already been considered, however, please find my advice and recommendations below.

As the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision making process for the planning authority the following is to inform the applicant:-

ADQ creates security requirements in relation to all new dwellings. All doors that provide entry into a building, including garage doors where there is a connecting door

to the dwelling, and all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24.

As such it is recommended that all external doors and easily accessible windows are sourced from a Secured by Design (SBD) member-company List of Member Companies (Alphabetical). The requirements of SBD are that doors Accredited Product Search for Doors and windows Accredited Product Search for Windows are not only tested to meet PAS 24 (2022) standard by the product manufacturer, but independent third-party certification from a UKAS accredited independent third-party certification authority is also in place, thus exceeding the requirements of ADQ and reducing much time and effort in establishing provenance of non SBD approved products.

Secured By Design is a free from charge police owned crime prevention initiative which aims to improve the security of buildings and their immediate surroundings in order to provide safer places and more secure places.

Crime, fear of crime, ASB and conflict are less likely to occur if the following attributes of Crime Prevention through Environmental Design (CPtED) are also considered in the design and layout of the proposed scheme:-

Access and movement (Permeability) - Places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.

The communal entrances to the flat/apartments must also meet the minimum security standard of PAS24:2022. There must be a visitor door entry system and an access control system to enable management oversight of the security of the building. The visitor entry system should allow occupants to be able to grant access to visitors remotely at all restricted communal points. Please note a tradesperson or timed-release mechanism are not supported by the police as they have proven to be the cause of anti-social behaviour and unlawful access to communal developments. The visitor door entry system should allow the occupant to have a two way conversation and also be able to visually identify the visitor prior to granting access. It would be beneficial if the monitors displayed in colour to assist the occupier with the identification.

The access control system should grant occupants and authorised persons via an electronic key card or key fob as opposed to a key code entry system which has proven also to cause issue with regards to unlawful entry where the codes have been shared or not changed regularly.

Structure – (Design & Layout) - Places that are structured so that different uses do not cause conflict

Surveillance (Natural, Formal & Informal) - Places where all publicly accessible spaces are overlooked.

Lighting should be installed to all elevations containing a doorset, Please be advised that we would not support the use of low level bollard lighting as these should only be used for wayfinding and demarcation purposes as they generally do not provide sufficient up lighting to aid facial recognition, which can increase the fear of crime. A dusk till dawn lighting solution would be preferred over a PIR lighting solution as evidence suggests it can increase the fear of crime with the constant activation. The lighting on private dwellings could be on a switch, so allowing the occupant to make an informed decision as to having the light on or off.

Lighting for communal areas within the apartments/flat buildings should be 24 hour lighting (switched using a daylight sensor formally a photoelectric cells), it is acceptable for this to be dimmed during hours of low occupancy to save energy. This would normally include the communal entrance hall, lobby area, corridors and stairwells.

Ownership - Places that promote a sense of ownership, respect, territorial responsibility and community.

Physical protection - Places that include necessary, well-designed security features as required by ADQ and SBD Homes 2023.

It is welcomed that where fencing is being considered as a rear boundary perimeter treatment that this will attain a height of 1.8m. Where Devon Hedging is being proposed to act as rear boundary treatments for dwellings, it must attain a minimum height of 1.8m, they also must be robust enough to prevent and deter unauthorised access to the rear of the properties. It is also important that the plants being used for the hedging do not go through any drastic seasonal change which could undermine the security of the boundary. Given it can take some time for the hedging to grow and thicken to be an appropriate boundary treatment, it should be supported by a temporary solution, such as wooden fencing for example.

It is not clear from the plans however if the intention is to install gates to provide access to the rear gardens, these must be lockable from both sides by means of a key for example. The gate must also attain the same height (1.8m) as the adjoining boundary treatment. Gates should be fitted as flush to the front building line as possible to prevent creating a recessed area.

The refuse and bin stores must be lockable to prevent unauthorised access. The internal side of the door should be fitted with a thumbturn or emergency furniture to allow for emergency egress and to avoid someone being locked inside the store. It

would also be beneficial if the stores have lighting so the persons using either store have a clear line of sight into the store thus reducing any potential fear of crime especially during the hours of darkness.

It is not clear how mail delivery is being considered for the apartments and i would respectfully seek clarification on this, as theft of mail and associated offences can become problems when not carefully considered.

If Smart Meters are not being installed these should where possible be installed outside the dwelling at the front or as close to the front of the building ensuring they are visible and benefit from natural surveillance.

Activity - Places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times.

Management and maintenance - Places that are designed with management and maintenance in mind, to discourage crime in the present and the future.

It is also recommended that a management and maintenance policy is drawn up prior to the first occupancy of the building to ensure that all communal areas are well maintained, and repairs are undertaken in a speedy manner so not to detract from the sense of ownership or undermine the security of the building.

Parking

All parking spaces should be clearly marked and allocated especially in the communal parking courtyards. It is appreciated that sensitive lighting is being considered from an ecological perspective however I would respectfully ask that lighting is considered from a crime, fear of crime and anti-social behaviour perspective as where parking courtyards are unlit they can increase the potential of crime, and also the fear of crime for the occupants parking in the hours of darkness. Please be advised that we would not support the use of low level bollard due to the reasons previously mentioned. Also, once a car is parked adjacent to a bollard light the light spill will be reduced to lighting the car only.

It is noted that units 25, to 28 have two tandem parking spaces each within their own garages, a concern regarding the tandem parking as it is likely from a practical and convenient point of view only one of the spaces will be used which will encourage unplanned parking elsewhere, which can cause parking related issues. Where garages are proposed it would be recommended that they are constructed to be wide enough to allow for the occupant to remove the bicycle or bin whilst a car is parked within the garage. This would prevent the need to park elsewhere and any potential parking related issues.

Torbay Council's Senior Tree Officer:

Response dated 07/08/2023

Please could you refer this back to the applicant / agent and request that the Arboricultural Consultant reviews their report as it currently has a number of inconsistent areas of information which do not appear to relate to the development under consideration.

In addition, please could I ask for further information / clarification on the following points:

1. Trees on eastern boundary with St.Marys Road – the extent of trees visible on street view images (2019) does not correlate with the submitted Tree Constraints Plan.
2. Trees to the south of Orchard House – within red line boundary but not surveyed. What are the proposals for this area? Has tree protection been considered for this part of the site and if not required please could this be stated / evidenced.
3. Arboricultural Impact Assessment – please can this be provided with the updated report.
4. Mitigation for tree losses – please provide species, nursery stock size and planting locations.

On receipt of this information, I will be able to provide you with detailed comments.

Response dated 01/02/2024

The Evolve TPP (as shown on the pdf file name) is the tree constraints and AIA. It's clear from this what trees will be removed, and I am happy with the impact assessment. I will accept the loss of G1 as part of the development proposal, subject to soft landscaping works including structural tree planting to mitigate this loss and secure additional enhancement of the site.

Tree protection will be required to ensure trees below Orchard House remain unaffected by development. If a Tree Protection Plan has not been submitted (or submitted under a different file reference), a plan will be required for submission through a planning condition.

A soft landscaping scheme will be required by a planning condition. The tree planting should include a mixture of species which are suitable for the locations being proposed. The available soil rooting volume should be sufficient for the proposed species to reach their full species potential.

WSP on behalf of the Local Highway Authority:

Response dated 16/08/2023

INTRODUCTION AND PLANNING HISTORY

The proposals relate to the re-development of existing industrial buildings (M.O.T. and service centre) and a car park/yard to provide 28 dwellings together with access, landscaping and associated works on a parcel of land to the north and south of St Marys Road. The site is allocated in the Brixham Peninsula Neighbourhood Plan as suitable for housing.

The proposed development will provide 12 houses and 16 flats.

A previous Planning Application (ref. P/2021/0890) which included the application site and additional land to the east for 130 dwellings was refused on 30th June 2021. The Highway Authority commented that the lack of safe pedestrian access to local facilities and services would likely result in a development over-reliant on private car use. Additionally, it was stated that the site layout does not enable the safe access and egress of refuse vehicles from the site.

SITE LOCATION AND BASELINE CONDITIONS

The proposed site is located on the northern and southern bound of St Marys Road within the southern extent of Brixham. The site is bounded to the east by the former Upton Manor Campsite and to the north, south and west by residential use. St Marys Road varies in width between 2.8m – 4.5m with limited street lighting and no footway provision.

There are bus stops situated within 50m of the site access (known as Springdale Close stops). Additional bus stops are located 100m north-west of the site on St Marys Road. These bus stops are served by an approximate hourly frequency to Brixham, Summercombe, South Bay and Higher Ranscombe. Paignton Rail Station is located approximately 9.5km north-west of the site.

The applicant has obtained Personal Injury Collision (PIC) data for the local highway network extent from CrashMap for the latest available five-year period (2017 – 2021). The analysis undertaken by the applicant has identified that only one slight collision has occurred within the study extent at the entrance to Upton Manor Campsite. This involved a pedestrian being struck by a vehicle whilst walking in the carriageway.

Considering that one slight collision has occurred within the study extent and period it is considered that there does not exist any operational safety issues within the highway network. The analysis is acceptable.

VEHICULAR AND PEDESTRIAN ACCESS

The site is currently accessed via two access points from St Marys Road. It is proposed that the location of the two access points will be retained, however these will be upgraded to provide two priority-controlled junction arrangements. A speed survey was undertaken in September 2020 which identified 85th percentile speeds of 20.1mph and 19.3mph eastbound and westbound respectively. Referencing the visibility splay calculator in Chapter 7 of *Manual for Streets* these speeds would result in a 'Y' distance requirement of 22.6m and 21.4m respectively. The applicant has demonstrated visibility splays of 2.4m x 25m and 2.4m x 24m can be achieved on drawing (ref. C23041-TP001(A)). This is considered acceptable.

Pedestrian and cycle access will be achieved via footways provided either side of the proposed access points. The proposed footway to the west of the northern access point onto St Mary's Road will connect to the extent of St Mary's Road that routes in a north to south alignment from Upton Manor Road. The proposed footway to the west of the southern access point will connect to formalised footway provision on the eastern extent of Springdale Close.

There is some concern from the Highway Authority regarding the crossing provision for pedestrians across St Mary's Road at the south-western extent of the northern section of the site (see Figure 1). The Units 01 – 07 building appears to block pedestrian / driver visibility. The applicant will be required to update the submitted Road Safety Audit (RSA) Stage 1/2 to determine if there are safety concerns regarding this / any mitigation measures that could be undertaken, as this does not appear to have been reviewed.

Within Paragraph 3.1.1. of the RSA document it stated that the audit team have assumed that St Mary's Road will be subject to a 20mph speed limit. However, this is not a valid assumption as St Mary's Road is/will not be subject to a 20mph speed limit.

The applicant will be required to update the RSA to reflect the above and should also give further consideration as to how pedestrians will safely cross St Mary's Road when turning left and right out of each section of the site.

SITE LAYOUT / SERVICING

The applicant has submitted a swept path analysis (ref.C23041-A) to illustrate a refuse vehicle and fire engine accessing and egressing the site in a forward gear for the northern section of the site. This is considered acceptable. For the southern section of the site, it appears that a refuse vehicle would be required to reverse into the private parking courtyard in order to safely turn within the site layout and egress in a forward gear. The applicant will be required to extend the adopted turning head to ensure that the refuse vehicle does not have to enter the extent of the private courtyard.

The applicant will be required to identify the location of bin stores for the flats.

The Highway Authority will want to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. The applicant will be required to confirm the extent of the site layout that will be offered for adoption through the submission of a S38 Highway Layout plan.

The applicant should note that there is some concern regarding the proposed materials used within the turning heads. The materials will be discussed in more detail at the S38 stage.

Noting the likely need for a Habitats Regulation Assessment (HRA) the applicant will be required to submit a lighting design and location plan to illustrate how the internal (and connection to external) footways/carriageways will be lit. This is in the interest of highway and pedestrian safety.

CAR AND CYCLE PARKING

Referencing Appendix F of the Torbay Local Plan (2012 – 2030) this states that two car (of which one should provide electric vehicle charging infrastructure) and two cycle parking spaces should be provided per dwelling. For flats a requirement of one car and one cycle parking space is required (of which 20% should provide electric vehicle charging infrastructure). This calculates a total requirement of 40 car parking spaces across the proposed site (of which 15 car parking spaces should provide electric vehicle charging infrastructure).

The applicant has stated that a total of 48 car parking spaces will be provided across the site layout with each dwelling having two cycle parking spaces and each flat having one cycle parking space. The applicant will be required to indicate the location of cycle parking spaces on the proposed site layout plan. Additionally, the applicant has stated that 20% of all car parking spaces will have electric vehicle charging infrastructure which equates to a total of 10 spaces. This is five fewer spaces than specified by Appendix F. The applicant will be required to amend the site layout plan to accommodate 15 electric vehicle charging spaces.

It is noted that tandem car parking has been proposed within the northern section of the site layout as well as in some of the proposed garages. The Highway Authority has some concern that this tandem parking arrangement will lead to overspill car parking occurring on the local highway network due to residents not wishing to park in the garage/have to swap cars around. This could create a highway safety issue and it is noted that the Police consultation for this Planning Application has raised a similar concern.

Additionally, there does not appear to be sufficient space on the surround of car parking spaces 13 – 16 for residents to freely wheel a bin from the rear to the front of the property if the spaces are occupied. This may result in bins being stored on the

highway network/blocking the available width of footways. The applicant will be required to amend the car parking space dimensions to ensure that sufficient space is provided to move bins from the rear to the front of the property. It is also noted that some of the car parking spaces do not conform to the required dimension requirements – the applicant will be required to ensure all car parking spaces measure 5.5m in length where they are accessed from the back of the highway. The applicant should refer to Page 33 of the Torbay Council Highways Standing Advice document for further reference (<https://www.torbay.gov.uk/media/16388/highways-standing-advice-revision-6.pdf>).

APC CONDITION

The Highway Authority would recommend a condition which requires highway details submitted which must indicate that the highways accord with adoptable standards and an informative which states that the Highway Authority intends to serve an Advance Payments Code notice on receipt of Building Regulations plans. This is to ensure that the road is constructed to adoptable standards. Our policy states we should adopt a road serving over 5 dwellings.

TRIP GENERATION

The applicant has used the TRICS database to undertake a comparative trip generation exercise between the extant and proposed uses on the site. The TRICS selection parameters are considered acceptable.

The comparative trip generation has identified that the proposed development will likely generate one additional trip in the AM peak and four additional trips in the PM peak period. It is acknowledged that the proposed development is located within the vicinity of the 'Windy Corner' junction that is currently operating above capacity, however the negligible proportional impact of this development site has been taken into consideration. Considering the minor increase in trip generation it is considered that the development proposals will result in a negligible impact on the operation and safety of the local highway network.

SUSTAINABLE TRANSPORT CONTRIBUTIONS

The Local Highway Authority will seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD https://www.torbay.gov.uk/media/19610/planning-contributions-spd_2022.pdf). For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Referencing Table 4.2. of the Planning Contributions SPD this equates to a contribution of £1,290 x 28 = £36,120.

CONCLUSION

The Highway Authority welcomes the principle of development proposed within this Planning Application. Prior to a formal positive recommendation being made, the applicant will be required to provide the following information:

- Identify the location of cycle parking to be provided for the proposed flats;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement;
- Update the Road Safety Audit Stage 1/2 for the proposed pedestrian crossing provision from the south-western section of the northern section of the site and remove the assumption regarding a 20mph speed restriction;
- Submit a lighting design and location plan;
- Identify the location of bin stores provided for the proposed flats; and
- Update the site layout to include the provision of 15 electric vehicle charging infrastructure spaces (one space per house and 20% for the quantum of flats).

Response dated 06/10/2023 following the receipt of further information:

INTRODUCTION AND PLANNING HISTORY

The highway authority has previously prepared a response in relation to this application (ref V1. Dated 16/08/2023) which should be read in conjunction with this document. The previous response concluded with the following:

“The Highway Authority welcomes the principle of development proposed within this Planning Application. Prior to a formal positive recommendation being made, the applicant will be required to provide the following information:

- Identify the location of cycle parking to be provided for the proposed flats;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement;

- Update the Road Safety Audit Stage 1/2 for the proposed pedestrian crossing provision from the south-western section of the northern section of the site and remove the assumption regarding a 20mph speed restriction;
- Submit a lighting design and location plan;
- Identify the location of bin stores provided for the proposed flats; and
- Update the site layout to include the provision of 15 electric vehicle charging infrastructure spaces (one space per house and 20% for the quantum of flats).“

The applicant has submitted additional information in which this response will review in respect to the outstanding items listed above.

CYCLE PARKING

Based on the additional information provided, it can be seen that bicycle storage is located as part of the block of units 16-24 comprising 16 spaces. It is unclear where cycle parking is to be located associated with units 1-7. Appendix F of the Torbay Local Plan states that there should be at least one cycle parking space per flat. This item therefore remains outstanding.

S38 HIGHWAY ADOPTION PLAN

The Applicant was advised in the previous response provided by the Local Highway Authority that a S38 Highway Adoption Plan should be submitted in support of the application. The Highway Authority will want to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. This item has not been provided thus this matter still remains outstanding.

SOUTHERN SITE TURNING HEAD

Amendments have not been made to the southern site turning head to ensure refuse vehicles do not reverse into the extent of the private parking courtyard thus this matter still remains outstanding. It is further noted that Torbay refuse vehicles will not service unadopted roads.

CAR PARKING BAY SIZE

It appears that no amendments have been made to the car parking spaces 13 16 to remove the current tandem parking and to allow the movement of bins from the front of the property to the rear thus this matter remains outstanding.

ROAD SAFETY AUDIT

Appropriate amendments have been made to the Road Safety Audit (RSA) regarding assumptions made regarding the 20mph speed restriction, this is considered acceptable.

Reference is made within the updated RSA to a Proposed Site Plan Revision E. This revised version of the site layout has not been fully presented as part of the further information received from the applicant. It is therefore unclear whether / how issues raised as part of the RSA have been addressed.

Previous concerns raised by the Highway Authority in relation to crossing provision for pedestrians across Springdale Close and St Mary's Road to the east and west of the site access, and at the proposed site access junctions. Suitable dropped kerbs and tactile paving should be indicated on any revised proposed layout drawings. This item therefore remains outstanding.

LIGHTING DESIGN

The applicant has submitted a lighting layout drawing (P2363-00-01) alongside additional information regarding the operation and performance of the lighting to be used, this is considered acceptable.

BIN STORES

The proposed location of the bin stores has been provided, this is considered acceptable.

ELECTRIC VEHICLE PROVISION

The site layout now displays provisions for 15 electric vehicle charging spaces, satisfying the required 1 EV space per house and 20% for the quantum of flats, this is considered acceptable.

CONCLUSION

Many of the prior matters have since been resolved, however, the applicant will still be required to provide the following prior to recommendation.

- Confirm locations and quantum of cycle parking;
- Submit a S38 Highway Adoption Plan;
- Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard;
- Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement for Units 9 and 10; and

- Submit proposals for facilitating pedestrian crossing of Springdale Road and St Mary's Road, as recommended by the Stage 1 RSA.

Response dated 26/03/2024

Confirm locations and quantum of cycle parking

The updated Site Masterplan (Drawing No 172-003 Rev E) shows a Bike Store located in the parking forecourt for Units 01-07. The masterplan states this is for 14 cycles, however, the type of cycle stand and associating sitting of it has not been clarified. (i.e. 7 Sheffield stands / Two-Tier stands will be required for 14 cycles, and Sheffield stands need to be spaced at 1m minimum gaps, whilst Two-Tier stands need a ceiling height of at least 2.7m based on the DfT's LTN1/20 standards).

The design details of the cycle stands are required to demonstrate the quantum of cycle parking can be accommodated in the shown Bike Stores, otherwise the proposals are considered contrary to NPPF para 114c. The Planning Officer should consider whether this matter can be dealt with by way of Planning Condition.

Submit a S38 Highway Adoption Plan

The Applicant has submitted a proposed Highways Adoption Plan (Drawing No 012 Rev -).

The updated Site Masterplan includes the provision of block paving along the footway on both sides of the site that fronts St Mary's Road which has been marked for adoption (the Site Masterplan key defines this as 'Paving to Pedestrian Routes'. The Highway Authority require the sections that are to be adopted to be tarmac/asphalt as this will avoid excessive maintenance / liability issues. The Site Masterplan should be updated at this stage of planning to avoid confusion at a later date.

For the northern site, the Highway Authority are satisfied with the adoption of the on-site turning head as this will be suitable for refuse collection.

For the southern site, the on-site turning head has not been offered for adoption, and the applicant is proposing this is a shared private drive. The applicant must be aware that Torbay Council refuse collection vehicles will not drive on unadopted highways, and therefore the waste collection arrangement must be clarified. Units 25-28 appear to be greater than 30m from the public highway, which exceeds the drag distance for collections based on Building Regulations. Therefore, based on this current arrangement, in order to provide a deliverable refuse strategy the turning head on the southern site will need to be adopted in order for refuse collection. The Torbay Highways Design Guide (Adopted Feb 2024) states that Shared Private Drives that are not adoptable are only permitted where fewer than 5 properties are served.

This is further supported by Policy BH8 of the Brixham Peninsula Neighbourhood Plan (Adopted Jun 2019) which requires new developments to comply with relevant adopted standards.

Amend the southern site turning head to ensure that a refuse vehicle does not reverse into the extent of the private parking courtyard

For this issue to be resolved, the refuse strategy for the southern site that is discussed in the section above needs to be clarified.

Amend the size and arrangement of car parking bays considering the requirement to wheel bins from the rear to the front of the property and remove the currently proposed tandem parking arrangement for Units 9 and 10

The updated Site Masterplan Drawing No 003 Rev E shows a Bin Store at the front of Unit 11. The applicant's email dated 17th October 2023 states that this Bin Store is to be used by the Units 10-13. Whilst the Highway Authority are now satisfied with this arrangement, it is recommended that the Torbay Waste Collection team reviews whether the Bin Store proposed is an adequate size to accommodate the waste for Units 9-13.

Submit proposals for facilitating pedestrian crossing of Springdale Road and St Mary's Road, as recommended by the Stage 1 RSA

The updated Site Masterplan Drawing No 003 Rev E shows a dropped kerb and tactile paving crossing and therefore the Highway Authority are satisfied this has been resolved.

Confirm that height of the western perimeter treatment of the northern section of the site shall be kept to within 600mm height to aid pedestrian / vehicle intervisibility

The previous Highway Authority response dated 6th October 2023 stated:

The Road Safety Audit Stage 1 identified a 'concern over the pedestrian / driver intervisibility at the south west corner of the northern section of the site for pedestrians crossing St Mary's Road. Confirmation is sought as to whether the perimeter treatment of the site shall be kept to below 600mm height in accordance with Manual for Streets guidance'.

The applicant's email dated 17th October 2023 states the above identified issue in the RSA S1 is not a highway safety concern. The Highway Authority are not satisfied with this response and consider this as an outstanding highway safety issue that requires resolving as all new developments must provide safe crossing environments for pedestrians of all ages and abilities and reduce possible conflicts (NPPF 114b, 116b/c) – the current unknown height and intervisibility is not suitable for vulnerable pedestrians (i.e. wheelchair users/children). Therefore, it is requested the applicant confirms on a drawing that the perimeter treatment will not exceed 600mm.

Conclusion

The Highway Authority wishes to raise an objection to the application due to insufficient details in relation to the cycle parking provision, refuse strategy & highway adoption, and pedestrian safety at the western boundary crossing of the northern site.

It should be clear that the Highway Authority are of the position that these design issues can all be resolved through the submission of amended plans/additional information.

Western Power:

No response received.

Wales & West Utilities:

No response received.

South Devon National Landscape Office:

No response received.

WSP Landscape and Visual Peer Review:

Response dated 01/12/2023

To see full report please refer to the Council's website, extracts are provided below due to length of report.

A desk-based landscape and visual impact peer review has been undertaken aimed at identifying:

- Potential gaps in the baseline analysis data presented;
- Issues in relation to the methodology used and technical guidance followed (e.g. Viewpoint Selection, AVR representation); and
- The appropriateness of the findings and conclusions (including recommending additional assessment in relation to potential effects upon the South Devon Area of Outstanding Natural Beauty (AONB) if deemed necessary).

The Assessment indicates that there are likely to be effects arising as a result of the Proposed Development. It finds that these effects will be most noticeable during the construction phase, reducing over time, as the Proposed Development matures within its setting and proposed vegetation provides screening.

In terms of effects upon Landscape receptors, The Assessment finds that the greatest level of effect occurs at the site level, most notably during the construction phase. Effects upon larger Landscape receptors such as the South Devon AONB and Landscape Character Areas/Types are noted to be less, largely due to the relatively

small scale of the Proposed Development, as well as the character of the PDS being defined by local context rather than that of the wider receptor.

In terms of effects upon Visual Receptors, the Assessment finds that the greatest level of effect is experienced by those receptors in close proximity to the PDS, and in particular during the construction phase, largely due to the presence of incongruent features such as plant and machinery, as well as noise and activity. Effects upon visual receptors further from the PDS, are notably less and further reduced over time during the operational phase.

The Assessment indicates that whilst there are likely to be both landscape and visual effects associated with the Proposed Development, particularly during the construction phase, these effects do not rise to the level where they are deemed to be significant.

WSP considered these findings to be reasonable, well justified and in accordance with the methodology.

Planning Officer Assessment

Key Issues/Material Considerations

1. Policies Relating to Housing Development
2. The South Devon Area of Outstanding Natural Beauty (National Landscape)
3. Design, Visual Appearance and the Character of the Area
4. Impact on Designated and Non-Designated Heritage Assets
5. Impact on Residential Amenity
6. Impact on Highway Safety
7. Impact on Trees
8. Impact on Ecology and Biodiversity
9. Impact on Flood Risk and Drainage
10. Affordable Housing Contributions
11. Designing Out Crime
12. Low Carbon Development

1. Policies Relating to Housing Development

The Development Plan (i.e. the Local Plan and the relevant Neighbourhood Plan) is the legal starting point for determining planning applications, and proposals should be assessed against it. A judgement should be made as to whether a proposal is in compliance with the Development Plan (when taken as a whole). Where the Development Plan is out of date in the case of applications such as this involving the provision of housing, it retains its statutory force, but the focus shifts onto the NPPF and presumption in favour of sustainable development.

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 25 units (St. Mary's/Old Dairy) which covers the area of the existing buildings north and south of St. Mary's Road. The buildings currently in this location have no policy requirement that require them to be retained and the principle of meeting the Neighbourhood Plan allocation of 25 units is considered to be acceptable. The proposed development is for 28 residential units in this location, which exceeds the policy allocation. The application site was previously allocated for housing in the previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan. The Council's Principal Policy and Project Planner has stated that they would not regard the 3no. additional dwellings as a departure from the Development Plan.

Policy BH3 of the Neighbourhood Plan allocates residential development for the Neighbourhood Plan area, subject to proposals demonstrating that there is no likely significant effect, either alone or in combination with other plans or projects on the integrity of European sites. As previously confirmed, the application site is an allocated residential development site, known as "H3-I2 St Mary's/Old Dairy".

The Housing Site Assessment describes the application site as "*St Mary's Industrial Estate site is located to the north of St Mary's Road while the Old Dairy site is to the south. The Industrial Estate site consists of a series of older buildings which form an industrial estate variously used for car repair workshops etc. It also includes, as per the maps which accompanied the Local Plan and the SHLAA, an adjacent field to the east of the main industrial estate. This field includes the remains of a former building which has largely blended into the landscape in the process of time. The Old Dairy site consists of the currently disused buildings of a former dairy*".

The Assessment outlines the opportunities for the application site as "*The current buildings at the St Mary's Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversions of existing buildings or demolition and new build to provide a more efficient use of land*". It also outlines the constraints as "*The St Mary's Industrial Estate site lies within the AONB and only part of this site is assessed to be previously developed land. Any development would need to take account of Greater Horseshoe Bats which are known to fly across or adjacent to the site. The Ecological Assessment undertaken by Kestrel of the St Mary's Industrial Estate site made reference to the importance of retaining the hedge (which separates the Industrial Estate from the adjacent field). Access to the site is also quite tortuous*".

Policy BH4 of the Neighbourhood Plan outlines that subject to compliance with other policies in the Neighbourhood Plan, residential development on brownfield site in preference to greenfield sites will be encouraged and supported. Policy BH4 confirms that brownfield sites within defined settlement boundaries, as designated under Policy

E2 of the Neighbourhood Plan, are the preferred locations for development. The application site is brownfield in nature.

In February 2024, the Department for Levelling Up, Housing and Communities has reiterated its support for brownfield regeneration and published a consultation on further revisions to the NPPF to introduce changes to Paragraph 129(c) to give significant weight to the benefits of delivering as many brownfield homes as possible. However, the consultation does confirm the government's commitment to beauty.

Policy E2 of the Neighbourhood Plan defines the settlement boundaries in the Neighbourhood Plan area. The supporting Policy Map confirms that the application site is located within the settlement boundary. Policy E2 goes on further to outline that subject to compliance with other policies in the Neighbourhood Plan, proposals for sustainable developments within settlement boundaries will be supported where developments demonstrate good design and follow the guidance in the relevant Design Statement as outlined in Policy BH5 of the Neighbourhood Plan.

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites. Letters of representation supporting the proposal highlight that the proposal would provide housing, whereas those objecting have raised concerns regarding the quantum of development and the housing mix. Letters of representation have also indicated that the application site is shown in the Local Plan. Objectors have raised concerns over the loss of employment uses.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location.

As concluded within this report, there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8, SS10, SS11, TA2, TA3 and W1 of the Local Plan, and Policies BE1, BH5, BH8, E1 and E2 of the Neighbourhood Plan.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay's most recent housing land supply which was published in April 2023, stated that the Council has 2.17 years, which is a significant shortfall. The Housing Delivery Test requires that the

presumption in favour of sustainable development be applied as per Paragraph 11 of the NPPF.

Paragraph 11 of the NPPF states:

Plans and decisions should apply a presumption in favour of sustainable development.

For decision-taking this means:

c) approving development proposals that accord with an up-to-date development plan without delay; or

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed [see Footnote 7]; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.

Whilst government guidance pulls in somewhat different directions, there is a clearly stated government objective of boosting the supply of housing. Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF. There is a pressing need for housing in Torbay, and the site is allocated for housing in the Development Plan. Accordingly, the presumption in favour of sustainable development is applied to applications involving the provision of housing.

Under the presumption, permission should only be refused where either:

- The application of policies in the Framework that protect the Area of Outstanding Natural Beauty or designated heritage assets provides a clear reason for refusal (i.e. the “tilted balance” at Paragraph (d)i) or
- The impacts of approving a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole (i.e. the “tilted balance” at Paragraph 11(d)ii).

The recent revision of the NPPF gives additional protection to Torbay's Neighbourhood Plans (Torquay, Paignton and Brixham Peninsula) until June 2024 and makes it clear that conflict with the Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits of development.

Development plan policies are taken into account when assessing whether the harm caused would “*significantly and demonstrably*” outweigh the benefit.

For reasons set out in this report there is material harm to the Area of Outstanding Natural Beauty (South Devon National Landscape) contrary to the NPPF, notably Paragraphs 180 and 182, which is a protected asset that presents a clear reason for refusing the application. There is also less than substantial harm to the setting of a Grade II listed building, a designated heritage asset, contrary to the NPPF, notably Paragraph 208, whereby the public benefits of the proposal do not outweigh the identified harm. Paragraph 205 of the NPPF states that 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. As such, the proposal presents a clear reason for refusing the application.

As such the ‘tilted balance’ identified in Paragraph 11 of the NPPF is not enacted. Areas of Outstanding Natural Beauty and designated heritage assets are defined protected assets under Paragraph 11(d)i and given the harm to such, the policies in the Framework which seek to protect the *protected areas of particular importance* provide a clear reason for refusing the development. The presumption in favour of sustainable development therefore does not apply.

It is also considered that the impacts of approving the development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole (i.e. the “tilted balance” at Paragraph 11(d)ii). This is set out in the final section of the report dealing with the planning balance.

2. The South Devon Area of Outstanding Natural Beauty (National Landscape)

The northern parcel of the application site is located within the South Devon Area of Outstanding Natural Beauty, which is 1 of 46 areas within England, Wales and Northern Ireland safeguarded in the national interest for its distinctive character and beauty. The legal designation is as an Area of Outstanding Natural Beauty. The Levelling Up and Regeneration Act has renamed the Areas of Outstanding Natural Beauty as National Landscapes. The term Area of Outstanding Natural Beauty will remain in this report, with the caveat that it is formally now the South Devon National Landscape.

Section 85 of the Countryside and Rights of Way Act 2000 places a general duty on public bodies in exercising or performing any functions in relation to, or so as to affect, land in an Area of Outstanding Natural Beauty in England, to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty. The Levelling Up and Regeneration Act replaced the former “*duty of regard*” with a stipulation that authorities “*must seek to further the purpose of conserving and enhancing the natural beauty*” of the Area of Outstanding Natural Beauty.

Planning Practice Guidance states that “*All development in National Parks, the Broads and Areas of Outstanding Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality*” (Paragraph: 041 Reference ID: 8-041-20190721).

Policy SS8 of the Local Plan states within the Area of Outstanding Natural Beauty the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. The policy goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated.

Policy SDB1 of the Local Plan advises that Brixham is expected to provide 660 new homes over the plan period but that this should be done without prejudicing the integrity of the Area of Outstanding Natural Beauty and Special Areas of Conservation, and provided that the interests of priority species, such as the Greater Horseshoe Bat and Cirl Buntings, can be safeguarded.

Policy SDB3 of the Local Plan confirms that the Area of Outstanding Natural Beauty around Brixham, including Berry Head National Nature Reserve, St. Mary’s Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes.

Policy E1 of the Neighbourhood Plan states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and new development will need to respect these qualities and wherever possible enhance them.

In accordance with paragraph 182 of the NPPF, great weight should be given to conserving and enhancing landscape and scenic beauty of designated areas, including Areas of Outstanding Natural Beauty, which have the highest status of protection. The NPPF outlines that the scale and extent of development within Areas of Outstanding Natural Beauty should be limited, and development within its setting to

be sensitively located and designed to avoid or minimise adverse impact on the designated areas.

Paragraph 183 of the NPPF confirms that when considering applications for development in protected areas, including Areas of Outstanding Natural Beauty, permission should be refused for major development [see Footnote 64] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Footnote 64: For the purposes of paragraphs 182 and 183, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

The application site serves strongly as a gateway to the Area of Outstanding Natural Beauty. Objectors have raised concerns about the proposed development and its impact on the South Devon Area of Outstanding Natural Beauty. Whilst technically, the application is a major planning application as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, consideration must be given as to whether the proposed development in the northern parcel of the site would be considered major development within the Area of Outstanding Natural Beauty. The section of the application site which is located within the Area of Outstanding Natural Beauty is the northern parcel and the proposal in this part of the application site is for 13no. residential units, the parcel is within the built up area and the site, together with the southern parcel, is allocated for residential development. It is considered that the proposal in the northern parcel of the application site does not constitute "major development" in the Area of Outstanding Natural Beauty as defined in Footnote 64 of the NPPF due to the reasons stated above.

The overriding policy intent in the Local Plan, Neighbourhood Plan and the guidance contained within the NPPF points towards protecting the Area of Outstanding Natural Beauty and now requires the Council to seek to further the purpose of conserving and enhancing its natural beauty, and providing quality housing in sustainable locations.

The application site is situated within the "Main Cities and Towns" character type as per the Devon Landscape Character Assessment and the Torbay Landscape Character Assessment. The application is accompanied by a Landscape Visual Impact

Assessment (LVIA). The LVIA has been reviewed by the Councils Landscape consultant WSP. The South Devon National Landscape Office have not commented upon the application.

The South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024 (South Devon AONB Partnership, 2019) identifies ten special qualities for which the South Devon Areas of Outstanding Natural Beauty, which are:

- *Fine, undeveloped, wild and rugged coastline;*
- *Ria estuaries (drowned river valleys), steep combes and a network of associated watercourses;*
- *Deeply rural rolling patchwork agricultural landscape;*
- *Deeply incised landscape that is intimate, hidden and secretive away from the plateau tops;*
- *Iconic wide, unspoilt and expansive panoramic views;*
- *A landscape with a rich time depth and a wealth of historic features and cultural associations;*
- *A breadth and depth of significant habitats, species and associated natural events;*
- *An ancient and intricate network of winding lanes, paths and recreational routes;*
- *Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement; and*
- *A variety in the setting to the AONB formed by the marine environment.*

The applicant's LVIA concludes that:

"The likely effects on the South Devon AONB have been assessed as minor adverse at construction and year 1, reducing to minor adverse to negligible at year 15. The Proposed Development will not be wholly uncharacteristic given the existing developed nature of the Site and its local context and will not result in unacceptable effects upon the special qualities or wider character of the AONB.

...

In summary, the Proposed Development at the Site will be on a previously developed and allocated site within the Settlement Boundary of Brixham. Whilst the Site partially lies within the South Devon AONB, the Site and its surrounding context are clearly of a suburban and previously developed character, representing a far less sensitive area of the AONB. The loss of landscape features as a result of the Proposed Development will be limited to a traditional stone building and other buildings located on Site and two trees on the south-western Site boundary. Additional tree and characteristic hedgebank planting is also proposed within the Site as part of the proposals. Residual effects at year 15 on views of the Site from the surrounding landscape are at worst, minor adverse-negligible where the Proposed Development will always be viewed within the context of Brixham."

The Councils' Landscape Consultant for this application (WSP) has only undertaken a desk-based peer review of the LVIA. The peer review being aimed at concluding on

the soundness of the report rather than being a stand-alone assessment, including in relation to potential effects upon the South Devon Area of Outstanding Natural Beauty. WSP as consultant landscape advisers notes that whilst there are likely to be both landscape and visual effects associated with the proposed development, particularly during the construction phase, these effects do not arise to the level which WSP consider from their desk-based study to be deemed to be significant.

It should be noted the Devon County Council's Landscape Officer previously commented upon the previous planning application (ref: P/2021/0890) which was an outline application for 130no. residential units, which included the application site. The Landscape Officer noted that there would be "*degree of harm to the rural landscape character, and AONB special qualities resulting from the removal of the traditional stone buildings of Upton Farm and the widening of St Mary's Lane with consequent need to remove the existing stone-faced hedgebank to the north of the lane*". Whilst this current proposal is subject of only the brownfield northern and southern parcels either side of St Mary's Road, it is evident that the existing traditional stone buildings provide rural landscape character and offer a special quality of the Area of Outstanding Natural Beauty. The Landscape Officer on the previous application identified that the application site offered a special quality of the Area of Outstanding Natural Beauty – "*The cluster of traditional historic stone buildings of Upton Farm along St Mary's lane and the historic hedgebanks along St Mary's lane contribute to "A landscape with a rich time depth and a wealth of historic features and cultural associations"*".

The proposal involves the total demolition of the existing traditional historic buildings which offer a wealth of historic features and cultural associations. The proposal would remove this special quality of the Area of Outstanding Natural Beauty. The existing buildings provide a rural character and "gateway" into the Area of Outstanding Natural Beauty as it transitions from town into countryside. The proposal in terms of its siting, scale and design, would produce a visually harmful built form that would be at prevailing odds with the surrounding area and local character, that does not conserve or enhance the Area of Outstanding Natural Beauty and certainly does not seek to further the purpose of conserving and enhancing its natural beauty, and would therefore be contrary to National and Local Plan policies. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme.

Given the proposals siting, scale and design, the loss of the existing traditional historic stone buildings, and its location within and adjacent to the South Devon Area of Outstanding Natural Beauty, it is considered that the proposed development would have a detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS11, SDB1, SDB3, DE1 and H1 of the Local Plan, Policy E1 of the Neighbourhood Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 180 and 182.

3. Design, Visual Appearance and the Character of the Area

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed and beautiful places” offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state 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 139 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 Neighbourhood Plan requires that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. To achieve good design, an important part is to respond to and integrate with local character and landscape context as well as the built environment. Policy BH5 reiterates the NPPF, that planning permission will be refused where poor design fails to take opportunities available for improving local character and quality of an area and the way it functions. Policy BH6 of the Neighbourhood Plan provides design guidance in relation to roofscape and dormer management.

It should be noted that this application has been submitted without any prior engagement with the Local Planning Authority, this is a missed opportunity given the pre-application service the Council offers. There is also the opportunity for the independent Torbay Design Review Panel to review the proposal to which the applicant has not engaged with either. It is also unfortunate that the applicant has failed to provide suitably scaled existing drawings, namely elevations, floorplans and sections of the buildings. The applicant submitted two plans (refs: 172-006 and 172-008) which are a collection of distorted 3D images of the existing site and surrounding area. I note that the submitted Heritage Statement by Southwest Archaeology contains existing floorplans, however such are caveated with ‘*sizes are approximate*’ and it states that some buildings have not been surveyed. This is simply not sufficient, as it is not clear as to the existing heights, levels and openings within the site which are material to this application given the sensitivity of the site within the South Devon Area of Outstanding Natural Beauty (National Landscape), being in close proximity to the South Hams Special Area of Conservation (SAC) and in relation to neighbouring properties.

The application site comprises of existing built form in the way of a mixture of one, two and three storey period stone and render commercial buildings, with areas of hardstanding. The application site is allocated for residential development and there are no policy constraints to prevent the demolition of the existing buildings onsite. It

should be noted that the Planning Inspector when assessing P/1988/1135 and P/1988/2392 considered that the existing traditional stone buildings on the application offered a “*significant contribution to the character of the area*”.

Units 1-7 is flatted development that comprises of a main two storeys built form, with a three storey corner feature. The proposed roofscape would have a mixture of hipped and gable features. The proposal will be constructed of natural stone and vertical black timber cladding. The roofing materials would comprise of natural slate and standing seam metal panels. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposal varies in height, the two storey element ranges from 7.5-8 metres in height whereas the three storey element is approximately 10.8 metres in height.

Unit 8 is a detached, two-storey dwellinghouse, that would have a gable roofscape. The proposal would be constructed of rustic red brick with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The detached dwellinghouse would be some 7.6 metres in height.

Units 9-10 are semi-detached two-and-a-half storey dwellinghouses. The proposed units would have flat roof, off-set dormers to their frontage. The proposal would be constructed of rustic red brick with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These semi-detached dwellinghouses would be some 9.1 metres in height.

Units 11-13 are two storey terraced dwellinghouses that would have a gable roofscape. The proposal will be constructed of rustic red brick, natural stone and vertical black timber cladding. The roofing materials would comprise of natural slate and standing seam metal panels. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These terraced dwellinghouses would be some 8.1 metres in height.

Units 14-15 are two storey semi-detached dwellinghouses. The proposed roofscape would be gabled. The proposal will be constructed of natural stone and vertical black timber cladding. The roofing materials would comprise of natural slate and standing seam metal panels. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The semi-detached dwellinghouses would be some 7.6 metres in height.

Units 16-24 is flatted development that comprises of three storey built form with a pitched roof that has gable features. The proposal will be constructed of natural stone, rustic red brick, vertical black timber cladding and standing seam metal cladding. The roofing materials would comprise of natural slate and standing seam metal panels.

The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposed flatted development is contained within two main blocks, one of which measures approximately 9.3 metres and the other approximately 10.3 metres.

Units 25-28 are three storey terraced dwellinghouses. The proposed roofscape would be pitched with gable features. The proposal will be constructed of natural stone, vertical black timber cladding and grey standing seam metal cladding. The roofing materials would comprise of standing seam grey metal. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The terraced dwellinghouses would be some 9.9 metres in height.

Letters of representation supporting the proposal state that the proposed development would remove an eyesore. Whilst objectors have raised concerns that the proposal would have a negative impact on the local area, is not in keeping with the local area, would result in overdevelopment of the site, and would set an unwanted precedent. Objectors have also raised concerns regarding the height of the development.

The proposed layout indicates the external finishes of the application site, however the submitted Proposed Layout (ref: 172-003 Rev E) does not provide a complete key of all the material choices. There are no details of the height extents of the proposed boundary treatments, which makes it not possible to comment upon the visual impact of such and whether some would impinge on highway visibility splays.

The application site provides a gateway to the South Devon Area of Outstanding Natural Beauty. The existing buildings onsite provide a rural gateway and former agricultural cultural heritage characteristic to the Area of Outstanding Natural Beauty.

The proposed design of the entire proposal is poor and not in keeping with the surrounding area, given its somewhat modern and contemporary industrial design. It is considered that the proposal fails to acknowledge the local character and lacks high quality architectural detail. The proposal in totality given its siting, scale and design would fail to integrate within the existing street scene and does not positively enhance the built environment. The Neighbourhood Plan emphasises the need for new development to respect the character and appearance of the surrounding area, whilst the existing buildings are of a differing character and appearance to the existing surrounding residential development, the use of the existing buildings differs from the existing residential development given it serves a commercial purpose. The proposal seeks to align with the surrounding residential use, but demonstrably fails to respect it through its scale and design.

The existing buildings are formed of traditional stone or block and render, with the surrounding properties displaying mixes of render and buff brick. The proposal seeks to introduce vertical black timber cladding which is considered to be unacceptable as

it would appear a stark contrast and is not evident elsewhere in the surrounding area. The proposal fails to provide a sensitive palette of materials given it being the gateway site in and into the Area of Outstanding Natural Beauty.

Whilst the existing buildings particularly dominate the southern section of the site in terms of footprint, the buildings respond to the changes in level, whereas the proposal provides a stark difference. The roofscapes of the existing buildings are varied but somewhat hidden from the public realm, whereas the varying roofscapes of the proposal would be dominant and visible given the increase in height. The proposal would remove the rural gateway to the South Devon Area of Outstanding Natural Beauty and would present a dominant stark built form and remove all former agricultural cultural heritage characteristics.

The proposed height of the development is concerning. Limited details have been provided with regards to levels and so the following comments are caveated on that basis. Given the existing buildings and structures on site which appear to adapt to the topography of the site, the proposal in contrast would introduce additional height. The proposed development in terms of height would be at prevailing odds with the surrounding area. It is considered that the proposed scale would not respect or enhance the local character and would fail to relate to the surrounding built environment in terms of height.

There are several locations within the proposed development where openings are either disproportionate or at odds with the other openings included on the same elevation, most of which would be visible from the street scene and are considered to be unacceptable. The inclusion of flat roofed dormer to Units 9 and 10 is unsympathetic and uncharacteristic. The quantum of floor to ceiling glazing on the flatted development block for Units 16-24 would not positively contribute to the streetscene given future occupiers belongings and paraphernalia being easily visible to passersby.

The recent revision to the NPPF contains additional text about building for beauty, it is considered that the current proposal does not provide beautiful buildings, instead demonstratively stark and incongruous built form that is at prevailing odds with the existing residential development and removes a rural gateway into the South Devon Area of Outstanding Natural Beauty. The proposed development would result in built form that would be wholly out of character with the existing area and would result in the loss of traditional stone buildings that make an important contribution to the character of the area. The development as a whole would be dominant and visually intrusive, and the overall scale and design is considered to result in a detrimental impact upon the existing street scene and locality, contrary to Policies DE1 and SS10 of the Local Plan, Policy BH5 of the Neighbourhood Plan and the guidance contained within the NPPF, in particular Paragraph 139.

4. Impact on Designated and Non-Designated Heritage Assets

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states 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”*.

This statutory requirement needs to be considered alongside the NPPF which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance.

Paragraph 203 of the NPPF goes on to state that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 205 of the NPPF considers that *“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”*.

Paragraph 206 of the NPPF 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), requires clear and convincing justification.

Paragraph 208 of the NPPF outlines 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.

With regards to non-designated heritage assets, Paragraph 209 of the NPPF advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Paragraph 210 of the NPPF confirms that should a heritage asset be lost either wholly or in part, local planning authorities should take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Policy BE1 of the Neighbourhood Plan confirms that proposals which affect designated and non-designated heritage assets must comply with the requirements of the NPPF and relevant policies of the Local Plan. Policy BE1 goes on to state that all developments should ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

Objectors have raised concerns regarding the loss of the existing traditional stone buildings, as well as impact on the historic landscape.

The Council's Principal Historic Environment Officer has confirmed that the application site contains a number of non-designated heritage assets and there is a Grade II listed building (1, 2 and 3 St. Mary's Road) located approximately 20 metres to the northwest of the application site. The significance of 1, 2 and 3 St. Mary's Road relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape. The Officer considers that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary's Road and Upton Manor Road and from within its own curtilage. The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

The Council's Principal Historic Environment Officer has outlined that both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site could be classed as non-designated heritage assets. It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The site has a complex narrative which the submitted Heritage Statement suggests should be further explored. The Council's Principal Historic Environment Officer has outlined the heritage values of the application site, such can be found in the consultation responses at the beginning of this committee report. Whilst the existing buildings have been altered as a result of past unsympathetic development within the site, the site has clear

demonstrable evidential, architectural and historic value. The Council's Principal Historic Environment Officer confirms that the existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

The total demolition and clearance of the site would cause substantial harm, through complete loss of significance, to the existing historic buildings and their historic relationship with each other and the wider landscape. This loss should be assessed within the context of Paragraph 203 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The proposed development lacks adequate justification and would therefore be contrary to the requirements of Paragraph 206 of the NPPF.

The application site is in close proximity to 1,2 and 3 St. Mary's Road. The site is currently well screened due to the presence of a band of mature vegetation and walling. The proposed development would remove the historic/former agricultural character of the application site and replace it with residential development of a notably different scale, massing and character to that existing. The Council's Principal Historic Environment Officer has stated that the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of Paragraph 208 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance.

With regards to the proposed development, the Council's Principal Historic Environment Officer does not consider that the design of the proposed development adequately reflects the historic use and special characteristics of the site. The Officer has confirmed that the introduction of contemporary architecture can be successful within historic settings, however it is considered that the proposed development is not of sufficient architectural or visual interest for this sensitive site. The Officer has advised that the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

The Council's Principal Historic Environment Officer has concluded that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the designated Grade II listed building (1, 2 and 3 St Mary's Road) heritage asset.

Within the context of Paragraph 208 of the NPPF, it is considered that the proposed development would result in less than substantial harm to designated and non-designated heritage assets, whereas the main public benefits of the scheme would result from the provision of 28 no. residential units. In this instance the benefits that are offered by the development do not outweigh the harm to the designated heritage asset.

and the loss of the non-designated heritage assets, the traditional stone buildings. The public benefits in this case do not provide a clear and convincing justification to outweigh the identified harm. In addition, by virtue of the identified heritage harm, which provides a clear reason for refusing the proposed development, the presumption in favour of sustainable development has been considered in this recommendation.

Therefore, the proposed development is considered to be contrary to Policy SS10 of the Local Plan and Policy BE1 of the Neighbourhood Plan.

The above conclusion has consideration of Paragraph 205 of the NPPF which identifies that 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.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

5. Impact on Residential Amenity

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.

Internal Living Space

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 135 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 sets out the minimum floor space standards for new dwellings and apartments. The proposed residential units feature the following approximate floor areas:

Unit Number	Number of Bedrooms	Number of Bed Spaces	Number of Storeys	Total Floorspace (sq.m)	NDSS Requirement (sq.m)	Complies?
1	2	4	1	80.7	70	Yes
2	2	4	1	88.5	70	Yes
3	1	2	1	58.1	50	Yes
4	1	2	1	59.3	50	Yes
5	2	4	1	78.1	70	Yes
6	2	4	1	78.1	70	Yes
7	2	4	1	78.2	70	Yes
8	4	5	2	118.9	97	Yes
9	4	7	3	125.0	121	Yes
10	4	7	3	125.0	121	Yes
11	2	4	2	78.6	79	No
12	2	4	2	78.3	79	No
13	3	5	2	95.8	93	Yes
14	3	5	2	95.0	93	Yes
15	3	5	2	95.0	93	Yes
16	2	4	1	75.8	70	Yes
17	2	4	1	75.8	70	Yes
18	2	4	1	73.0	70	Yes
19	2	4	1	75.8	70	Yes
20	2	4	1	75.8	70	Yes
21	2	4	1	73.0	70	Yes
22	2	4	1	75.8	70	Yes
23	2	4	1	75.8	70	Yes
24	2	4	1	73.0	70	Yes
25	2	4	2*	79.4	70	Yes
26	2	4	2*	79.4	70	Yes
27	2	4	2*	79.4	70	Yes
28	2	4	2*	79.4	70	Yes

* - These residential units are three storeys in height, however the ground floor is used as an integral garage and therefore is not included within the NDSS calculation.

The majority (26no.) units comply with the minimum floor space requirements apart from units 11 and 12 marginally fall below such. Whilst the floor areas of these units are marginally below the recommended floor area, the units are considered to have a usable layout for all day to day needs, adequate light and outlook and private outside amenity spaces. Therefore, whilst the floor area is slightly below standards, the quality of the internal environment is considered to be satisfactory.

All other units across the site are considered to provide a good quality internal

environment for future occupiers with habitable rooms served by adequate light and outlook and layouts set out in a functional manner. Therefore, the proposed residential accommodation is considered to comply with this criterion of Policy DE3 of the Local Plan.

External Amenity Space

Policy DE3 of the Local Plan states that new dwellings should provide 55 square metres of outdoor amenity space and flatted development should provide 10 square metres of outdoor amenity space, which can be provided individually or communally.

The proposed layout demonstrates that the site is overdeveloped by the quantum of development proposed, given that a number of units fall below the threshold. The proposed layout demonstrates that a number of residential units have undersized or no access to outdoor amenity space. In terms of dwellinghouses, Units 15, 27 and 28 are below the required 55 square metres, between 7.5-12 square metres below. The proposed layout shows the outdoor amenity space divided into three parcels for Units 16-34, however when reviewing the proposed internal floorplans for the units, it is apparent that only 2no. units (Units 16 and 17) face onto this space, there the middle section of outdoor amenity space would be accessed by both units. There is no proposed outdoor amenity space for the remaining flats (Units 18-24), as the two small parcels of landscaping to the north and south of the smaller block protect habitable room openings, some of which open onto these landscaped parcels. It is unclear whether these landscaped areas will be bounded to provide individual amenity areas. Furthermore, Units 1-7 have an area of outdoor amenity space to the western flank of the built form which measures approximately 61.5 square metres, if this is proposed to be a communal provision to which it is assumed it is given that Unit 1 does not have any openings onto such, is therefore a deficit of 8.5 square metres. Moreover, limited information has been provided to establish the levels of the outdoor amenity spaces relating to Units 25-28, some contour lines have been provided on the proposed layout which confirms that these spaces would be sloping, the useability of such is questioned.

It is considered that the proposal would result in failing to provide a number of future occupiers with adequate and useable outdoor amenity space. Therefore, it is considered that the proposal fails to accord with Policy DE3 of the Local Plan.

Neighbour Amenity

Objectors have raised concerns regarding privacy/overlooking, noise, loss of light and the proposed development having a negative impact on residential amenity.

The proposed submission is supported by limited proposed sectional drawings. There are concerns regarding the separation distances between proposed units within the scheme, as well as in relation to existing neighbouring properties. The northern parcel of the application site is surrounded to the northern and western flanks by existing

residential development on St Mary's Road, whereas to the south is the southern parcel of the application site. The northern parcel's northern flank is screened by existing vegetation. The southern parcel of the application site is surrounded to the eastern, southern and western flanks by existing neighbouring properties either on Springdale Close or St Mary's Road, whereas the northern flank would look upon the northern parcel of the application site.

Unit 8 is separated from Units 9-10 by approximately 10 metres, however the proposed units front onto each other and would likely result in levels of intervisibility, given the limited information provided it is hard to establish the exact level of intervisibility. Furthermore, although St Mary's Road separates Units 1-7 from Units 16-24, it is considered that there would likely be intervisibility between the three storey element of Units 1-7 which contain Units 5-7 and the opposing proposed flatted development, namely Units 16, 19 and 22. It is also considered that there would be oblique intervisibility within the proposed flatted development block, in particular between Units 16 and 18; 19 and 21; and 22 and 24, although they pose secondary openings to the living space the openings are approximately 5 metres apart.

Given the limited information, it is unclear whether there would be any overlooking issues in relation to Units 25-28 and the existing adjacent properties on Springdale Close which are some 12 metres and beyond away. Furthermore, the proposed flatted development block that contains Units 16-24 would be some 18 metres from the frontage of No.2 Springdale Close, this property as well as others on Springdale Close are bungalows, it is considered that the proposed three storey built form (some 9.4 metres in height) would be dominant and overbearing on this property. Given the limited sections and levels provided, it is difficult to establish whether the proposal would result in overshadowing.

It is considered that the northern parcel of the application site would not have a detrimental impact on adjacent existing neighbouring properties given the siting, scale and design of the proposed built form, existing vegetation and subject to suitable proposed vegetation and boundary treatments. Consideration is also given to 'Orchard House' which sits east of the southern parcel of the application site, and is elevated from the public highway. It is considered that Unit 14 is unlikely to result in a detrimental impact upon the occupiers of the property given its siting and separation distance. However, Unit 25 is some 5.6 metres to 6.5 metres from the western elevation of Orchard House, this elevation is served by a number of openings. Insufficient information has been provided in terms of levels, the proposed layout states the finished floor level is +58.15 and the eaves height of Orchard House is +68.37, Units 25-28 are approximately 9.9 metres in height, it is considered that this block of built form would be at a similar height to Orchard House and given the separation distances would have an unacceptable impact upon the occupiers in terms of being overbearing and overtly dominant. The proposed window on the eastern elevation of Unit 25, should planning permission be granted, should be obscurely

glazed to prevent any overlooking.

It is considered that the proposal would result in a layout that would result in overlooking/intervisibility issues between future occupiers and may result in a detrimental impact upon existing neighbouring properties on Springdale Close. The proposal would result in an overbearing and overtly dominant for existing properties on both Springdale Close and St Mary's Road. It is considered that the proposal fails to accord with Policy DE3 of the Local Plan.

Should planning permission be granted, planning conditions should be employed to secure a Construction Method Statement prior to the commencement of the development; notwithstanding the proposed layout confirmation of who the outdoor amenity spaces are allocated to; a suitable scheme of boundary treatments; obscure glazing where appropriate and necessary; and where necessary and appropriate the removal of permitted development rights.

6. Impact on Highway Safety

Paragraph 114 of 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; 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 115 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 Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The application site is located on the northern and southern flanks of St Mary's Road, which is an adopted public highway. St Marys Road varies in width between 2.8 metres to 4.5 metres with limited street lighting and no footway provision. There are bus stops situated within 50 metres of the application on Springdale Close and additional bus stops are located 100 metres north-west of the site on St Marys Road. These bus stops are served by an approximate hourly frequency to Brixham, Summercombe, South Bay and Higher Ranscombe.

Objectors have raised concerns regarding traffic and access, as well as pedestrian accessibility and permeability.

The applicant used the TRICS database to undertake a comparative trip generation exercise between the extant and proposed uses on the site. The comparative trip generation has identified that the proposed development will likely generate one additional trip in the AM peak and four additional trips in the PM peak period. The Local Highway Authority considered these findings to be acceptable and that the minor increase in trip generation would result in a negligible impact on the operation and safety of the local highway network.

Visibility Splays

The application site is currently accessed via two access points from St Marys Road. The proposal seeks to retain the location of the two access points, but upgrade such to provide two priority-controlled junction arrangements. This section of St Mary's Road has a 30mph speed limit, a speed survey was conducted in September 2020 which identified 85th percentile speeds of 20.1mph and 19.3mph eastbound and westbound respectively. With regards to the visibility splay calculator contained within Chapter 7 of *Manual for Streets*, these speeds would result in a 'Y' distance requirement of 22.6 metres and 21.4 metres respectively. The applicant has demonstrated visibility splays of 2.4 metres x 25 metres and 2.4 metres x 24 metres can be achieved, the Local Highway Authority consider this to be acceptable.

Pedestrian and Cycle Connectivity

The proposal outlines that pedestrian and cycle access will be achieved via footways provided either side of the proposed access points. The proposed footway to the west of the northern access point onto St Mary's Road will connect to the extent of St Mary's Road that routes in a north to south alignment from Upton Manor Road. The proposed footway to the west of the southern access point will connect to formalised footway provision on the eastern extent of Springdale Close.

The Local Highway Authority initially raised concern regarding the crossing provision for pedestrians across St Mary's Road at the south-western extent of the northern section of the site as Units 1-7 appear to block pedestrian / driver visibility and requested an updated Road Safety Audit (RSA) to determine there were any safety

concerns regarding this or any mitigation measures that could be undertaken. This concern remains unresolved, as the RSA considered it not a highway safety concern, however the Local Highway Authority are not satisfied with the response and consider this as an outstanding highway safety issue that requires resolving as all new developments must provide safe crossing environments for pedestrians of all ages and abilities and reduce possible conflicts. The current unknown height and intervisibility is not suitable for vulnerable pedestrians (i.e. wheelchair users/children). Therefore, it is requested the applicant confirms that the perimeter treatment will not exceed 600mm.

The RSA was also requested to be updated due to an assumption that St Mary's Road would be subject to a 20mph speed limit, however this was an invalid assumption. The RSA was amended to address the 20mph speed limit assumption.

The proposal shows a dropped kerb and tactile paving crossing and therefore the Local Highway Authority are satisfied that previous concerns has been resolved.

Swept Path Analysis

The application is supported by a swept path analysis (ref: C23041-A) which illustrates that a refuse vehicle and a fire engine can access and egress the site in a forward gear in the northern parcel of the application site, the Local Highway Authority consider this acceptable. However, the swept path analysis for the southern parcel of the application site illustrates that a refuse vehicle would be required to reverse into the private parking courtyard in order to safely turn within the site layout and egress in a forward gear. The Local Highway Authority requested that the applicant should extend the adopted turning head to ensure that the refuse vehicle does not have to enter the extent of the private courtyard. The applicant provided additional highways information, however the applicant failed to make amendments to the turning head, which would result in refuse vehicles reversing into the extent of the private parking courtyard, it was also stated that SWISCo would not drive onto unadopted roads.

Car and Cycle Parking Provision

Appendix F of the Local Plan requires two car parking spaces (of which one should provide electric vehicle charging infrastructure) and two cycle parking spaces should be provided per dwelling. Appendix F of the Local Plan requires one car parking space (of which 20% should provide electric vehicle charging infrastructure) and one cycle parking space should be provided per flat. The proposal is for 28no. residential units, of which 16no. flats and 12no. dwellinghouses are proposed. This calculates a total requirement of 40no. car parking spaces across the application site (of which 15 car parking spaces should provide electric vehicle charging infrastructure) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 48no. car parking spaces will be provided across the site. The submitted layout indicates a total of 15no. car parking spaces with electric vehicle charging

infrastructure across the site. The submitted layout also includes communal areas of cycle storage for Units 1-7 and Units 16-24.

The Local Highway Authority and the Police Designing-Out Crime Officer have both raised concerns regarding the elements of proposed tandem parking in both parcels of the application site. These concerns revolve around the parking arrangement leading to an overspill of car parking occurring on the local highway network due to residents not wishing to park in the garage or requiring the vehicle that is parked in the rear space, which could create a highway safety issue.

The proposed parking arrangement of 48no. parking spaces is convoluted. There is no indication as to which parking spaces are allocated to which residential unit and whether there are any visitor parking spaces for the flatted development as per the requirement of Appendix F of the Local Plan.

The adopted Highways Standing Advice outlines that where properties have shared or adjoining parking spaces, sufficient access/egress for vehicles and waste/cycle storage should be provided as 6.4 metres wide (3.2 metres for each property), an illustrative diagram of such is contained within Appendix 3 of the Standing Advice. The Standing Advice also confirms that a 3.2 metre wide parking space is required when the parking space is adjacent to a solid obstruction. The proposed parking provision has several pinch points, the proposed parking spaces numbered 14 and 16 provide a combined width of 5.1 metres which are bounded either side by dwellings, it is unclear how individuals would access/egress their vehicles without conflicting with either the dwellings or the neighbour's vehicle. Similarly, where there are expansive rows of parking spaces, e.g. nos.1-6, 33-37 and 38-48, where the widths of such parking spaces are 2.4 metres and again is likely to result in conflicts between parties when trying to access/egress their vehicles. These pinch points demonstrate and confirm that the parking provision is contrived.

Furthermore, the proposed integral garages for Units 25-28 are contrary to the size dimensions provided by Standing Advice, a singular garage should have a minimum internal length of 6 metres, the proposal is for 4no. tandem integral garages which measure approximately 9.6 metres in length. Therefore, the proposed tandem integral garages are too small to serve as such and would likely result in vehicles protruding beyond the built form and resulting in garage doors being unable to close. The 2no. parking spaces adjacent to Unit 15 are substandard in size, whilst they provide 6 metres in length, they propose a width of 2.4 metres but the eastern edge of the space would abut Unit 15's wall, the width of such spaces should be 3.2 metres, similarly with parking space no.10 which is adjacent to a boundary treatment.

It is considered that 12no. parking spaces within the proposed layout are substandard, parking spaces numbered 10, 13, 14, 15, 16, 21, 22, 23, 25, 27, 29, 48, which are contrary to the adopted Highways Standing Advice. Therefore, only 36no. parking

spaces are considered to meet the requirements of the adopted Highways Standing Advice. The proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. As such, the proposal is contrary to Policies TA2 and TA3 of the Local Plan, the adopted Highways Standing Advice and Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

Bin Storage

Policy DE3 of the Local Plan requires the satisfactory provision for the storage of containers for waste and recycling. 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.

Building Regulations H6 which stipulates that “*Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority*”. It states that the distance from the external door to the bin storage location should be no more than 30 metres and the bin storage location to the nominated collection point should be no more than 25 metres.

The submitted layout (ref: 172-005 (Waste Management)) indicates areas of bin storage for the proposed development. The applicant has submitted a Proposed Waste Management Plan (ref: 172-005). It is unclear how Units 9 and 10 will manoeuvre their bins from the rear gardens to their frontages given the issues of either closed boundary treatments or parked vehicles. The proposed bin storage by Unit 11 is poor, the proposed storage is sited against the window and access for Unit 11. The proposed bin storage and cycle store for Units 16-24 is poorly designed, it would require future occupiers to have to walk a considerable distance to dispose of their waste. The Local Highway Authority have also raised concerns regarding the manoeuvrability of bins in relation to Plot 10, which may result in bins being stored on the highway network/blocking the available width of footways. The applicant was advised to amend the layout to ensure that the proposed layout provided sufficient space to move bins from the rear to the front of properties.

SWISCo's Waste (Strategy and Performance) Team Manager has objected to the proposed development, due to some of the bin storage locations being inaccessible due to closed boundary treatments or parked vehicles. The SWISCo Manager has also objected due to the submitted swept path analysis showing refuse collection vehicles driving onto an unadopted highway, which SWISCo would not agree to due to insurance purposes. The SWISCo Manager also raises concerns that should the

southern turning head not be adopted, it is unclear where refuse collection vehicles would be able to park to collect waste and recycling.

SWISCo have confirmed that they would not collect refuse and recycling until a formal indemnity is in place once the road had been adopted by the Local Highway Authority. SWISCo have also requested waste management contributions in line with the Planning Contributions and Affordable Housing Supplementary Planning Document (2022), which would be the cost of bin, recycling boxes, food waste caddy and recycling information at £90 per dwelling and contributions towards waste collection vehicles at £72 per dwelling. Table 4.12. of the Supplementary Planning Document equates to a contribution of $£90 \times 28 = £2,520$ and $£72 \times 28 = £2,016$.

The development fails to secure acceptable waste storage and collection facilities that would not accord with adopted waste storage requirements, and thus the associated activity would result in the creation of an environment injurious to the amenity of future residents to the site, and highway safety, contrary to Policies DE1, DE3 and W1 of the Local Plan.

Lighting Design

The Local Highway Authority requested that the applicant submitted a lighting design and location plan to illustrate how the internal (and connection to external) footways/carrageways will be lit, in the interest of highway and pedestrian safety. This information was provided and the Local Highway Authority considered it to be acceptable.

Sustainable Travel Contributions

The Local Highway Authority have confirmed that they would seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Section 4.3 of Planning Contributions and Affordable Housing Supplementary Planning Document (2022) seeks additional Sustainable Transport contributions for major schemes, referencing Table 4.2. of the Supplementary Planning Document this equates to a contribution of $£1,290 \times 28 = £36,120$.

Section 38 Agreement

The Local Highway Authority have confirmed that they would seek to adopt the site layout as Highways Maintainable at Public Expense (HMPE) with the exception of the parking courtyard. The Local Highway Authority requested that the applicant confirm the extent of the site layout that will be offered for adoption through the submission of a Section 38 Highway Layout plan, whilst noting the Local Highway Authority's concern regarding the materials used within the turning heads. The applicant has provided a Section 38 Highway Adoption Plan (ref: 172-012) which shows the provision of block paving along the footway on both sides of the site that fronts St Mary's Road which has been marked for adoption. The Local Highway Authority have confirmed that they

would require the sections that are to be adopted to be tarmac/asphalt as this will avoid excessive maintenance and liability issues.

The Local Highway Authority are satisfied with the adoption of the on-site turning head on the northern parcel of the application site as this will be suitable for refuse collection. However, the on-site turning head on the southern parcel of the application site has not been offered for adoption, and the applicant is proposing this is a shared private drive. The applicant must be aware that SWISCo will not drive on unadopted highways for refuse collections, and therefore the waste collection arrangement must be clarified. It is also important to note that the Torbay Highways Design Guide (Adopted February 2024) states that shared private drives that are not adoptable are only permitted where fewer than five properties are served. This is further supported by Policy BH8 of the Neighbourhood Plan which requires new developments to comply with relevant adopted standards.

Concluding Remarks

The Local Highway Authority has raised an objection to the current proposals, given the insufficient information provided in relation to the refuse strategy and highway adoption, as well as the pedestrian safety at the western boundary crossing of the northern parcel of the application site. It should be noted that the Local Highway Authority does consider that these concerns can be overcome through amended plans and additional information, however the applicant has failed to provide such. Furthermore, the proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. The proposed development is therefore contrary to Policies TA2 and TA3 of the Local Plan, the adopted Highways Standing Advice, the adopted Highways Design Guide for New Developments, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework, in particular Paragraphs 115 and 116.

SWISCo's Waste (Strategy and Performance) Team Manager has objected to the proposed development, due to inaccessible bin storage locations, the swept path analysis showing refuse collection vehicles driving onto an unadopted highway, which SWISCo would not agree to due to insurance purposes and concerns regarding the lack of adoption to the southern parcel of the application site. The proposed development is therefore contrary to Policies DE3 and W1 of the Local Plan.

The Committee should note that whilst the Council can require the estate roads to be constructed to an acceptable (adoptable) standard, it cannot secure the adoption of estate roads through the planning process. Its policy is to encourage adoption, as far as it can. If planning permission is granted then a planning condition is required which secures the construction of the estate roads to acceptable (adoptable) standards and (if not adopted) secures their retention and future maintenance for the lifetime of the development.

7. Impact on Trees

Policy C4 of the Local Plan states that development will not be permitted when 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.

There is a group Tree Preservation Order (1999.015 G1) north of the application site. Objectors have raised concerns regarding the impact on trees. The application is supported by a tree constraints plan and an Arboricultural Impact Assessment. The report confirms that there are two groups of trees, sycamores in G1 and beech trees in G2, both groups are in reasonable condition. The report outlines that the proposal has a very limited impact on the trees on and adjacent to the site excepting the loss of the sycamores in G1, which are highly visible but not in good condition and are outgrowing their situation regardless of the proposed development. The report confirms that the beech trees in G2 will not be affected by any of the proposals. Similarly, there are some trees to the south of Orchard House but these are not implicated or affected by the proposed development.

SWISCo's Senior Tree Officer has been consulted on the application and has confirmed that he is satisfied with the proposed removal of trees and the Arboricultural Impact Assessment. The Officer has stated that the loss of G1 would be acceptable subject to a soft landscaping works scheme that includes structural tree planting to mitigate this loss and secure additional enhancement of the site. Therefore, the proposal is considered to have an acceptable impact on trees in accordance with Policy C4 of the Local Plan.

8. Impact on Ecology and Biodiversity

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 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 to Policy NC1 of the Local Plan. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 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.

The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustenance Zone for such. The application is supported by an Ecological Assessment (June 2023) and a Biodiversity Net Gain Report (June 2023). However, following initial comments from Devon County Council's Ecologist, a Bat Survey Addendum (August 2023) was produced. Objectors have raised concerns regarding the impact on wildlife.

South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats (GHBs). The survey work found that there was no suitable habitat for foraging, and no linear commuting features present on site for the GHB. The site is dominated by hardstanding and the surrounding area is predominantly urbanised. Devon County Council's Ecologist concluded that the proposed development would not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor would it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location of the development, in an area unfavourable to GHBs, with no suitable foraging habitat or linear habitats. In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al., 2019), there is unlikely to be a likely significant effect on the South Hams SAC. Therefore, an Appropriate Assessment is not deemed to be required and no mitigation is required.

South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwellings. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required

mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The CIL Regulation 123 list includes CIL payments towards the impacts on South Hams Special Area of Conservation (Berry Head to Sharkham Point, Brixham) arising from recreational impacts on limestone grassland between Berry Head and Sharkham Point. The Planning contributions and Affordable Housing SPD (2022) formalises the removal of pooling restrictions for S106 obligations.

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required. Given the recommendation, a legal agreement to secure the mitigation of £3,780 has not been furthered with the applicant, however the lack of mitigation secured is contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

Lyme Bay and Torbay SAC

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC. The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition. There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan. Devon County Council's Ecologist has stated that individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project. If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

Biodiversity Net Gain

The submitted Biodiversity Net Gain Report refers to a completed Biodiversity Net Gain Metric Assessment, however this has not provided in its original format for Devon County Council's Ecologist to assess the results. Devon County Council's Ecologist also requested details of who will be responsible for managing and maintaining the habitats. The applicant has failed to provide this information, therefore Devon County Council's Ecologist is unable to state definitively that the net gain achieved as stated in the report is correct.

Concluding Remarks

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required, the proposal is therefore contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

Insufficient information has been provided to ensure that the proposal has secured a biodiversity net gain as per the NPPF, therefore the proposal is contrary to the guidance contained within the NPPF, namely Paragraph 180.

9. Impact on Flood Risk and Drainage

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

The site is located within the Critical Drainage Area and the application is accompanied by a Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage and sewage. Due to the ground conditions encountered during the site investigation infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system.

The Council's Drainage Engineer has reviewed the Flood Risk Assessment and drainage strategy and has confirmed that the proposed discharge rate of 1.0l/sec complies with the requirements of the Torbay Critical Drainage Area. However, the Torbay Council SUDS design guide states that where the 1 in 10year greenfield run-off rate is identified as less than 1.5l/sec, the discharge rate allowed for the development is 1.5l/sec. By using 1.5l/sec the half drain down time for the proposed attenuation will be significantly reduced.

The applicant has submitted hydraulic modelling for the size of the attenuation tanks and for the surface water drainage system discharging to the attenuation tanks or downstream of the attenuation tanks to the combined sewer system. The submitted drainage strategy shows the proposed surface water drainage for the development, it confirms that there will not be a risk of flooding to properties on the site from the critical 1 in 100 year storm event plus 50% for climate change and 10% for urban creep. The Council's Drainage Engineer has confirmed that provided the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, they raise no objections on drainage grounds to planning permission being granted.

The proposal is therefore considered to accord with Policy ER1 of the Local Plan and the guidance contained in the NPPF.

10. Affordable Housing Contributions

Paragraph 65 of the NPPF states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The Planning Contributions and Affordable Housing Supplementary Planning Document (2022) have applied the NPPF threshold as a material consideration, despite the starting point being Policy H2 of the Local Plan. The current proposal is major in nature, as the proposed number of residential units is over 10 residential units, and therefore it triggers the requirement for affordable housing contributions in Policy H2 of the Local Plan.

The proposal falls within the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15 dwellings or more. For a net increase of 20+ dwellings, it would have an affordable housing target of 20% which is delivered on-site, commuted sums would only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.

The proposal seeks to provide 6no. affordable residential units, in the form of 2no. x 1-bed apartments and 4no. x 2-bed apartments. This would present a 21.4% affordable housing provision onsite. Objectors have raised concerns regarding the lack of affordable housing.

In the absence of a legal agreement to secure the affordable housing provision, it is considered that such would constitute a further reason for refusal. The proposal fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Local Plan and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (2022).

11. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy BH5 of the Neighbourhood Plan outlines that major housing developments should adequately take into account the safety and security of the users of the facilities and the neighbouring residents.

The Police Designing Out Crime Officer was consulted and commented upon the application. The proposal does not include a scheme of designing-out crime measures.

12. Low Carbon Development

Policy SS14 of the Local Plan seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials.

Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
2. Use energy efficiently within the fabric of the building;
3. Incorporate the use of decentralised heat, cooling and power systems; and
4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.

Objectors have raised concerns regarding the impact on climate change, air pollution, marine pollution and construction impacts. The applicant has submitted an Energy Statement (July 2023) and completed the Torbay Sustainability Checklist for Major Development.

The Statement outlines that the proposal reduces energy demand through the siting and design, ensuring that the majority of units are positioned to maximise solar gain and minimise the need for artificial lighting and heating. The Statement outlines that the layout encourages natural ventilation and cooling, with the incorporation of large openings, cross-ventilation strategies, and the use of external louvered shading devices to regulate internal temperatures. The proposal would be constructed in full accordance with the relevant Building Regulation, specifically Approved Document L which defines the minimum U-Values for all elements and air tightness targets. The proposal will include the following features:

- Heating: Individual ASHP units.
- Underfloor heating with 35°C max operating temperature
- 100% low energy lighting
- Multi-point extract systems(continuous), Appendix Q certified
- MVHR system (continuous), Appendix Q certified
- Air permeability with MVHR: 3 m³/m²/hr @ 50Pa
- Wall U-value: 0.16 W/m²/K
- Corridor communal walls U-value: 0.25 W/m²/K
- Corridors: Heated
- Party walls between flats fully insulated

- Roof U-value: 0.11 W/m²/K
- Doors U-value: 1.4 W/m²/K
- Windows U-value: 1.5 W/m²/K
- Floor U-value: 0.10 W/m²/K
- Thermal bridging: Accredited construction
- Window G-value: Mixture of 0.42 and 0.46
- Rooflight G-value: 0.33

The proposal would incorporate electric vehicle charging points and cycle storage to promote sustainable travel. The proposal is considered to accord with Policies SS14 and ES1 of the Local Plan.

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

In terms of the economic element of sustainable development, the balance is considered to be positive.

The Social Role

The proposal would result in some dwellings having undersized gardens and has the potential to have an adverse impact on the occupiers of neighbouring properties.

There would be a detrimental impact on local services i.e. schools, Doctors surgeries etc, however this can be mitigated via S106 contributions.

However, the principal social benefit of the proposed development would be the provision of additional housing including affordable housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

The Environmental Role

With respect to the environmental role of sustainable development, the development of the site within the South Devon National Landscape would fail to conserve or enhance the natural beauty of the Area of Outstanding Natural Beauty. Great weight should be given to harmful impact on the South Devon Area of Outstanding Natural Beauty.

The proposed development would cause clear harm to a number of identified non-designated heritage assets and the Grade II listed building (1, 2 and 3 St Mary's Road).

Insufficient information has been provided to establish whether the proposed development would provide a biodiversity net gain.

It is concluded that the adverse environmental impacts of the development weigh against the development.

Sustainability Conclusion

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

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106:

The following are to be included in Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed

negotiation of the legal agreement. If Members consider that the application is acceptable is recommended that authority to progress and complete the legal agreement be delegated to officers.

Ecology

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy NC1 of the Torbay Local Plan and as identified as a necessary mitigation.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022). For 28 dwellings this would equate to an obligation of £3,780.00.

Affordable Housing

Policy H2 of the Local Plan states that developments of 20+ residential units on brownfield sites should provide 20% affordable housing. The provision of affordable housing is to be provided on-site, through 6no. residential units, which equates to 21.4%.

The proposal provides details of the affordable housing provision, mix of unit types and sizes. Should the development be approved, a 20% level of affordable housing should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) An Affordable Housing Scheme to be submitted for the agreement of the Council.
- 3) Occupancy to accord with Policy BH2 of the Neighbourhood Plan.

Sustainable Transport

In accordance with Policy SS7 of the Local Plan and the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) (to open market housing only) Sustainable Transport obligations should be secured.

This equates to a contribution of £1,290 x 22 = £28,380, as the 6no. affordable housing units would be discounted due to site deliverability matters. However, as for the 22no. units such cannot be sought due to the units being CIL liable.

Public Open Space, Sport and Recreation

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities
- Equipped play facilities for young people
- Greenspace/Open spaces
- Allotments/sustainable food production

However, such contributions cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Employment

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure loss of employment for use classes B2, B8 or E(g) uses, however such cannot be sought on the 22no. open market units as such are CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Education

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

NHS Devon

The site is allocated in the Development Plan for 25no. units and as such the development in this area is anticipated and therefore the demand on the GP surgeries was considered at the time of allocation.

Lifelong Learning Obligations

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Waste and Recycling

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

CIL:

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm.

The estimated CIL liability is £166,378.41. This figure is indexed linked, and the final figure will be calculated on the day of the decision.

An informative can be imposed, should consent be granted, to explain the applicant's/developer's/ landowner's obligations under the CIL Regulations.

CIL is a "Local Finance Consideration" relevant to determining applications. However, in the officer's assessment, it is not a determining factor (either way) in the planning balance assessment below.

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:

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland.

Planning Balance

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise. As concluded within this report there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8, SS10, SS11, TA2, TA3 and W1 of the Local Plan, and Policies BE1, BH5, BH8, E1 and E2 of the Neighbourhood Plan.

As the proposal is not in accordance with the Development Plan, consideration needs to be given as to whether material considerations indicate that the application should be approved.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay's most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of benefits, the proposal of 28no. residential units, would make a moderate contribution to local housing supply. This would be consistent with national guidance that seeks to significantly boost the supply of homes. The proposal includes 6no. affordable housing units which boosts the public benefit. In addition, social, economic

and environmental benefits associated with building and occupying homes weigh in favour of the development, and there is also some minor benefit from the discounted CIL payment. The fact that the site is allocated for housing, and would therefore provide housing if an acceptable scheme comes forward, is material.

The proposed development would present acceptable internal residential environments that principally accord with development plan expectations and National Space Standards. This compliance weighs neutrally in the decision making. However, the development will present undue harm to the living conditions of some of the future occupiers given the undersized or lack of outdoor amenity spaces, and would harm adjacent neighbours and future occupiers, as identified within this report, which weighs negatively against the development.

However, the NPPF gives great weight to conserving and enhancing the landscape and scenic beauty of areas of outstanding natural beauty, as they have the highest status of protection in relation to such issues. The NPPF confirms that development within such areas should be sensitively located and designed to avoid or minimise adverse impacts on the designated area.

Weight must also be afforded the duties within the Countryside and Rights of Way Act 2000, S85, in exercising or performing any functions in relation to, or so as to affect, land in an area of outstanding natural beauty in England, the Council must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty.

Additionally, the NPPF gives great weight to a designated heritage asset's conservation, irrespective of the amount of harm. The NPPF confirms that the significance of a non-designated heritage asset should be taken into account when determining planning applications, as such a balanced judgement is required. Weight must also be afforded to the statutory duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

Furthermore, this report has set out a number of adverse material considerations that lie behind the conflict with the Development Plan, such are detailed within the reasons for refusal.

In addition, insufficient information has been provided to enable a proper assessment and determination of important considerations given the sensitivity of the site within the South Devon Area of Outstanding Natural Beauty, being in close proximity to the South Hams SAC and in relation to neighbouring properties.

Housing need is itself an important factor but must be balanced with other considerations to inform whether development is sustainable development in the round. It is concluded that other material considerations do not justify the grant of planning permission.

Finally, the presumption in favour of sustainable development has been considered in this recommendation. The identified harm to the South Devon Area of Outstanding Natural Beauty (National Landscape), provides a clear reason for refusing the proposed development. Furthermore, the identified harm to the setting of the Grade II designated heritage asset, provides a clear reason for refusing the proposed development. The adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusions and Reasons for Decision

With all matters considered, as detailed within this report, it is concluded that the proposal would fail to conserve and enhance the natural beauty of the South Devon Area of Outstanding Natural Beauty. The NPPF guides that when considering the impact of proposed development on the significance of a designated protected area (areas of outstanding natural beauty), great weight should be given to conserving and enhancing the landscape and scenic beauty of such. It is concluded that the public benefits of the proposal do not outweigh the adverse impacts that would result to the South Devon Area of Outstanding Natural Beauty, the surrounding area, and the harm to neighbour amenity. Furthermore, it is concluded that the proposed development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II listed building) and the public benefits do not outweigh the adverse impacts that result on the setting of the listed building. For these reasons the application is recommended for refusal, as detailed below.

Officer Recommendation

That planning permission is refused, subject to the reasons detailed below. The final drafting of reasons for refusal and addressing any further material considerations that may come to light to be delegated to the Divisional Director for Planning, Housing and Climate Emergency.

Reason(s) for Refusal

1. The proposed development, by reason of its siting, scale and design, and its location within and adjacent to the South Devon National Landscape, would have a detrimental impact on the landscape character and scenic beauty of this part of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS11, SDB1, SDB3, DE1 and H1 of the Adopted Torbay Local Plan, Policy E1 of the Adopted Brixham

Peninsula Neighbourhood Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 180 and 182.

2. The total demolition and clearance of the application site would cause substantial harm to the existing non-designated heritage assets that has not been adequately justified. The proposed total demolition and clearance appears to lack adequate justification. The proposal does not adequately reflect the historic use and special characteristics of the application site, resulting in a poor architectural and visual proposal. The proposed development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II) and this is not outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SS10 of the Local Plan, Policy BE1 of the Neighbourhood Plan and the guidance contained within the NPPF, namely Paragraphs 206, 207 and 208.
3. Given the scale and design of the proposal, it is considered the proposal would fail to relate to the surrounding built environment in terms of scale, height and massing. The proposal lacks high quality architectural detail and a sensitive palette of materials, as such the proposal fails to integrate with the existing streetscene. The proposed scale and design of the proposal is stark, incongruous and dominant within the street scene. As such it would be inappropriate and out of character with the context of the site and surrounding area and fail to respect the local character and area as a gateway to the South Devon National Landscape. The proposal is considered to be contrary to Policies DE1 of the Adopted Local Plan 2012-2030, Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 139.
4. The proposed development would provide a poor quality residential environment by reason of failing to secure an acceptable level of outdoor amenity space for future occupiers, namely Units 1-7, 18-24, 27 and 28 due to either insufficiently sized parcels of outdoor amenity space or provided no outdoor amenity space, which would result in the creation of an environment injurious to the amenity of future residents, contrary to Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 135.
5. The proposal, by reason of its siting, scale and design would have an unacceptable impact upon the occupiers of No.2 Springdale Close and Orchard House St Mary's Road, in terms of the proposed built form being in close proximity to this dwelling, which would result in an overbearing, overtly dominant environment for the occupiers of such and also an overlooked environment for the occupiers of No.2 Springdale Close. The proposed layout would result in internal intervisibility issues between future occupiers, namely between Unit 8 and 9-10, and between Units 5-

7 and Units 16, 19 and 22 Therefore, the proposal fails to accord with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 135.

6. The proposed layout presents a contrived parking layout, of which 12no. parking spaces within the proposed layout are substandard, those numbered 10, 13, 14, 15, 16, 21, 22, 23, 25, 27, 29, 48, which are contrary to the adopted Highways Standing Advice. The proposed layout presents 36no. parking spaces which are considered to meet the Highways Standing Advice, however the minimum required parking spaces for the proposed development is 41. The proposed parking arrangement would therefore exacerbate the existing parking issues in the area resulting in a poor form of development, with a resulting harmful effect on highway safety. As such, the proposal is contrary to Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030, the adopted Highways Standing Advice and Policy BH8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030, and the guidance contained in the National Planning Policy Framework, in particular Paragraph 115.
7. The proposed layout does not enable refuse vehicles safely or acceptably access and egress to and within the site. In addition, insufficient information has been submitted to confirm that the proposal would not have an impact on highways safety for all road users including pedestrians due to visibility splays and boundary treatments, nor as to whether the proposal would provide internal roads which would be to an acceptable (adoptable standard), or for the residential units to be served by refuse vehicles. As such the proposal is considered to be contrary to Policy TA2 of the Adopted Torbay Local Plan 2012-2030, and the guidance contained within the NPPF in particular Paragraphs 114 and 115.
8. The development fails to secure acceptable waste storage and collection facilities that would not accord with adopted waste storage requirements, and thus the associated activity would result in the creation of an environment injurious to the amenity of future residents to the site, and highway safety, contrary to Policies DE1, DE3 and W1 of the Adopted Torbay Local Plan 2012-2030.
9. The submitted ecological information provided is insufficient to demonstrate that the proposed development would result in a measurable net gain in biodiversity. The proposal is therefore contrary to Policies NC1 and SS8 and the guidance contained within the NPPF, namely Paragraph 180.
10. The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary mechanism to deliver site acceptability mitigation regarding ecology, and affordable housing, contrary to Policies H2, NC1, SS7 and SS8 of the Adopted Torbay Local Plan 2012-2030, Policy E8 of the Adopted Brixham Peninsula

Neighbourhood Plan 2012-2030 and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (December 2022).

Informative(s)

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 with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to withdraw the application. However, the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

Relevant Policies

BE1 – Heritage Assets and Their Setting

BH3 – Delivery of New Homes

BH4 – Housing Development – Brownfield (Previously Developed) and Greenfield (Not Previously Developed) Sites

BH5 – Good Design and the Town and Village Design Statements

BH6 – Roofscape and Dormer Management

BH8 – Access to New Dwellings

C4 – Trees, Hedgerows and Natural Landscape Features

DE1 – Design

DE3 – Development Amenity

E1 – Landscape Beauty and Protected Areas

E2 – Settlement Boundaries

E8 – Internationally and Nationally Important Ecological Sites

ER1 – Flood Risk

ES1 – Energy

H1 – Applications for New Homes

H2 – Affordable Housing

NC1 – Biodiversity and Geodiversity

SDB1 – Brixham Peninsula

SDB3 – Brixham Urban Fringe and Area of Outstanding Natural Beauty

SS3 – Presumption In Favour Of Sustainable Development

SS8 – Natural Environment

SS11 – Sustainable Communities

SS14 – Low Carbon Development and Adaptation to Climate Change

T1 – Linking of New Developments to Travel Improvements

TA1 – Transport and Accessibility

TA2 – Development Access

TA3 – Parking Requirements

W1 – Waste Hierarchy