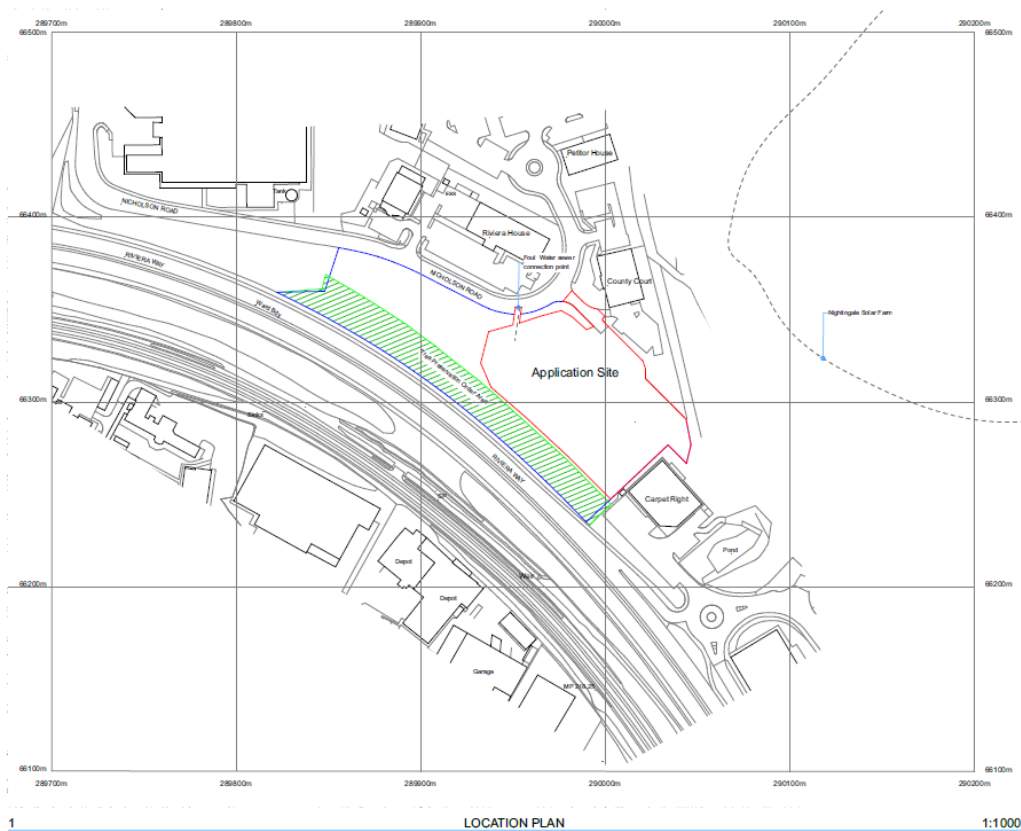


Application Site Address	Land Adjacent County Court Nicholson Road Torquay TQ2 7AZ
Proposal	Outline Application (matters of appearance and landscaping reserved) for Use Class B2, B8 and E(g)(ii) & E(g)(iii) commercial units with associated works.
Application Number	P/2024/0511
Applicant	T Jones - Belstone Fox (Project Management) Ltd
Agent	Mr Philip Byers - Project SW Ltd
Date Application Valid	09/01/2025
Decision Due Date	10/04/2025
Extension of Time Date	22/08/2025
Recommendation	<p>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.</p> <p>If Members of Planning Committee are minded to approve the application against officer recommendation, final drafting of the planning condition(s) will be delegated to the Divisional Director of Planning, Housing and Climate Emergency and in consultation with the chairperson.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee as the proposal is major development.
Planning Case Officer	Verity Clark

## **Location Plan:**



## **Site Details**

The application site comprises of an access road with safety barrier and an area of grassland surrounded by trees and vegetation accessed from Nicholson Road and adjacent to Riviera Way (A3022). The application site is approximately 0.66 hectares in area. The highest part of the site is at its point of access from Nicholson Road and slopes towards the South where it sits adjacent to the main arterial highway route Riviera Way. The site is located within the Riviera Way Corridor Urban Landscape Protection Area and is a designated as Local Green Space within the Torquay Neighbourhood Plan. To the south west of the site is an area of mature woodland which has the benefit of a Tree Protection Order (2016.006) and this lies along the southern boundary of the privately owned plot between the Riviera Way highway and the application site. The site is located within flood zone 1 and a critical drainage area as designated by the Environment agency.

## **Description of Development**

The proposal seeks outline planning permission (matters of appearance and landscaping reserved) for Use Class B2, B8 and E(g)(ii) & E(g)(iii) commercial units with associated works. At this stage the exact mix of land uses is uncertain although the analysis of market demand for the proposed uses presented in the Economic

Statement identifies a variety of potential occupants requiring mostly units of light industrial, office and distribution uses. The applicant proposes a 25% split between the four proposed uses which can be controlled by condition.

The layout plan details two blocks of commercial uses set in staggered building lines separated into 17 different units totalling 2,044m<sup>2</sup> of floor area. The northern block features a cycle store. Access to the site will be via the existing private shared surface access road which will link to a new internal road. A new pedestrian access point will be created via a stepped access onto Nicholson Road. The site will feature 60 parking spaces (although the proposed site plan incorrectly annotates the number of spaces as 66); 7 of these spaces being disabled spaces, a commercial vehicle turning area and a loading/unloading area.

### **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 Torbay Local Plan 2012-2030 ("The Local Plan")
- The Torquay Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan")

#### **Material Considerations**

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

### **Relevant Planning History**

P/2023/0900: Outline Application (all matters reserved) for proposed Use Class B2, B8 and E(g)(ii) & E(g)(iii) commercial units with associated works. Withdrawn

P/2020/0484: Construction of car park. Refused 16/09/2020.

P/2001/0764: Change Of Use To Temporary Car Park For 3 Years. Approved 20/08/2001.

P/1992/0834: Erection Of New Magistrates Courts Buildings (In Outline). Approved 21/12/1992.

P/1986/2612: Comprehensive Development Inc Residential, Light Industry, Offices, Ware Housing, District Shopping Centre, School, Health Centre, Open Space, Shops And Petrol Filling Station, Etc. Non-determined. (Application Allowed at Appeal 15 March 1989 – APP/M1140/A/87/062285).

### **Summary of Representations**

The application was publicised through a site notice, newspaper advert and neighbour notification letters.

1 letter of objection has been received. Issues raised:

- Designated local green space protected from development

### **Summary of Consultation Responses**

Note: Full responses are available to view on the Council's public access system (<https://publicaccess.torbay.gov.uk/view/>).

### **Senior Environmental Health Officer (14/01/2025):**

Although I do not have any objections to the above Planning Application, I have the following comments to make:

#### **Contaminated Land**

The report submitted with the application is for a former proposal (a car park). This is not suitable for this application. Please ask the applicant to provide either a new or an updated report which considers the proposed end use. It would be preferable to receive this report prior to determination, because the outcome of the risk assessment could affect the form or viability of the development. However should you consider that this could be managed by a condition, the following would be appropriate:

No development shall take place on site until a full investigation of the site has taken place to determine the extent of, and risk posed by, any contamination of the land and the results, together with any remedial works necessary, have been agreed in writing by the Local Planning Authority. The building(s) shall not be occupied until the approved remedial works have been implemented and a remediation statement submitted to the Local Planning Authority detailing what contamination has been found and how it has been dealt with together with confirmation that no unacceptable risks remain.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

## Noise

The proposed use classes have the potential to generate noise. I appreciate that a full noise impact assessment is not possible at this stage, however it would be useful to have some information now, in order that more specific condition(s) can be recommended. In particular, a noise survey now would allow us to set cumulative noise emissions limits for the development, define the acceptable hours of use and agree any essential noise management measures such as barriers or bunds around the site. Please could you ask the applicant to undertake an outline noise assessment? Once received I will be able to recommend conditions to include on any consent.

Reason: In the interests of the amenities of surrounding occupiers.

## Air Quality

The proposed use classes have the potential to result in emissions to air, both directly (eg from stacks or equipment) and indirectly (from increased traffic flows). No assessment of this has been included in the application. This is an outline application and the mix of proposed uses is large, so I have recommended a condition which aims to achieve a suitable level of control for any operation that has the potential to cause harm, without being too onerous on those which pose less risk. I would recommend that the following condition is added to any consent:

Prior to the occupation of any unit hereby approved, an air quality assessment shall be submitted to and approved in writing by the LPA for that unit. The assessment shall provide an appropriate level of detail to allow the LPA to conclude whether the operation of that unit will have an adverse impact on air quality. If necessary, the report shall include proposed measures to mitigate the impact of the operation on air quality. Any agreed mitigation measures shall be implemented in full prior to occupation of the unit and maintained as agreed thereafter.

Reason: In the interests of the amenities of surrounding occupiers and to prevent unacceptable pollution of the air.

## Construction/Demolition Management Plan:

Please include the following condition on any consent:

No development shall take place until a site specific Construction/Demolition 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 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.

### Lighting

The application states that the lighting scheme for the development shall comply with the ILP guidance on the reduction of obtrusive light. Please could you include the following condition on any consent? (please note that this is to prevent nuisance light spill and not for purposes of protecting visual amenity or wildlife.

Prior to the commencement of the development an assessment of the impact of all external lighting associated with the development shall be submitted to and approved in writing by the Local Planning Authority. The assessment should address the impact of the lights (including hours of use) on the nearest receptors. Thereafter the lighting shall be installed and maintained in accordance with the specifications within the assessment.

Reason: In order to avoid nuisance light spill affecting neighbouring amenity.

### **Senior Environmental Health Officer updated comments following submission of further information (07/03/2025):**

This is useful. Please could you add the following condition to any consent?

Total noise from the development hereby approved shall not exceed:

55dB LAeq, 15 minute when measured at 1m from the façade of any off site non-residential building.

41dB rating noise level (measured in accordance with BS4142:2014) measured at 1m from the façade of any residential building between the hours of 07:00 at 23:00

32dB rating noise level (measured in accordance with BS4142:2014) measured at 1m from the façade of any residential building between the hours of 23:00 at 07:00.

### **Police Designing Out Crime Officer (17/01/2025):**

From a designing out crime, fear of crime and anti-social behaviour perspective please find my advice and recommendations below.

It is welcomed the inclusion of the crime prevention statement and the detail provided. I appreciate this is currently at the outline stage and as stated the detailed design and specification of materials and construction methods (RIBA work stage 4 & 5) has not started yet. I also welcome the intent to complete the development in

accordance with SBD Commercial Guide and to apply for the SBD Gold Award. I would recommend reviewing the Secured By Design Commercial 2023 Application Form at the earliest opportunity via the SBD website via this link.

[https://www.securedbydesign.com/images/COM23\\_APP-compressed.pdf](https://www.securedbydesign.com/images/COM23_APP-compressed.pdf)

This will assist when considering when detailed design and specifications. As part of the process as the Designing out Crime Officer I would be required to sign off any development, and ensure it meets all the requirements as such please do not hesitate to contact me direct regarding this and any discussion around the RIBA work stage 4 and 5, as I would be happy to assist.

It is understood that the rear footpath to the commercial unit is proposed to be open to allow for emergency egress. However, the rear of commercial units are most vulnerable to crime and anti-social behaviour when open access is allowed when there is no legitimate activity taking place and limited surveillance, whilst it's appreciated CCTV is being considered unless it is a monitored system it does leave it vulnerable. It would be recommended that a form of fencing was considered with a gate that can be opened during the working hours to allow for emergency egress but secured when no one is on site.

It is also noted the comment stating Street lighting will generally be in accordance with BS 5489-1:2013 and Secured By Design recommendations. It should be noted if the intention is to meet Secured by Design compliance the updated standard for lighting must comply with BS5489:1 2020 for commercial sites to attain Gold, however it is appreciated that there may be other factors such as ecology aspects which could affect this.

I would respectfully ask that a condition is in place to ensure that the development achieves secured by design or as near as practicable in the interest of designing out crime, fear of crime and anti-social behaviour in line with Policy DE1.4 of the Torbay Local Plan.

**Team Manager – Waste (Strategy and Performance) (20/01/2025):**

I would have no objection to this development. The waste and recycling from industrial units is classified as commercial waste and the owner(s) will need to use a private commercial waste contractor, not the domestic collections. If the owner(s) wish to use SWISCo to collect recycling and waste, they should contact our Business Waste Team.

**Senior Tree Officer (24/01/2025):**

No objections to proposed development on arboricultural grounds. Soft landscape details to be secured by a planning condition.

The development proposal sets out the proposed layout and site sections which is critical to successful tree retention.

Trees T7 – T10 are proposed for removal. These are low-quality and could be replaced through a soft landscaping plan secured by a planning condition if planning permission is granted.

H1 is proposed for removal to form the vehicle access. Scope for mitigating this loss elsewhere in the site could be realistically delivered by soft landscaping.

The site sections show minor ground level increase in a small area of the fringe of W6 where car parking is proposed within tree root protection areas. This is represented within the Aspect Tree Consultancy (Aspect) Tree Protection Plan (Drawing 06183.TPP. 23.10.24). Given the modest level of incursion and potential for avoiding ground compaction through an Arboricultural Method Statement, I have no objections to this proposal provided ground protection details are secured for implementation either by condition or with additional detail provided up front at this stage in the planning process.

#### Recommendations

A pre-commencement planning should be applied to secure the implementation of the Aspect - Tree Protection Plan (Drawing 06183.TPP. 23.10.24).

Further detail on the arboricultural method statement should be secured to avoid or minimise risks to W6 where car parking is proposed in a small root protection area. Ground protection should be load bearing, porous and ensure protected soils remain at a favourable soil bulk density for root growth.

Soft landscaping details should be secured by a planning condition. The scheme should include structural tree planting to mitigate the loss of T7 – T10 on the north-west boundary. Further woodland scrub planting should be undertaken on the south-west boundary and lower elevations of the site bordering W6. Structural tree planting using specimen trees should be undertaken on the south-east boundary of the proposed car park to provide natural screening.

#### **Drainage Engineer (31/01/2025):**

1. The site is located in Flood Zone 1 and the developer has submitted a flood risk assessment for the proposed development.
2. As infiltration testing has previously demonstrated that the use of infiltration drainage is not feasible for this site, 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 surface water sewer system. No details of the proposed discharge rate have been submitted.



3. The Torbay Critical Drainage Area requirements identify any surface water discharge rate from the site to the surface water sewer must be limited to Greenfield run off rate from the proposed impermeable area of the development for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 50% for climate change and 10% increase in impermeable area to allow for urban creep. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec we would accept a discharge rate of 1.5l/sec. Details of how the discharge rate has been calculated must be submitted in support of the planning application.

4. No details of the proposed surface water drainage have been submitted with the planning application. The developer must submit a drawing showing the proposed surface water drainage for the development which includes manhole cover levels, invert levels, pipe lengths, pipe diameters, pipe gradients and pipe numbering used within the hydraulic model.

5. In addition, a drawing is required identifying the impermeable area discharging to each pipe length. All of these details will be required to be included within the hydraulic modelling in order to confirm whether there is a risk of flooding to properties on the site or an increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% increase in impermeable area for urban creep.

6. 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% increase in impermeable area 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% increase in impermeable area for urban creep.

Based on the above comments, before planning permission can be granted the applicant must address the points identified above.

**Drainage Engineer updated comments following the submission of additional information and discussion with the planning officer (08/04/2025):**

I can confirm that as Lead Local Flood Authority we have a statutory duty to comment on all major planning applications for surface water flooding/drainage. As a result, I have always expected the full drainage details to be submitted with the planning application for all majors. In this instance the developer has failed to do this hence my previous consultation response.

Having reviewed the information you provided and checking the NPPF and guidance documents, I would agree that if the developer appealed a refusal on drainage grounds for this site, we may lose the appeal, as I cannot further justify the requirements for supplying the full drainage details over the fact that it is a major planning application. As a result, I think it would be best, on this occasion, if we conditioned the surface water drainage requirements for this planning application. Please use the previously agreed standing advice.

Going forward, as discussed, it may be worth reviewing the validation list to identify that we will in the future require surface water drainage details submitted with all major planning applications even if the development site is less than 1 hectare.

**Devon County Council Ecologist (06/02/2025):**

Further information required prior to determination:

The ecology report states that 'Further bat surveys, following best practise guidance, should be undertaken prior to commencement of development to ensure that proposed mitigation is appropriate'. Given ecology is not a reserved matters and it is not best practice to condition protected species surveys, if bat activity surveys are required then the results of these required surveys will need to be submitted with this outline application. Clarification is therefore required from the consultant ecologist.

The ecology report states that a 'External Lighting Statement' has been supplied to the LPA, but this does not appear to be available online. Furthermore, any dark corridors for bats need to be shown on a plan which can be approved as part of this outline application. Currently the location and width of the required dark corridors for bats is unknown and this information needs to be provided prior to determination of this outline application. Furthermore, it needs to be clarified that the proposed site layout submitted with this outline application is indicative only, and that any site layout submitted at reserved matters will be compliant with ecological constraints onsite (i.e the location of dark corridors for bats) – this relates mainly to internal light spill impacts and building orientation.

It is noted that the habitat survey was undertaken in November 2023. This is outside the optimum survey season for grassland habitats. Therefore, the validity of the habitat survey and habitat conditions must be robustly justified by the consultant ecologist. If robust justification cannot be provided, then a habitat survey during the survey season will need to be carried out. Furthermore, the condition assessment sheets have not been submitted so therefore it is unclear how the onsite habitats were deemed to be the condition stated. The condition assessment sheets for the onsite habitats need to be submitted so the metric can be assessed thoroughly.

**Devon County Council Ecologist updated comments following submission of further information (07/03/2025):**

I note the confirmation by the consultant ecologist, and I am happy to accept their justification for the lack of requirement for updated bat activity surveys, as well as their explanation around the BNG condition assessments of onsite habitats.

However, I note from the plan submitted that the dark corridor is proposed outside the redline boundary to the east of the site, located within the woodland belt. I believe the functionality of this proposed dark corridor location requires justification, as bats utilise linear features for foraging and commuting and rarely travel through woodland, especially species such as lesser and greater horseshoe that were recorded onsite during the 2020 bat activity surveys.

As per the 'Maintaining dark corridors through the landscape for bats' guidance document (Devon County Council, dated January 2022), for developments such as this one dark corridors for bats should consist of 'an open grassy corridor maintained next to a natural linear feature such as a hedge, woodland edge, or vegetated watercourse' – this doesn't appear to be what is proposed for this application.

Therefore, I believe that the functionality of the dark corridor for bats needs to be justified. If robust justification cannot be provided, then the position of the dark corridor for bats may need to be amended.

**Devon County Council Ecologist updated comments following submission of further information (31/03/2025):**

I am more than happy to agree with the below and I believe the justification for the bat corridors is sufficient. I have no further ecological comments to make.

**WSP (on behalf of Torbay Council's Local Highway Authority) (06/02/2025):**

**1.0 Description of Proposal**

The applicant proposes to develop the site adjacent to Torquay and Newton Abbot County Court, Nicholson Road, Torquay, for employment use comprising high-quality commercial units, within use classes B2, B8 and E(g)(ii) & E(g)(iii).

The applicant has submitted a Design and Access Statement which includes an Access and Travel Statement in support of the application, produced by Project (SW) Ltd, dated June 2024 (reference 2418 6.1 V2), along with a Waste Management Statement (Reference 2418 6.1).

**2.0 Site Description**

The site is situated in the south east of The Willows Retail Park located north of A3022 Riviera Way. Access to the site is via an extension to an unnamed private road off Nicholson Road which currently has no footways. Public Right of Way TQ/8z is near to the north of the site, connecting Broomhill Way with Browns Bridge Road and Kingskerswell Road.

### 3.0 Site History

The site has been previously subject to Planning Application Ref P/2020/0484 - Construction of car park, which was refused on 16 September 2020; and Planning Application Ref P/2023/0900 - Outline Application (all matters reserved) for proposed Use Class B2, B8 and E(g)(ii) & E(g)(iii) commercial units with associated works which was withdrawn 24 January 2024.

### 4.0 Traffic Impact

#### Trip Generation

No estimation of the development's proposed trip generation has been provided at this stage. It is requested that the Applicant provide this element to be considered at Outline stage in order to fully understand the scale of the development and potential impact on the highway network.

It is recommended that TRICs Database is used for each use class, and the proposed number of trips to be generated by the development provided.

#### Highway Safety

The site access is an existing private shared surface access road, Torquay & Newton Abbot County Court & Family Court have current right of way for access to their premises.

Double yellow lines are present for approximately 10m south east of the site access junction on both sides (site access road), 6m south west of the site access junction (Nicholson Road), approximately 38m north east of the site access (Nicholson Road) and present for approximately 85m on the western side of Nicholson Road (opposite site access junction).

The Highway Authority have reviewed collision history for the most recent 5 year period.

### 5.0 Design Considerations

#### Pedestrian and Cycle Access

The site is located in north west Torquay, north of the A3022 Riviera Way which forms part of the site's ownership boundary and approximately 1km east of the A380 South Devon Expressway. Nicholson Road has a footway on both sides until Sainsburys servicing yard, beyond this the footway continues on the west side of Nicholson Road until the Nicholson Road / private road junction which leads to the site.

It is noted that there is no existing footway on the private road which leads to the proposed site access. The applicant should therefore consider how access for pedestrians and mobility impaired users will be achieved, as well as for those using nearby bus services. The Design and Access statement mentions that 'For major development a good standard of access for walking, cycling and private transport will

be required.' The applicant must demonstrate how this standard will be met, currently no provision of a footway into the site is contradictory to the statement.

#### Cycle Parking

The applicant states that cycle parking will be provided in line with Torbay Local Plan guidelines for 1 cycle space per 2 employees. The exact number should be identified based on the anticipated number of employees at the site. Cycle parking should be secure, sheltered and in a well lit location.

#### Public Transport Access

The nearest bus stops are located approximately 600m to the north west on Browns Bridge Road named as Nicholson Road. There is also a bus stop within The Willows Retail Park close to the Marks & Spencer and is named The Willows, Marks & Spencer and is also approximately 600m to the north west.

Stagecoach provide services 35A / 35C (Torquay Loop) and 53 (Torbay Hospital – Kingsteignton) which serve both bus stops. Country Bus Devon provide service 149 (Totnes - Torquay via Marldon) at Nicholson Road bus stop and service 174 (Teignmouth to Torbay Hospital) at both bus stops. A limited timetable is also provided by Torbay Buses which stops at The Willows, Marks & Spencer bus stop.

There are also bus stops on Riviera Way, the applicant could consider improving access to these stops by proposing more direct connections from the site.

Torre Railway Station is approximately 3km to the south east and is estimated to be a 36-minute journey by foot from the site. The number 12 bus service by Stagecoach also connects Torre Railway Station to Newton Road (Shiphay, Cadewall Lane bus stop), south of Riviera Way, which is an 18-minute walk from the site.

#### Vehicular Access

Vehicular access is proposed via an extension to the existing private road. At this stage, the proposed access for vehicles is suitable however the internal access requires a swept path assessment as set out in the refuse / emergency section below.

#### Car and Cycle Parking

59 car park spaces and 25 cycle spaces are proposed including accessible vehicle spaces and EV charging. This level of parking for vehicles and cycles complies with the requirements outlined in Appendix F of the 2012 – 2030 Torbay Local Plan.

Proposed Floor Plan: Reference 2418\_P0.17E depicts 12 accessible parking spaces, whereas the Proposed Site Plan Reference 2418\_P0.13C depicts 11 accessible parking spaces. Clarification is sought on the number of accessible parking spaces proposed.

### Refuse / Servicing / Emergency Access

It is stated within the Waste Management Statement and Application Form that each individual commercial unit occupier will provide their own waste storage arrangements within their Unit and make arrangements for collection by a registered waste carrier.

It is requested that that the internal roads are demonstrated to be designed to adoptable standards and swept path analysis is provided for a 11.2m long refuse vehicle should Torbay Waste Collection Authority be requested to undertake collections in the future.

### 6.0 Travel Plan

Paragraph 9.2 of the Design and Access Statement submitted by the Applicant states that 'It is proposed that a (SMART) Travel Plan for the site will be prepared and submitted for approval by Torbay Council before the commercial units are occupied. This Travel Plan will be prepared in accordance with the guidance provided by the Travel Devon Tool Kit available at <https://www.traveldevon.info/travel-devon-toolkit/> This will:

- reduce car park congestion and improve access to the site for staff, visitors and customers
- improve the businesses' image as green employers
- reduce business mileage costs
- increase staff physical and mental health and productivity
- aid with staff recruitment and retention
- minimise the impacts of travel, associated with the development, on the local community: and
- environment by reducing congestion and air pollution.

Use of the Devon Travel Plan guidance would not be appropriate for this application, as it falls within the jurisdiction of Torbay Council as the Local Highway Authority. The Applicant is advised that any Travel Plan submitted in support of development of the site should be completed in accordance with Torbay Travel Planning Guidance, as is outlined in Policy TA2 of the Torbay Local Plan.

### 7.0 Planning Obligation

The Local Highway Authority will seek the necessary 278 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/council/policies/planning-policies/local-plan/spd/>) and Table 4.3. For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

## 8.0 Conclusion

The following additional information is required for the Highway Authority to be able to provide a positive recommendation:

- Trip rates and generation associated with the proposed development and review of possible impacts;
- Confirmation of the number of accessible parking spaces proposed.
- Swept path assessment for Refuse / Servicing / Emergency Access.
- Detail on the site access arrangement to enable safe and suitable access for all users in line with Policy TA2 of the Torbay Local Plan and Paragraph 115 of the NPPF.

### **WSP (on behalf of Torbay Council's Local Highway Authority) updated comments following submission of further information (27/03/2025):**

#### 1.0 Description of Proposal

The applicant proposes to develop the greenfield site adjacent to Torquay and Newton Abbot County Court on Nicholson Road at the Willows for employment use comprising high-quality commercial units, within use classes B2, B8 and E(g)(ii) & E(g)(iii).

Further supporting documentation has been submitted (13th March 2025) in response to the initial Highway Authority comments including:

- An updated Design and Access Statement reference 2418 6.1 V3;
- A previous Transport Scoping Note dated January 2021;
- An updated Site Plan reference 2418\_P0. 13D; and
- A cover email response dated 13th March 2025.

#### 2.0 Previous Consultation

The Local Highway Authority on 6th February 2025 stated the following was outstanding:

- Forecast trip generation and trip impact assessment;
- Parking numbers confirmation;
- Swept path assessment for Refuse / Servicing / Emergency Access; and
- Site access improvements to enable safe and suitable access for all.

#### 3.0 Traffic Impact

##### Trip Generation

No estimation of trip generation or a trip impact assessment is provided. The pre-application Transport Scoping Note dated January 2021 relates to a smaller quantum of office use potentially with an unknown amount of B8 use and does not provide any assessment of HGV traffic associated with a B8 use, assessment of highway safety, or non-motorised user accessibility.

This considerable Application requires a Transport Statement (TS) to provide the essential supporting data, and the lack of such information means that no assessment of the proposal's highway impacts is possible, and the Application cannot be supported at this time.

Data to show potential trips for an all B2 use of the site, or an all B8 use, or a combination supported by evidence as to why that mix, is required. The TS should review the existing traffic flow and parking on Nicholson Road and the County Court car parking with reference to how it and the new traffic can be safely managed.

#### 4.0 Highway Safety

No consideration of HGV or other vehicle access along the private access road past the car park at the rear of the Court and into and along Nicholson Road is provided.

No consideration of connections to the site from the existing network for walkers, cyclists, and bus users including those with mobility impairments is provided.

No review of personal injury collisions in the local area is provided.

Without the above, the Highway Authority have significant concerns about the impact that additional trips will have on the operation of the existing highway as well as safety on the existing and proposed private access road for all travellers. Until these concerns are addressed to its satisfaction, no support for the proposal could be given.

#### 5.0 Design Considerations

##### Pedestrian, Cycle and Bus Access

The Applicant must demonstrate how access for pedestrians and cyclists including those with mobility impairments will be achieved, as currently no provision of a footway into the site or within it is demonstrated. The Applicant should comply with the specifications in the Highway Design Guide of February 2024 for Commercial Access Roads and specifically Page 19 and 29. It is noted that the nearest bus stop is over 560metres away, well above the expected maximum of 400metres.

Within the site it is assumed a footway is provided in front of all units, however, they should be at least 2metres wide protected from parked car overrun by knee rail posts or bollards.

Access to the internal site footway for those parking to the side of C3 must be provided as opposed to having to walk around parked cars, and a 1.5metre gap at least between parking spaces is required.

The footway passing the cycle store should continue onto the access road as a 3metre wide shared use path and join a new 3metre shared use path constructed on the southern side of the access road through the junction with Nicholson Road. Support to access the footway opposite will also be required.

A crossing facility to access the parking bays to the northeast of the site around the HGV turning area is required including a footway to reach them on the north side of the access road.

##### Cycle Parking



The Applicant states that 25 cycle spaces can be accommodated within the cycle store, and the additional 5 required to meet the Parking Standards added if required later. The standards are not optional and 30 parking spaces are required, to be clearly evidenced on plan with their type, security, access, and construction specification also shown.

#### Car Parking

There is still a mismatch between parking numbers on plan and in the Application form which must be clarified. The proposed layout does not meet the adopted Parking Standards within Appendix F of the Adopted Local Plan 2012-2030, failing to provide adequate space around disabled spaces, space between lines of parking, safe access in the case of bays north and east of the HGV turning area, and lacking HGV parking. Refuse / Servicing / Emergency Access

The access junction with Nicholson Road, the internal junction between the main car park and HGV turning area, and within the car park for access to the units C3 and D1 should be demonstrated as suitable for a 16.5 articulated vehicle, a fire tender from the local service, and a typical refuse vehicle used by private contractors as is the intention.

Clarification is required on how individual units will be serviced and receive deliveries. Highway Drainage

The separate comments submitted to Planning dated 31 January 2025 are to be noted.

#### 6.0 Travel Plan

Paragraph 9.2 of the Design and Access Statement submitted by the Applicant has been updated which now refers to Torbay Travel Planning Guidance as is outlined in Policy TA2 of the Torbay Local Plan. A Travel Plan will need to be agreed pre-commencement of any works, which can be secured by a Planning Condition.

#### 7.0 Construction Traffic Management Plan

A Construction Traffic Management Plan will be required by way of Condition pre-commencement to ensure construction vehicles will not have a detrimental impact on the public highway in the vicinity of the site. This will include ensuring adequate parking for construction vehicles is available on-site. It should include as a minimum:

- Description with Planning Application number;
- Location Description and Plan;
- Duration of the works;
- All works and ancillary operations including those that 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 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;
- Programme (draft high level to give idea of planned timings);
- Roles and responsibilities;
- Communications;
- Operational control;
- Traffic Management;
- Emergency preparedness and response – Fuel, oil or chemical spills, incident investigation/reporting;
- Management and control of noise and dust and other air-borne pollutants;
- Complaint management and procedure;
- Liaison with neighbours and businesses (including radius of the area for letter drop);
- Delivery vehicle type, size, frequency (estimated at the early stage, confirmed pre-commencement);
- Contractor vehicle numbers;
- Compound arrangement detailing access, parking, offices, storage etc.;
- Recommended traffic routes;
- Wheel-wash facilities to prevent loose debris and dirt entering the highway; and
- Commitment to conduct a joint highway condition survey and agree to rectify/ or pay for rectification.

Reason: In the interests of the safe operation of the network for all road users as well as amenities of surrounding occupiers during the construction of the development.

## 8.0 Planning Obligation

The Local Highway Authority's previous response (6th February 2025) stated details regarding Section 278 works, S106 planning contributions and Sustainable Transport contributions and should be noted. It is likely that to be acceptable, existing parking on Nicholson Road will need to be removed and new pedestrian / cyclist infrastructure provided. A link to the Public Right of Way to the east of the site is also desirable to improve access to the site, as would one via the carpet right site however third parties would need to be approached to secure agreement.

This is in addition to improvement works that are required to the shared private access into the site from Nicholson Road that should meet the adopted Highway Standards, even though the road is private.

## 9.0 Conclusion

The Applicant has not addressed the comments provided previously by the Highway Authority and has not provided a Transport Statement essential for such commercial proposals.

There are also significant on site and access issues that must be addressed during the Outline Application Stage to demonstrate that a suitable scheme can be delivered.

The existing scheme fails on highway safety and operational grounds and the layout and appearance will need altering before any kind of support could be considered.

**WSP (on behalf of Torbay Council's Local Highway Authority) updated comments following submission of further information (07/05/2025):**

**1.0 Description of Proposal**

The Applicant proposes to develop the greenfield site adjacent to Torquay and Newton Abbot County Court on Nicholson Road at the Willows for employment use comprising high-quality commercial units, within use classes B2, B8 and E(g)(ii) & E(g)(iii).

Further supporting documentation has been submitted (24th April 2025) in response to the previous Highway Authority comments of 27th March 2024 including:

- An updated Design and Access Statement reference 2418 6.1 V4;
- Cross section plans;
- 2 Transport Technical Notes of April 2025;
- An updated Site Plan reference 2418\_P0. 13E; and
- A cover email response dated 25th April 2025.

**2.0 Previous Consultation**

The Local Highway Authority set out in detail the issues outstanding from their first comments of 6th February 2025 that stated the following was outstanding:

- Forecast trip generation and trip impact assessment;
- Parking numbers confirmation;
- Swept path assessment for Refuse / Servicing / Emergency Access; and
- Site access improvements to enable safe and suitable access for all.

**3.0 Traffic Impact**

**Trip Generation**

An assessment of future site traffic has now been provided based on an assumed equal split of land uses across the site rather than worst case scenario which should have been tested for both movement and parking need.

The assessment does indicate how quickly the Nicholson Road on-street parking spaces fill up resulting in the many vehicles having to give way, typically most before 9a.m. all by 11a.m. With the lower forecast traffic provided, traffic is typically increasing by around 10.7% along Nicholson Road during the morning peak period which is likely to be more focussed into a shorter period than one hour.

**Highway Safety**

Consideration of vehicle user safety on Nicholson Road has been made highlighting the passing places provided between on-street parking, and lack of recent road traffic incidents reported to the police.

Tracking has been provided for an artic truck, refuse vehicle and fire tender. This does highlight that an artic exiting the site into Nicholson Road will be on the wrong side of the carriageway in the path of on-coming traffic coming around a bend.

#### 4.0 Design Considerations

##### Pedestrian, Cycle and Bus Access

The Highway Authority requested that provision be made for safe, convenient access for all to and from the site as well as on it irrespective of mode of travel and ability. Whilst this has been demonstrated partly for vehicles, the Applicant has attempted to justify lack of convenient connections for those on bike, walking or using the bus off-site as well as on-site through suggesting that the number will be extremely low. Where provision has been improved with the stepped access to the northeast of the site direct onto Nicholson Road, they have again attempted to justify the non-level access provision.

The access road is at, if not beyond, the recommended gradients for new carriageways on the highway sloping down into the site from Nicholson Road, and whilst the road will not be adopted, the need for safe design for vehicles, walkers, and cyclists of all abilities remains a concern of the Highway Authority. To justify sub-standard provision by examples elsewhere is not relevant.

The Applicant should comply with the specifications in the Highway Design Guide of February 2024 for Commercial Access Roads and specifically Page 19 and 29.

Level provision to access the site for walkers and cyclists is required, including to and from the proposed cycle parking.

It is noted that the nearest bus stop is over 560metres away, well above the expected maximum of 400metres.

Within the site those walking require safe, unobstructed, routes with protection. Access to the internal site footway for those parking to the side of C3 must be provided as opposed to having to walk around parked cars, and a 1.5metre gap at least between parking spaces is required.

Support to access the footway on the opposite side of Nicholson Road from the new steps is required.

Pedestrians on-site need assistance to access the parking bays to the northeast of the site around the HGV turning area.

##### Cycle Parking

The Applicant states that 25 cycle spaces can be accommodated within the cycle store, and the additional 5 required to meet the Parking Standards added if required later. The standards are not optional.

Further information to confirm the type, security, access, and construction specification for the cycle store is required.

#### Car Parking

As highlighted above, parking numbers should be based on worst case scenarios for land uses rather than an aspirational equal split.

The layout should, as set out in the adopted Parking Standards within Appendix F of the Adopted Local Plan 2012-2030, provide adequate space around disabled spaces, space between lines of parking, safe access in the case of bays north and east of the HGV turning area, and HGV parking. The proposed loading bay obstructs access to the bulk of the site and promotes over-run of the safety area around a disabled space into which a mobility impaired individual could emerge.

#### Refuse / Servicing / Emergency Access

Clarification is required on how individual units will be serviced and receive deliveries.

#### Highway Drainage

The separate comments submitted to Planning dated 31 January 2025 are to be noted.

#### 5.0 Travel Plan

Whilst it is noted that a Travel Plan will be agreed pre-commencement, it cannot overcome a poor layout that discourages access by any means other than a vehicle.

#### 6.0 Construction Traffic Management Plan

The Applicant has noted that a Construction Traffic Management Plan will be required by way of Condition pre-commencement to ensure construction vehicles will not have a detrimental impact on the public highway in the vicinity of the site. This will include ensuring adequate parking for construction vehicles is available on-site. It should include as a minimum:

- Description with Planning Application number;
- Location Description and Plan;
- Duration of the works;
- All works and ancillary operations including those that 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 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;

- Programme (draft high level to give idea of planned timings);
- Roles and responsibilities;
- Communications;
- Operational control;
- Traffic Management;
- Emergency preparedness and response – Fuel, oil or chemical spills, incident investigation/reporting;
- Management and control of noise and dust and other air-borne pollutants;
- Complaint management and procedure;
- Liaison with neighbours and businesses (including radius of the area for letter drop);
- Delivery vehicle type, size, frequency (estimated at the early stage, confirmed pre-commencement);
- Contractor vehicle numbers;
- Compound arrangement detailing access, parking, offices, storage etc.;
- Recommended traffic routes;
- Wheel-wash facilities to prevent loose debris and dirt entering the highway; and
- Commitment to conduct a joint highway condition survey and agree to rectify/ or pay for rectification.

Reason: In the interests of the safe operation of the network for all road users as well as amenities of surrounding occupiers during the construction of the development.

## 7.0 Planning Obligation

The Local Highway Authority's previous response should be noted regarding Section 278 works, S106 planning contributions and Sustainable Transport contributions.

It is likely that to be acceptable, existing parking on Nicholson Road will need to be removed to accommodate a pedestrian crossing to the footway on the northern side south of the new steps to the site. This will also help address safety improvements necessary to manage the unsafe exit of any artic truck from the site on the bend.

The Highway Authority also see a link to the Public Right of Way to the east of the site as desirable to improve access to the site.

This is in addition to improvement works that are required to the shared private access into the site from Nicholson Road.

## 8.0 Conclusion

The Applicant has provided updated information including plans showing a new access for pedestrians via steps rather than level access and a loading bay that obstructs the majority of the site. They have also sought to justify the poor and cramped layout that deviates from the expected safe standards for all users irrespective of mode and ability by arguing such measures are not necessary given their anticipated numbers using them.

Poor access and parking layouts can never be justified, and it is the duty of the Highway Authority to ensure that developments are fit for purpose so as not to lead to any issues off-site upon the public highway.

Given the above concerns, the Applicant is required to review their proposal to enable support from the Highway Authority to be obtained.

**WSP (on behalf of Torbay Council's Local Highway Authority) updated comments following submission of further information (22/07/2025):**

**1.0 Description of Proposal**

The Applicant proposes to develop the greenfield site adjacent to Torquay and Newton Abbot County Court off Nicholson Road at the Willows for employment use comprising 17 commercial units within use classes B2, B8 and E(g)(ii) & E(g)(iii) creating up to 60 full-time equivalent jobs. It would be located off an existing short private road providing access only to the rear of the Magistrates Court.

**Previous Consultation**

Following the Local Highway Authority's comments dated 6th February 2025, 27th March 2025, and 7th May 2025 and following a meeting on the 28th of May with the Agents of the Applicant, updates to the proposal have been received by the Council on the 8th of July.

**Site History**

No Permit on the site has been granted since 2001 for a temporary car park. No Permit for development on the site has been granted since 1992. Both are out of date and hold no relevance to this application.

A 2023 Application for a similar proposal was withdrawn in January 2024. The Highway Authority raised concerns about access for users of active travel modes and the bus, plus the impact the proposal could have upon the local network.

**2.0 Accessibility**

Whilst bus services run the other side of the Willows Retail Park, and, cycle routes pass north and south, the lack of connected and direct links into the site, the distance, plus the car dominated environment along Nicholson Road that acts as a key section of the missing connection, combine to form a barrier to anyone not driving a car and effectively renders the site inaccessible realistically on foot, bike, or by bus. The nearest bus stops are over 560metres walk away beyond the 400metre maximum distance the Council applies to all new developments.

Nicholson Road is a significant barrier to cycling with parking along one side the entire working day as identified by the surveys undertaken on behalf of the Applicant. Not only does parking force cyclists to use the middle of the road, but they can also be delayed behind vehicles using the passing places to wait for vehicles approaching in

the other direction to pass. This is contrary to the safe, convenient experience that cyclists have with segregated infrastructure befitting of the Local Plan ambitions to improve access, safety, and the environment.

### 3.0 Traffic Impact

Assuming an equal 25% between the four land-use classes proposed is highly assumptive and not guaranteed. On this basis, the proposal would create a 10.7% increase in traffic including HGV's during the morning peak along Nicholson Road, from 121 vehicles passing each way to 134. It is assumed also that the existing passing places between the on-street parking will continue to operate efficiently and cope with this new traffic without additional delay and disruption to existing road users. AS outlined above, the existing traffic and parking is very undesirable and hazardous for vulnerable road users such as cyclists currently, therefore additional traffic will only make the ability not to drive to any destination along Nicholson Road harder.

For a robust assessment to provide the Highway Authority with assurance to safeguard the integrity and performance of the highway, the impact assessment needs to be performed using worst case scenarios, not hopeful unsubstantiated assumptions. This has not been undertaken.

### 4.0 Design Considerations

#### Pedestrians

The site will be accessed by extending an existing short section of private road off Nicholson Road that leads to the private car park to the rear of the Magistrates Court and then a cul-de-sac. Direct access into the Courts is available from the car park. Parking in the cul-de-sac occurs regularly, a result of the demand for parking by those working in the adjacent premises it is presumed.

The extended access road will lead down a steep slope beyond that gradient set out in the Highway Standards (Highway Design Guide April 2025: Commercial Access Roads – Page 19, 29) to the new buildings and car park which includes a turning area for larger vehicles in the middle of the access.

There is no continuous, level footway along the existing or proposed access road from Nicholson Road. Instead, 18 narrow steps just 1.5-metres wide, less than the 2-metres specified in Highway Standards for new footpaths, are proposed onto Nicholson Road south of the access road junction and on the opposite side to the existing footway along the highway. A landing pad on highway land at the top of the steps is proposed to provide pedestrians with a safe crossing place, but located on the bend of Nicholson Road on an adverse camber with on-street parking obstructing visibility is not appropriate for supporting pedestrian movement as safely as possible.

At the very least a kerb build out extension would be required on Nicholson Road adjacent to the steps replacing one on-street parking space. Without a build out, the



double yellow lines need extending removing up to 5 parking spaces to provide the visibility required at the crossing point. Any scheme would need to be subject of a Road Safety Audit Stage 1 (RSA1) assessment given the road alignment, camber, and parking forcing traffic heading away from of the Magistrates Court and passing the crossing point being in the middle of the road; this could be a surprise to some pedestrians who might step into the carriageway without looking.

To confirm its deliverability and therefore whether a solution to provide safe pedestrian connection to the existing footway on Nicholson Road is possible, the RSA1 should be undertaken prior to any Permit being granted for the Application, given were the scheme not to be delivered, access to the site would be restricted to vehicles only contrary to Policies TA1 and TA2.

A Section 106 Agreement to secure the funds to form a build out and crossing over Nicholson Road could be an effective way to provide an appropriate pedestrian crossing once an RSA1 has been undertaken and agreed. Not only does a build out minimise loss of on-street parking, but there is also no need to consult the public unlike when altering existing Traffic Regulation Orders (TRO) such as the one governing the double yellow lines parking restriction. If consultation were required, there would be no guarantee that the support for the change would be forthcoming meaning the pedestrian safety improvement would not be possible.

A Section 106 to deliver a kerb build out extension scheme could be secured by a Planning Condition that requires the funds covering all costs incurred by the Council to be paid pre-commencement of any works. However, before that and determination of the Application, a design subjected to RSA1 by the Applicant would need to be agreed by the Highway Authority first.

The proposed 18 steps onto Nicholson Road are narrow at only 1.5-metres width and with the gradient, the needs of mobility impaired pedestrians be it disabled, elderly, those with pushchairs, deliveries such as the postman using a trolley, etc, and who need access to the site are not met. Further, without a 2-metre wide footway and a separate 3-metre wide shared use path as required by the Council's Highway Standards along the private access road between the site and Nicholson Road, the site is not accessible or inclusive contrary to Policies:

- TA1 - Policy TA1 Transport and accessibility; and
- TA2 - Development access.

The access road would continue not to be adopted by the Highway Authority therefore and the needs of access for non-vehicle users would never be met.

### Cyclists

A covered cycle store for up to 30 bicycles will be provided at the bottom of the access road on the eastern end of the new buildings which is welcomed. This should be fully

open before first occupation. Further information to confirm the type, security, access, and construction specification for the cycle store is required and should be agreed pre-commencement secured by a Planning Condition.

Along the excessively steep (in terms of Highway Design Guidance Standards) access road, no 3-metre wide shared use path for pedestrians and cyclists as required by the Council's Highway Standards is provided and with the proposed steps being too narrow to safely accommodate a bike rail to help cyclists wheel down the 18 steps, access by cycle to the proposed site is not available to all but only the most proficient cyclist. This is further hampered by the lack of segregated access routes on the surrounding highway which with the amount and mix of traffic combined with parked vehicles along Nicholson Road is a significant barrier to making cycling an attractive, safe, and convenient option to encourage more local people to switch modes from vehicles. The proposed site is therefore clearly contrary to Policies:

- TA1 - Policy TA1 Transport and accessibility; and
- TA2 - Development access.

The access road would continue not to be adopted by the Highway Authority therefore and the needs of access for non-vehicle users would never be met.

#### Access Road

The new access road is just 5.5-metres wide, not 6.7-m required by the Council's Highway Standards to safely accommodate two larger vehicles passing each other and not 7.3-metres as needed when HGV movements are expected. Were two wider vehicles to meet, one would need to reverse which could be backing out into Nicholson Road. Given the lack of visibility for any vehicle reversing into Nicholson Road and the location into a bend on the public highway, not only could this lead to disruption of through traffic, but it could easily lead to a serious road traffic collision on the highway that might also involve vulnerable pedestrians heading to and from the Magistrates Court, nursery or other commercial premises nearby.

No account of traffic exiting the car park at the rear of the Magistrates Court is given. It is unclear if appropriate visibility for vehicles exiting that car park of any vehicular traffic using the access road can be achieved. This is essential to ensure no new safety hazard is introduced to the detriment of existing road users.

The gradient of the proposed new section of access road is approximately 1:12, so above the recommended 1:20 set out in the Highway Design Guide (April 2025) for Commercial Access Roads. 1:10 would be considered in exceptional cases, however, given the substandard nature of the proposed access road in terms of width of carriageway and lacking footways, concession is not appropriate given the further difficulty that such an excessive gradient provides to large vehicles needing to reverse up or down it, should two ever meet in opposing directions. Across the whole access road from Nicholson Road the gradient is 1:14.

The new section of access road like the short existing section will not be adopted as proposed and maintenance and unobstructed access would be the responsibility of the Applicant. An Agreement would need to be secured via Planning Condition that prior to the first occupation of the development a Road Management Plan is submitted to and approved in writing by the Local Planning Authority, to ensure that there is an appropriate scheme of maintenance, and which ensures a minimum clear way is maintained for delivery and emergency vehicles in perpetuity.

To be acceptable, the Applicant should comply with the specifications in the Highway Design Guide (April 2025) for Commercial Access Roads and specifically Page 19 and 29, which are requirements, not options to bring the whole private road new and existing up to standard. The proposed access road is contrary to Policy:

- TA2 - Development access.

#### Access Road / Nicholson Road Junction

Tracking has been provided for an articulated vehicle, refuse vehicle and fire tender. This shows an HGV entering left into Nicholson Road from the site is on the wrong and opposing traffic side of the carriageway in the path of on-coming traffic coming around a bend without long advanced visibility. With such moves commonplace in the morning peak hour for B8 warehouse land-use functions, to avoid risk of road traffic incidents and casualties when private cars are using the road in their highest numbers coming to work, a TRO to extend the double yellows is necessary. But as above, a successful outcome of a TRO public consultation cannot be guaranteed and should be undertaken at the Applicant's expense prior to determining the Application to support deliverability of a safe access. Without improvement, safe commercial vehicle exits onto Nicholson Road are not possible which is contrary to Policy:

- TA2 - Development access.

As occurs with other developments and formation of new accesses onto the Highway, the areas subject to works could be brought into the red line area and made subject of a Section 278 Agreement with the Highway Authority, whereby an access fit for purpose for all users irrespective of mode would be created together with appropriate crossing facilities. The design would need to be agreed first and subject to a Stage 1 Road Safety Audit.

#### Parking

The proposal has 55 parking spaces shown on Plan yet 60 are claimed in supporting information. There are 7 appropriately wider spaces for disabled users.

Assuming a 25% equal split across the four land-use classes, according to the Parking Standards set out in the Local Plan, Appendix F, at least 51 spaces including 7 for disabled users are required. An HGV loading bay is provided, but no parking bay as required by the Standards.

9 car parking spaces in the west of the site near the proposed steps are difficult to access safely should another vehicle be exiting with an access just 3.6metres wide, less than the minimum 4.8-metres for two way movement. This risks a vehicle overrunning the marked walkway adjacent or reversing blind back potentially into oncoming traffic.

The Highway Authority is also concerned at the risk that parking demand could be almost 30% higher than forecast by the Applicant with variations of the land-use mix, despite the Applicant agreeing to a Condition to limit B2 use to 25%; B2 typically has higher car trip generation during the peak periods compared to others. Should overflow parking be required, there is a real risk that cars will park along the new private access road and further reduce the already narrow road increasing the likelihood of disruption and incidents on Nicholson Road as vehicles cannot enter in unobstructed. Parking enforcement of the private access road would not be a matter within the control of the Council and even with a Planning Condition to require clear access, would need ongoing monitoring followed by lengthy and complicated planning enforcement.

Table 1 below identifies the Highway Authority's worst case parking requirement assessment as 68 car spaces. This also assumes a Condition is secured to limit the maximum amount of floor space permitted under Eii to 25% as well given it is also prone to high car trip generation levels.

Site Area: 2044sqm	Space / sqm	MAX sqm	Minimum spaces	Worst Case Site Requirement	Total	Disabled (10%)
Eii Office (R&D)	1/30	511	17	25% Eii (17) + 75% Eiii (51)	68	7
Eiii Light Industrial	1/30	2044	68	All Eiii	68	7
B2 General Industrial	1/35	511	15	25% B2 (15) + 75% Eii/iii (51)	66	7
B8 Warehouse	1/200	2044	11	10% B8 (1) + 90% Eii/iii (60)	61	6

**Table 1: Worst Case Application Parking Supply**

As well as concern regards the parking supply, no provision for electric vehicle charging points is included as required under the Parking Standards.

Provision for pedestrian walkways is included within the car park but will require people including those with impairments to walk in the middle of the running lanes mixing with commercial vehicles and at the rear of any cars that may not have reversed in, risking personal injury collisions and not providing a safe environment supportive of all pedestrians.

The proposed parking is contrary to Policy:

- TA3 Parking requirements.

Servicing

Tracking for a refuse vehicle within the site demonstrates it can enter and exit the new access road in a forward gear. Clarification is required on how individual units will be serviced and receive deliveries however to assess the operational effectiveness of the live site when parking is full.

As noted above, the access road is just 5.5-metres wide, below the minimum 7.3-metres required by the Council's Highway Standards. Commercial vehicles may need to reverse back out into Nicholson Road on the bend with restricted visibility. This risks disruption of through traffic and serious road traffic collisions on the public highway. Within the site reversing of large vehicles within the main parking area is also proposed and assumes no other vehicles are moving.

Without HGV parking disruption on-site may occur if two or more are present simultaneously. A Car Park Management Plan should be secured pre-commencement by Condition to set out and agree the strategy for servicing and accommodating all large vehicles.

By Condition, a Waste Management Plan indicating recycling and waste collection methods should be submitted to and approved in writing by the Local Planning Authority and should be implemented in full at the first point of occupation of the development, then sustained in perpetuity.

Currently the proposed servicing arrangements are contrary to Policies:

- TA1 - Policy TA1 Transport and accessibility; and
- TA2 - Development access.

#### Highway Drainage

The separate comments submitted to Planning dated 31 January 2025 and 10th April 2025 are to be noted.

#### 5.0 Travel Plan

Whilst it is noted that a Travel Plan will be agreed pre-commencement which would need to be secured by a Planning Condition, it cannot overcome a poor layout that discourages access by any means other than a vehicle. It would be impossible to promote walking, cycling and bus use in sufficient numbers and safely, making the Travel Plan a failure from Day 1 and pointless.

#### 6.0 Construction Traffic Management Plan

The Applicant has noted that a Construction Traffic Management Plan will be required by way of Condition pre-commencement to ensure construction vehicles will not have a detrimental impact on the public highway in the vicinity of the site. This will include ensuring adequate parking for construction vehicles is available on-site. It should include as a minimum:

- Description with Planning Application number;

- Location Description and Plan;
- Duration of the works;
- All works and ancillary operations including those that 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 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;
- Programme (draft high level to give idea of planned timings);
- Roles and responsibilities;
- Communications;
- Operational control;
- Traffic Management;
- Emergency preparedness and response – Fuel, oil or chemical spills, incident investigation/reporting;
- Management and control of noise and dust and other air-borne pollutants;
- Complaint management and procedure;
- Liaison with neighbours and businesses (including radius of the area for letter drop);
- Delivery vehicle type, size, frequency (estimated at the early stage, confirmed pre-commencement);
- Contractor vehicle numbers;
- Compound arrangement detailing access, parking, offices, storage etc.;
- Recommended traffic routes;
- Wheel-wash facilities to prevent loose debris and dirt entering the highway; and
- Commitment to conduct a joint highway condition survey and agree to rectify/ or pay for rectification.

Reason: In the interests of the safe operation of the network for all road users as well as amenities of surrounding occupiers during the construction of the development.

## 7.0 Planning Obligation

The Local Highway Authority's previous response should be noted regarding Section 278 works, S106 planning contributions and Sustainable Transport contributions.

It is likely that to be acceptable, existing parking on Nicholson Road will need to be removed to accommodate a pedestrian crossing to the footway on the northern side south of the new steps to the site. This will also help address safety improvements necessary to manage the unsafe exit of any artic truck from the site on the bend.

## 8.0 Conclusion

The Applicant has provided updated information including plans showing a new access for pedestrians via steps rather than level access and a loading bay that will obstruct users of the site. They have also sought to justify the poor and cramped parking layout and access that deviates significantly from the expected safe minimum

standards set out in the mandatory Highway Design Guidance, April 2025, by arguing measures to facilitate safe, active travel, inclusive access are not necessary given their anticipated numbers at the proposal.

Poor access and parking layouts can never be justified, and it is the duty of the Highway Authority to ensure that developments are fit for purpose so as not to lead to any issues off-site upon the public highway as well as to be mindful of poor safety within sites that impacts ability to service the site.

The Highway Authority do not agree with the traffic impact assessment made and believe traffic levels and types may be higher than forecast impacting on existing users of Nicholson Road. Further, the parking demand is expected to be higher than predicted which could lead to overflow parking blocking the already below standard private access road. With that road not meeting minimum design standards and therefore not being adopted, maintenance and parking enforcement will be onerous for the Council to manage in the interests of public safety.

Where improvements are considered, namely a pedestrian improvement, it is a compromise both in terms of safety and inclusivity. And having not been designed and consulted upon further, there is no assurance that such a highway improvement could even be delivered.

Many areas need to be Conditioned as stated above were a Permit to be granted, though this could have been avoided on issues such as cycle parking had proper consideration by the Applicant been made.

As part of a Reserved Matters Application, detailed highway technical information, including but not limited to, surface details, drainage details, kerbing, signing, and lighting would need to be secured.

However, given the above major concerns especially concerning traffic impact, access, parking, and access together with insufficient information to agree the impacts of the proposal upon the surrounding highway and detail of the scheme, the Highway Authority objects to the proposal which is contrary to the terms, spirit, and full contents of Policies TA1, 2, and 3.

#### **Torquay Neighbourhood Plan Forum (13/02/2025):**

The Forum objected to the previous Application, P/2023/0900 which was subsequently withdrawn. The primary reason for the objection was the impact on a designated Green Space. Mr Tim Jones has engaged with the Steering Group via correspondence to address the concerns

There are two principal considerations: the desirability of delivering new Employment Space; and that the site is a Designated Green Space.

Torbay has a need for new Employment Space, the project can be delivered on a timely basis, and the location has good transport links, especially should the proposed railway station at Edginswell be reactivated. Although parking is provided, given the current level of parking in Nicholson Road, there is a possibility that this may not be sufficient, particularly with respect to delivery vehicles and visitors to the site.

The site is designated as a Local Green Space, Reference TLGSS12, in the Torquay Neighbourhood Plan, Adopted in June 2019. A key feature of the Neighbourhood Plan when it went to Referendum was the protection of Green Spaces, and we believe that this was a major consideration for those who voted in favour. It is unfortunate that the Design & Access Statement refers to an Urban Landscape Protection Area, but makes minimal reference to the Neighbourhood Plan and the Green Space. We strongly object to paragraph 16.4 in the Statement.

The NPPF 2023, paragraph 105, allows communities to identify and protect green areas of particular importance to them. The NPPF 2024, which has come into force since submission of this Application, continues to allow this in paragraph 106. The sites designated in the Torquay Neighbourhood Plan have special significance to the local community be it historic asset, recreational, sport or food production use, or wildlife refuge. Policy TE2 allows for minor improvements to community access, or facilities that support their use for public recreation or amateur sports, or development allowing reasonable small extensions in a style that reflects the setting and the local area which would be consistent with the LGS designation, to be supported. The Design & Access Statement indicates that the proposed development will provide the opportunity to improve and enhance the landscape quality and biodiversity of the application site. Provided that this is guaranteed through a Planning Condition, the Forum can allow the conflict with Neighbourhood Plan Policy TE2. This position must not set a precedent for development on other Green Spaces. Further attrition of Green Spaces is highly undesirable.

With respect to Drainage, no details for handling surface water have been provided. The Forum notes the comments from the Drainage Engineer, and cannot support this Application unless these issues are addressed. The NPPF and Torbay Council SuDS Design Manual Sept 2022 require that water discharge off-site does not exceed the pre-development greenfield discharge rate, (or 1 in 10 year storm rate), and that the drainage system is designed for the equivalent of a 1 in 100 year storm event, plus 50% climate change allowance, plus a further 10% for urban creep.

To meet SuDS design requirements both the rainwater run-off and the groundwater volumes will need to be stored on the site. All attenuation tanks must incorporate an 'exceedance (overflow) pipe' to be installed, which discharges to a safe location. As there is no local water course and that the Site is next to a busy major highway and railway any exceedance flow could present a significant safety risk.



The attached Policy Checklist shows compliance with the majority of policies, but the Forum has major concerns about the development on the designated Green Space and the lack of Drainage information. The essential question is whether or not the benefits of providing the employment space are sufficient to outweigh the loss of the Green Space.

After much debate, the Steering Group can support this Application provided that:

- This must not set any precedent for further development on designated Green Spaces.
- The developer will restore the undeveloped portion of the site to provide suitable habitat for the resident species.
- A 15% on-site biodiversity gain is achieved (to allow for Green Space).
- The developer or any future site owner will thereafter fully maintain the site to preserve its Green Space characteristics, especially that fronting Riviera Way.
- The developer will allow public access for the amenity of the Green Space.
- Resolution of the drainage issues is addressed prior to determination.
- Provision of a Sustainable Transport Plan prior to determination.

**Principal Policy and Project Planner (11/02/2025):**

As we have previously discussed, I wish to support the application from a policy perspective. Torbay has a very pressing need to identify additional employment land. The site is designated as a Local Green Space (TLGSS12) in Policy TE2 of the Torquay Neighbourhood Plan, and is an Urban Landscape Protection Area C5.06 in the Local Plan. I set out a policy view under former application P/2023/0900 on 12/12/2023. These comments remain relevant. In particular in relation to whether the economic development needs of Torbay justify “very special circumstances” to allow development within the LGS. These would arise due to the agglomeration advantages around Nicholson Road and Torbay’s pressing need to improve employment prospects in the area.

Since December 2023 the 2024 NPPF has been published. Chapter 7 of the Framework has been expanded to provide a stronger support for meeting economic development needs to support economic growth. The development plan is more than five years old, and therefore the “Presumption in Favour of Sustainable Development” is applicable insofar as there is a tension with the LGS. However, as noted above and in my previous comments, it is possible to argue that very special circumstances apply to justify approval. I note that the applicant has discussed the proposal with the Neighbourhood Forum.

I would ask that permission is limited to Class E(g), B2 and B8 by condition. Although there may be some scope for flexibility, there would not be an LGS justification for releasing the land for retail or some other class E uses.

I have considered whether the council should seek a larger development that incorporated residential apartments. However, I understand that covenants on the site render it unavailable for residential use.

The application clearly raises detailed issues in relation to matters such as ecology, biodiversity net gain, tree protection etc, highways and access. I have not assessed these matters. Of course, support for the application assumes that such matters can be resolved satisfactorily.

Previous comments still deemed relevant relating to withdrawn application P/2023/0900:

I refer to the above consultation relating to outline application for employment use on land adjacent to the County Court, Nicholson Road. I appreciate that the proposal raises several policy issues, but in principle I support the employment proposal, which is needed to help Torbay's economic recovery and raise Gross Value Added (GVA) in the Bay. There is a very pressing need to improve economic performance, which is key to reducing income and employment deprivation in Torbay. It will help to deliver the Torbay Economic Growth Strategy. Economic Growth Strategy - Torbay Council. I note that the application is supported by an Economic Benefits Summary Statement, which draws on the evidence base for the Economic Growth Strategy. The new Economic Development Needs Assessment (EDNA) is currently under preparation, but the draft EDNA indicates a likely need for at least 14 ha of Class E(g) and B2 land by 2040. There is a shortage of well-accessed employment land with good transport connections, and a risk that employers will relocate out of Torbay if sufficient space cannot be provided.

The site has been promoted for development to the Local Plan Update (which is referred to in the Access Design Statement as an informal enquiry by the applicant). However, the Local Plan update is at an early stage and carries no weight (either way) in the planning balance. The starting point for the application is the current Torbay Local Plan (2012-30) and Torquay Neighbourhood Plan.

The most significant single development plan policy is TE2 of the Torquay Neighbourhood Plan, which designates the site as a Local Greenspace TLGSS12 Riviera Way Woodland. Local Green Spaces have similar weight to greenbelt and rule out development other than in very special circumstances. As you are aware, LGSs are a NPPF footnote 7 matter that can constitute a clear reason for refusal under paragraph 11(D)(i) of the September 2023 NPPF. However, the conflict with the NPPF policy needs to be sufficiently serious to represent a clear reason to refuse the application. The second part of Policy TE2 sets out what very special circumstances may include, and encompasses a new railway station at Edginswell as well as small extensions that would be consistent with the LGS designation. In my view it is relevant that the LGS is termed "Riviera Way Woodland", as the site is not covered by

woodland, and sensitive landscaping may conserve the overall purpose of the LGS designation. The application site has no public rights of way over it, so recreation cannot be a purpose of the designation.

The Design and Access Statement acknowledges that there is a level of conflict with the LGS designation, but argues that the principal landscape purpose of the designation is to protect the Gateway (landscape) feature. It also suggests that the approval for a Solar Farm at Nightingale Park is also on an LGS, and that “the weight attached to that policy must be reduced accordingly”(15.4). The solar farm at Nightingale Park (P/2021/1287) is a different type of development and required a planning balancing exercise to be undertaken; and I do not consider that it reduces the policy weight of the LGS. It does, however, point to a recent decision that has treated economic and environmental benefits as a “very special circumstance” in a nearby location.

The site is also an Urban Landscape protection Area C5.06 in the Local Plan. Policy C5 allows development where it makes a contribution to the landscape character and does not undermine the value of the area. I note that the Design and Access Statement argues that the proposal is consistent with the ULPA designation. ULPAs are a weaker designation than LGSs, although the planning considerations relating to the overlapping designations may be similar.

The proposal is supported by Policy TJ1 of the TNP. In terms of the Local Plan’s growth strategy, there is a need to boost economic development in order to meet the target of 5,000- 5,500 new jobs sought by Policies SS1, SS4 and SS5. Although not specifically allocated from employment in the Torbay Local Plan 2012-30, the site is within the broader Torquay Gateway area and is an accessible location close to strategic transport networks. Paragraph 85 of the NPPF indicates that significant weight should be placed on supporting economic growth and productivity. Paragraph 86(e) indicates that planning policies should be flexible enough to accommodate needs not anticipated in the plan.

The site has a significant planning history, most recently P/2020/0484 for formation of a car park, which was refused in September 2020. The site was part of the original Scotts Bridge Barton comprehensive development P/1986/2612 which was allowed at appeal in 1989 and forms the basis for the Willows and adjoining development. The area had planning permission for a Magistrates Court (P/1992/0834). The site was previously allocated for employment development (Policy E1.3) in the Torbay Local Plan 1995-2011. The historic designation only carries minimal weight compared to the current development plan but does show that the site has previously been viewed as a development site; and capable of accommodating buildings without compromising the wider landscape scheme of (what is now) Riviera Way. The original ULPA follows Riviera Way and its principal function in this location is to retain the landscaped corridor of this gateway location.

The proposal is in outline, so the layout and use of development will be determined at Reserved Matters stage. Although advertised as Class B2,B8 and E(g)ii and E(g)iii commercial units, the application form states Class B2, B8, and E(g). I would recommend that any approval is tied to Class B2 or E(g)(ii) R&D-(iii) light industrial . I would not object to Class E(g)(i) i.e. office being included, although there may not be the demand for such use. Other Class E uses such as retail (E(a), food and drink E(b) should also be restricted, given that the “very special circumstances” relate to economic development likely to raise GVA. Retail proposals, should they arise will raise a separate range of sequential test and impact issues. The TDA’s Head of Economy is likely to raise concern about Class B8 (which may represent a poor economic return in terms of jobs, or may become a de facto retail use). It may not be appropriate to restrict all B8 use, but I would suggest that no more than a limited number of units should be for B8 (e.g. no more than 10% of the units by floor area). I would ask that you consult with the TDA/Economy Environment and Infrastructure team to get their views about how to maximise the economic benefits from the proposal.

The above does not provide a full assessment, and I appreciate that there are landscape, ecology and transport matters that will need to be considered in detail. The proposal does conflict with the LGS designation in the TNP, and to some extent the ULPA designation. Conversely, the proposal strongly supports the economic development aspirations of the Local Plan, particularly SS1, SS3,SS4 and SS5. Development Plan Policies frequently pull in different directions, and it does seem to me that the proposal is in conflict with the development plan taken as a whole due to the weight that LGSs carry. The degree of conflict is mitigated to the extent that the wider purpose of the LGS is not undermined, and by the economic development policies in the development plan.

The very pressing need to support economic development and support Torbay’s economic recovery are material considerations that should be given substantial weight. From a policy perspective they would override the (limited) conflict with the development plan, although I understand that you will need to assess the proposals impacts in more detail.

**Principal Climate Emergency Officer (31/01/2025):**

- I welcome the applicant’s submission of the LPA’s Sustainability Checklist and of an energy statement that proposes a low carbon, climate resilient approach.
- The applicant refers to a range of measures in the submitted Sustainability Checklist and Energy Statement that are to be explored and/or included in the design of the development. However, the applicant states that the detailed design/specification has not yet commenced and that development briefs will specify a range of low carbon and climate resilient measures including fabric improvements, air source heat pumps, solar PV on all roofs, SUDs, grey water

harvesting, a travel plan, bike stores and EV charging points. They also commit to a BREEAM certification. This is all welcomed, but to ensure Policy SS14 and ES1 of the Torbay Local Plan are fully met, commitment and a clear account of what will actually be delivered on site is now required.

#### Proposed Condition

A condition is proposed, requiring a more detailed energy statement be submitted at the reserved matter stage / or appropriate timescale (and prior to commencement on site). The detailed statement will need to outline the specific measures/approaches that will be incorporated into the site to meet Policy SS14 and ES1 of the Torbay Local Plan. Drawing out specifically how the development:

1. Conserves 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. Uses energy efficiently within the fabric of the building;
3. Uses on-site or near-site renewable technologies to achieve further reductions in carbon emissions; and
4. How a sustainability approach will be adopted and has influenced the choices of materials and constructions techniques to help create a sustainable development and reduce environmental impacts including carbon emissions.
5. How BREEAM certification will be achieved
6. Other - details on the proposed SUDs, grey water harvesting (to demonstrate resilience to a changing climate), travel plan and EV charging points

Reason: to meet SS14 and ES1.

Officer note – The planning officer confirmed to the consultee that this is an outline application with all matters apart from appearance and landscaping under consideration. A condition requiring them to confirm how the building orientation and layout would achieve reduced energy demand could not be added as this would already be fixed if approved. Minus these points a condition could be recommended for this detail to be submitted with the reserved matters application for appearance and landscaping. The consultee was asked if they were satisfied with this approach and subsequently confirmed they were.

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

1. Principle of Development
2. Impact on the Character of the Area
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Impact on Ecology and Trees
6. Impact on Flood Risk and Drainage
7. Designing Out Crime
8. Low Carbon Development and Energy

## **Planning Officer Assessment**

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

The proposal is for the construction of commercial units in use class B2, B8 and E(g)(ii) & E(g)(iii) with associated works.

The site is a designated Local Green Space (LGS) under Policy TE2 of the Neighbourhood Plan. Policy TE2 states that development is ruled out other than in very special circumstances. The Policy goes on to outline a number of very special circumstances, however the proposal would fall outside of those specified.

The supporting Design and Access Statement argues that *this application shows that the overall economic and employment benefits of the development justify why it is appropriate and should be allowed within this existing small, isolated area of the Local Green Space which does not conform to the defined 'intrinsic quality criteria'. If the Council do not agree in this respect, then the decision maker must consider whether the potential harm to the LGS by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by the benefits of the scheme.*

The Economic Benefits, Policy and Demand Summary Statement states that planning reference P/1992/0834 for the erection of New Magistrates Courts Buildings was never built out, but “implemented through the construction of the existing access on the application site” and as such the land could still lawfully be developed. Officers are of the view that the scheme has not been implemented. The onus is on the applicant to demonstrate that this permission was implemented, a certificate of lawfulness for existing use has not been submitted to demonstrate such, and therefore little weight is given to this assertion. It should also be noted that the 1992 permission predates the LGS designation. The site is also designated as an Urban Landscape Protection Area (ULPA) under Policy C5 of the Local Plan. This designation is a lower order of protection than the LGS, but still requires significant consideration, this will be assessed within the next section of the committee report. Policy TE2 of the Neighbourhood Plan carries more weight than Policy C5 of the Local Plan, although the thrust of the two policies is similar.

The site is designated as a LGS in the Neighbourhood Plan and the applicant disagrees with its designation. The development plan is more than five years old, and therefore the “Presumption in Favour of Sustainable Development” is applicable insofar as there is a tension with the LGS. The submitted Design and Access Statement notes that the site is within the Neighbourhood Plan allocated employment site of TNPE09 however this is incorrect as the site falls outside of this designation.

Paragraph 108 of the NPPF states that “policies for managing development within a Local Green Space should be consistent with national policy for Green Belts”.

Footnote 45 clarifies that this excludes the provisions relating to grey belt and previously developed land.

Paragraph 153 of the NPPF states “When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations”. Paragraph 154 of the NPPF states that development in the Green Belt is inappropriate unless one of the listed exceptions applies. The proposal does not fall within any of the listed exceptions.

Paragraph 155 of the NPPF which notes that commercial use should not be regarded as inappropriate, cannot be applied as it relies on the site being defined as grey belt land. As noted above, footnote 45 clearly excludes local green space from the provisions relating to grey belt.

This will be discussed in further detail in the conclusion, however the proposal is contrary to Policy TE2 and paragraphs within the NPPF relating to local green space and green belt land. Whilst it has been put forward that Torbay has a very pressing need to identify additional employment land and that the agglomeration advantages around Nicholson Road and Torbay’s pressing needs to improve the employment prospects in the area would result in a very special circumstance, as identified later in the highway safety section, the design of the site renders it inaccessible and therefore conflicts with paragraph 115 of the NPPF and the Torbay Local Plan Policies TA1, TA2, SC1 and SS11. The NPPF is clear that when considering development proposals that ‘it should be ensured that safe and suitable access to the site can be achieved for all users.’ This is a fundamental site acceptability matter which is not met and this results in other harm from the development. Paragraph 153 of the NPPF is clear that ‘Very special circumstances’ will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Given the level of harm caused from the proposal from the lack of safe and suitable access for all, the threshold of very special circumstances is not met and the proposal therefore conflicts with the NPPF.

The application site is located outside of The Willows district centre. The sequential/impact tests are not applied to the use classes proposed as these do not constitute main town centre uses as defined within the NPPF. Alternative Class E uses would require consideration of the sequential/impact tests.

The Council’s Principal Policy and Project Planner supports the employment proposal in principle subject to compliance with other policies, noting that it is needed to help Torbay’s economic recovery and raise Gross Value Added (GVA) in the Bay. There is

a very pressing need to improve economic performance, which is key to reducing income and employment deprivation in Torbay. It will help to deliver the Torbay Economic Growth Strategy. The application is supported by an Economic Benefits Summary Statement, which draws on the evidence base for the Economic Growth Strategy. The new Economic Development Needs Assessment (EDNA) is currently under preparation, but the draft EDNA indicates a likely need for at least 14ha of Class E(g) and B2 land by 2040. There is a shortage of well-accessed employment land with good transport connections, and a risk that employers will relocate out of Torbay if sufficient space cannot be provided. The principle of new employment space is supported by Policy TJ1 of the Neighbourhood Plan which states that the provision of new employment space will be supported across Torquay, consistent with policies for managing development contained within the Torquay Neighbourhood Plan and the Torbay Local Plan. In terms of the Local Plan's growth strategy, there is a need to boost economic development in order to meet the target of 5,000- 5,500 new jobs sought by Policies SS1, SS4 and SS5. Policy SS4 is clear that the Council will, in principle, support proposals that deliver employment space and high value jobs. Although not specifically allocated for employment in the Torbay Local Plan, the site is within the broader Torquay Gateway area and is an accessible location close to strategic transport networks. Paragraph 85 of the NPPF indicates that significant weight should be placed on supporting economic growth and productivity. Paragraph 86(e) indicates that planning policies should be flexible enough to accommodate needs not anticipated in the plan and allow for new and flexible working practices and spaces to enable a rapid response to changes in economic circumstances.

The Economic Benefits, Policy and Demand Summary Statement prepared by the applicant states that *there is identified demand for 2,128 sq. m. (23,000 sq. Y.). These are for immediate occupation. These enquiries have not been generated through a bespoke marketing campaign. It is anticipated that further enquiries will be generated through a formal marketing exercise. In accordance with the latest analysis of the Needs Assessment, there is clear evidence that there is a deficit of employment land supply of 1.4 ha (38 acres). There is also evidence that there is an imbalance of distribution for delivery of employment space, with 95% currently being in Paignton and only 5% in Torquay. This same report also identifies an increasing net loss of employment allocated space to alternative uses. The employment provision is situated within a very short walk from the Willow Shopping Centre and is adjacent to a wide range of other commercial uses, including the adjacent Torbay Court Buildings. This means that the scheme will add critical mass to these areas. It will also mean that the existing multimodal transport networks, such as, bus, cycle, and walking access already operational for these existing areas, will benefit the subject site. This will enhance its green travel credentials. The construction of the proposed development will generate initial temporary direct benefits through employment and indirect benefits through supply chain spending, but its positive impacts will be experienced for long afterwards and will provide an important source of local economic and social benefit for communities. The operation of the commercial floorspace will support a range of*



*employment opportunities on site, with this employment contributing to uplifts in economic productivity across both Torbay and sub-regional economies. There is some evidence to indicate that the constrained nature of economic opportunities in Torbay has meant that the full benefits of the South Devon Link Road (Kings Kerswell Bypass) are not being realised. There are still significant numbers of Torbay Residents who travel outside the Bay for their business/ employment activities. This development will help to start addressing this challenge.* Section 5 and 6 of the report identifies construction phase and operational phase impacts including that the operation of the proposed development has the capacity to support circa 60 FTE jobs on site. It is also estimated that 40 net additional FTE jobs will be directly supported within the Torbay economy with a further 20 direct net additional FTE jobs sourced from the sub-regional area. An Additional 20 FTE jobs could be generated and supported via indirect and induced effects, including contracts within the supply chain, salaries, and onward expenditure across Torbay. A further 20 indirect and induced FTE jobs would be supported across the sub-regional area. The proposed development will generate economic productivity in the form of GVA uplift annually. There is potential to deliver an annual net additional £1 million GVA contribution to the Torbay economy each year, with this being part of a wider £1.5 million contribution generated across the sub-regional area.

Overall the economic benefits generated from the proposed development weigh very strongly in favour of the proposal.

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

Paragraph 131 of the National Planning Policy Framework (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. 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, taking into account any local design guidance and supplementary planning documents. 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 TH8 of the Torquay Neighbourhood Plan requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings.

The site is located north of Riviera Way and site vegetation clearance works have previously been undertaken which opened up views into the site. The site currently comprises an area of grassland bounded by hedge, scrub and mature trees, with trees to the south west of the site protected under a tree preservation order. The site slopes from north to south and is visible from a number of public vantage points including Nicholson Road and Riviera Way.

This is an outline application for matters of access, layout and scale. As such matters of appearance and landscaping are reserved. The proposal features two blocks of development. The northern block features 8 units and cycle storage with a floor area of 800m<sup>2</sup>. This building will feature a pitched roof and have a total height of 8.9m set within a staggered building line. The southern block also includes a staggered building line and pitched roof and will feature 9 units with a floor area of 1,244m<sup>2</sup>. Given the slope of the ground levels this building will require underbuild on the rear southern elevation which varies in height. At its tallest point including underbuild, this building will have an approximate height of 13.8m, although when viewed from within the central yard area, the height will be 9.25m. The existing site topographical survey indicates that the junction of the shared access road with Nicholson Road has a level of 66,470. The southern block will have a roof level of 69,350 which will sit 2.88m higher than this section of the road. The overall height will therefore likely sit below that of the adjacent County Court. To facilitate the construction, excavation and build up will be required across the site. The site will be accessed by the existing shared surface access road that leads to the County Court and to the site. This will be extended down into the site. The site will feature 60 parking spaces, (although 66 are annotated on the submitted plan), sited centrally between the buildings and to the sides. There will also be space for a commercial vehicle turning area. Pedestrian footpaths will be created next to the buildings alongside markings on the car park for designated footpath routes. A new access to Nicholson Road will be formed via a stepped pedestrian access which links to the internal footpaths.

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

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

In terms of landscape impact it is relevant to consider the visibility of the site from Riviera Way and other public vantage points. The applicant has provided a landscape and visual amenity statement. This confirms that the site lies in National Character Area 151 South Devon and at a more local level in the Devon Character Type 7 Main towns and Cities for which there is no character assessment. The site lies within the Urban Landscape Protection Area Riviera Way Corridor within the Torbay Strategic Landscape Study document, which is currently undergoing review. The site and immediate context do not fall within any Landscape Character Assessment (LCA) or Landscape Character Type (LCT) with assessments to refer to. The area is urban fringe and is densely populated, that said it has been well designed to screen built form and has retained green areas that soften the pockets of urban residential, retail

and commercial properties retaining its links with the wider Devon landscape. Overall, the site and its immediate context is considered to be Medium/Low Landscape condition due to the presence of extensive development and road and rail corridors. The site and the immediate landscape is considered to be of Medium overall landscape value. In terms of landscape effects the report states:

*The proposed development involves the introduction of 17 commercial units of varying sizes. This scheme will require some earthworks to level areas of the site (see separate sections drawing) as the buildings will be stepped into the slope. The existing vegetation on the site will be retained with the exception of a small amount of scrub to create an entrance off Nicholson Road. Scope for landscape mitigation measures could include additional woodland tree planting to the east of the site which would form a continuation of the tree planting on Riviera Way and provide screening from the identified viewpoint from the east. Individual tree planting in strategic areas around the buildings and wildflower seeding on banks would create interest and assist with softening built form, enhance biodiversity and assist with assimilating the built form into its receiving landscape.*

*The site falls within the area 05 Scotts Bridge within Policy C5 Urban Landscape Protection Area. This policy seeks to ensure that development within this area makes a positive contribution to the urban environment and enhances the landscape character. The proposals will result in the loss of an area of grassland with the introduction of a number of commercial units and associated infrastructure but this loss can be somewhat mitigated with mitigation measures.*

*The site itself lies in an urban fringe location on sloping ground and the topography and existing vegetation cover afford it a level of containment, and as such the development is anticipated to have little effect on the current situation. The development will be set into the landscape which will result in the ground needing to be levelled to an extent to facilitate 'stepping' the buildings into the landscape. The site is set into an area of the landscape which screens it from all but a limited amount of short-range views adjacent to the site in the immediate vicinity.*

The report confirms that only two partial views of the site were identified from points in the close vicinity of the site, on Nicholson Road and a slip road exiting the A3022 (Photoviewpoints 1 and 2). There is scope for introducing planting to the east of the site which would assist with filtering / screening the site from the slip road off the A3022. Overall the report concludes that with appropriate mitigation measures, the development could be accommodated within the landscape.

The site is located within ULPA C5.06. The Review of Urban Landscape Protection Areas in Torbay (March 2013) describes the designation as a *gateway to Torbay, heavily treed valley floor particularly along the railway line, road boundaries and hospital approaches, contributes to a network of linear linkages throughout the urban area, acts as green corridors for wildlife ULPA extended to include both sides of Riviera Way and land to west of Newton Road from Lawes Bridge junction to Shiphay Lane junction.*

Whilst the proposal will result in the loss of the open space, the key positive aspect of the tree lined corridor facing Riviera Way will be retained. As noted within the landscape and visual amenity statement, there is scope with appropriate mitigation to screen the site further and bolster current landscaping. Whilst the proposal will alter the character of the ULPA, the intrinsic value for which it was designated can be retained and enhanced and therefore the proposal is considered to be in accordance with Policy C5 of the Local Plan subject to securing an adequate landscaping scheme at the reserved matters stage.

Policy TE2 of the Neighborhood Plan designates the site as the Riviera Way Woodland LGS – TLGSS12. Whilst the name indicates that the designation relates to woodland, the whole site is covered by this designation and therefore must be treated as a LGS. Paragraph 153 of the NPPF states that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposal will result in a loss of the open space, fundamentally changing the character of the site. As noted previously the proposal does not constitute very special circumstances and is inappropriate development. The proposal is therefore contrary to Policy TE2 of the Local Plan and the guidance within the NPPF relating to impacts on LGS and proposals affecting green belt.

Notwithstanding the fundamental concern with the impact on the LGS, the overall layout, siting and scale utilises a large proportion of the site resulting in an intensive form of development. However, the site layout would allow for bolstering of landscaping as suggested within the landscape and visual amenity statement which would help to screen the site and improve the existing landscape setting and tree cover. The height of the buildings would be considered appropriate when viewed from Nicholson Road in the context of the existing built form and views from Riviera Way could be screened, thereby minimising any landscape impact and harm to the character and visual amenities of the locality.

Whilst the development could be mitigated to result in compliance with Policies DE1, C5 and TH8, there is a fundamental conflict with the LGS designation and the proposal therefore fails to accord with Policy TE2 and the NPPF.

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

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. The Neighbourhood Plan is largely silent on the matter of amenity. The NPPF guides (paragraph 135) 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.

The site is located in close proximity to a commercial area. Torbay Council's Senior Environmental Health Officer recommends a condition relating to contaminated land is added to any consent. They have also noted that the proposed use classes have the potential to generate noise. Whilst it is appreciated that a full noise impact assessment is not possible at this stage, it would be useful to have some information so that more specific condition(s) can be recommended. In particular, a noise survey now would allow us to set cumulative noise emissions limits for the development, define the acceptable hours of use and agree any essential noise management measures such as barriers or bunds around the site. Following these comments a proposed commercial development baseline noise survey was submitted. The report presents upper noise limits for noise associated with the proposal. The limits have been determined based on the measured ambient and background noise levels and will avoid adverse impacts. The Senior Environmental Health Officer has reviewed the document and recommends a condition limiting the total noise from the development to:

- 55dB LAeq, 15 minute when measured at 1m from the façade of any off site non-residential building.
- 41dB rating noise level (measured in accordance with BS4142:2014) measured at 1m from the façade of any residential building between the hours of 07:00 at 23:00
- 32dB rating noise level (measured in accordance with BS4142:2014) measured at 1m from the façade of any residential building between the hours of 23:00 at 07:00

The applicant has confirmed their agreement to a condition to this effect.

The Senior Environmental Health Officer also notes that the proposed use classes have the potential to result in emissions to air, both directly (eg from stacks or equipment) and indirectly (from increased traffic flows). No assessment of this has been included in the application. This is an outline application and the mix of proposed uses is large, so they have recommended a condition which aims to achieve a suitable level of control for any operation that has the potential to cause harm, without being too onerous on those which pose less risk. Whilst these comments are noted, the site is not within an air quality management area and the requirement of such information is not considered to be necessary in this instance. The Officer also recommends a

condition for a construction management plan which is considered reasonable to ensure the development process is adequately managed and nearby uses are not negatively impacted.

Given its siting, scale, and design of the proposals and the siting and distance to nearby uses, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours with the addition of the recommended conditions.

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

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

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. The Neighbourhood Plan falls silent on parking matters for commercial use.

Paragraph 115 of the NPPF guides that when assessing developments it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, 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 through a vision-led approach. Paragraph 116 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, following mitigation, would be severe, taking into account all reasonable future scenarios.

The site is located off Nicholson Road, adjacent to Torquay and Newton Abbot County Court and The Willows Retail Park. The vehicular access to the site is via a shared private shared surface road with the County Court. This private road is accessed via a priority T-junction with Nicholson Road (public highway).

WSP has been appointed on behalf of the Local Authority to provide highway comments with regards to the proposed development. WSP have provided four sets of written comments which reflect updated information and plans which have tried to address concerns raised. The last set of comments confirms the final position. In terms of traffic impact, assuming an equal 25% between the four land-use classes proposed, the proposal would create a 10.7% increase in traffic including HGV's during the

morning peak along Nicholson Road, from 121 vehicles passing each way to 134. It is assumed also that the existing passing places between the on-street parking will continue to operate efficiently and cope with this new traffic without additional delay and disruption to existing road users. Existing traffic and parking is very undesirable and hazardous for vulnerable road users such as cyclists currently along Nicholson Road, therefore additional traffic will only make the ability not to drive to any destination along Nicholson Road harder. For a robust assessment to provide the Highway Authority with assurance to safeguard the integrity and performance of the highway, the impact assessment needs to be performed using worst case scenarios. This has not been undertaken in the submitted documentation.

In respect of pedestrian access, the site will be accessed by extending an existing short section of private road off Nicholson Road that leads to the private car park to the rear of the County Court and then a cul-de-sac. Direct access into the Courts is available from the car park. Parking in the cul-de-sac occurs regularly, a result of the demand for parking. The extended access road will lead down a steep slope beyond that gradient set out in the Highway Standards (Highway Design Guide April 2025: Commercial Access Roads – Page 19, 29) to the new buildings and car park which includes a turning area for larger vehicles in the middle of the access. There is no continuous, level footway along the existing or proposed access road from Nicholson Road. Instead, 18 narrow steps just 1.5-metres wide, less than the 2-metres specified in Highway Standards for new footpaths, are proposed onto Nicholson Road south of the access road junction and on the opposite side to the existing footway along the highway. A landing pad on highway land at the top of the steps is proposed to provide pedestrians with a safe crossing place, but located on the bend of Nicholson Road on an adverse camber with on-street parking obstructing visibility is not appropriate for supporting pedestrian movement as safely as possible. WSP recommend that at the very least a kerb build out extension would be required on Nicholson Road adjacent to the steps replacing one on-street parking space. Without a build out, the double yellow lines need extending removing up to 5 parking spaces to provide the visibility required at the crossing point. Any scheme would need to be subject of a Road Safety Audit Stage 1 (RSA1) assessment given the road alignment, camber, and parking forcing traffic heading away from of the County Court and passing the crossing point being in the middle of the road; this could be a surprise to some pedestrians who might step into the carriageway without looking. The proposed 18 steps onto Nicholson Road are narrow at only 1.5-metres width and with the gradient, the needs of mobility impaired pedestrians be it disabled, elderly, those with pushchairs, deliveries such as the postman using a trolley, etc, and who need access to the site are not met. Further, without a 2-metre wide footway and a separate 3-metre wide shared use path as required by the Council's Highway Standards along the private access road between the site and Nicholson Road, the site is not accessible or inclusive contrary to Policies TA1 and TA2 of the Local Plan.

A covered cycle store for up to 30 bicycles will be provided at the bottom of the access road on the eastern end of the new buildings which is acceptable and accords with Appendix F. This should be fully open before first occupation. Further information to confirm the type, security, access, and construction specification for the cycle store is required and could be secured by a planning condition.

Along the excessively steep (in terms of Highway Design Guidance Standards) access road, no 3-metre wide shared use path for pedestrians and cyclists as required by the Council's Highway Standards is provided and with the proposed steps being too narrow to safely accommodate a bike rail to help cyclists wheel down the 18 steps, access by cycle to the proposed site is not available to all but only the most proficient cyclist. This is further hampered by the lack of segregated access routes on the surrounding highway which with the amount and mix of traffic combined with parked vehicles along Nicholson Road is a significant barrier to making cycling an attractive, safe, and convenient option to encourage more local people to switch modes from vehicles. The proposed site is therefore clearly contrary to Policies TA1 and TA2 of the Local Plan.

The new access road is 5.5m wide, not the 6.7m required by the Council's Highway Standards to safely accommodate two larger vehicles passing each other and not 7.3-metres as needed when HGV movements are expected. Were two wider vehicles to meet, one would need to reverse which could be backing out into Nicholson Road. Given the lack of visibility for any vehicle reversing into Nicholson Road and the location into a bend on the public highway, not only could this lead to disruption of through traffic, but it could easily lead to a serious road traffic collision on the highway that might also involve vulnerable pedestrians heading to and from the County Court, nursery or other commercial premises nearby. No account of traffic exiting the car park at the rear of the County Court is given. It is unclear if appropriate visibility for vehicles exiting that car park of any vehicular traffic using the access road can be achieved. This is essential to ensure no new safety hazard is introduced to the detriment of existing road users. The gradient of the proposed new section of access road is approximately 1:12, so above the recommended 1:20 set out in the Highway Design Guide (April 2025) for Commercial Access Roads. 1:10 would be considered in exceptional cases, however, given the substandard nature of the proposed access road in terms of width of carriageway and lacking footways, concession is not appropriate given the further difficulty that such an excessive gradient provides to large vehicles needing to reverse up or down it, should two ever meet in opposing directions. Across the whole access road from Nicholson Road the gradient is 1:14. The new section of access road like the short existing section will not be adopted as proposed and maintenance and unobstructed access would be the responsibility of the applicant. An agreement would need to be secured via planning condition that prior to the first occupation of the development a road management plan is submitted to and approved in writing by the Local Planning Authority, to ensure that there is an appropriate scheme of maintenance, and which ensures a minimum clear way is



maintained for delivery and emergency vehicles in perpetuity. To be acceptable, the proposal should comply with the specifications in the Highway Design Guide (April 2025) for Commercial Access Roads and specifically Page 19 and 29, which are requirements to bring the whole private road new and existing up to standard. The proposed access road presented fails to meet these standards and is contrary to Policy TA2 of the Local Plan.

Tracking has been provided for an articulated vehicle, refuse vehicle and fire tender. This shows an HGV entering left into Nicholson Road from the site is on the wrong and opposing traffic side of the carriageway in the path of on-coming traffic coming around a bend without long advanced visibility. With such moves commonplace in the morning peak hour for B8 warehouse land-use functions, to avoid risk of road traffic incidents and casualties when private cars are using the road in their highest numbers coming to work, a TRO to extend the double yellows is necessary.

In respect of parking provision the site plan details 60 spaces, with 7 of these being disabled spaces. Assuming a 25% equal split across the four land-use classes, according to the parking standards set out in the Local Plan, Appendix F, at least 51 spaces including 7 for disabled users are required. An HGV loading bay is provided, but no parking bay as required by the standards. Without HGV parking disruption on-site may occur if two or more are present simultaneously. 9 car parking spaces in the west of the site near the proposed steps are difficult to access safely should another vehicle be exiting with an access just 3.6metres wide, less than the minimum 4.8-metres for two way movement. This risks a vehicle overrunning the marked walkway adjacent or reversing blind back potentially into oncoming traffic.

The Highway Authority is also concerned at the risk that parking demand could be almost 30% higher than forecast by the applicant with variations of the land-use mix, despite the applicant agreeing to a condition to limit B2 use to 25%; as B2 typically has higher car trip generation during the peak periods compared to others. Should overflow parking be required, there is a real risk that cars will park along the new private access road and further reduce the already narrow road increasing the likelihood of disruption and incidents on Nicholson Road as vehicles cannot enter in unobstructed. Parking enforcement of the private access road would not be a matter within the control of the Council and even with a planning condition to require clear access, would need ongoing monitoring.

WSP have provided a worse case parking requirements assessment. Whilst this assessment is noted, if each use class was restricted to a maximum of 25% of the floor area this would result in a maximum floor space of 511m<sup>2</sup> for each use. This would result in a parking requirement for Class B2 of 15 spaces, Class B8 of 3 spaces, Class E(g)(ii) of 17 spaces and Class E(g)(iii) of 17 spaces. This results in a total requirement of 52 spaces (if the requirement for B8 is rounded up to 3) with 7 disabled spaces. The parking supply detailed is therefore sufficient in terms of numbers when

compared to Appendix F and assuming a planning condition is added restricting the uses to 25% each of the total floor area.

The comments from WSP conclude that the applicant has provided updated information including plans showing a new access for pedestrians via steps rather than level access and a loading bay that will obstruct users of the site. They have also sought to justify the poor and cramped parking layout and access that deviates significantly from the expected safe minimum standards set out in the mandatory Highway Design Guidance, April 2025, by arguing measures to facilitate safe, active travel and inclusive access are not necessary given their anticipated numbers at the proposal. Poor access and parking layouts can never be justified, and it is the duty of the Highway Authority to ensure that developments are fit for purpose so as not to lead to any issues off-site upon the public highway as well as to be mindful of poor safety within sites that impacts ability to service the site. The Highway Authority do not agree with the traffic impact assessment and believe traffic levels and types may be higher than forecast impacting on existing users of Nicholson Road. Further, the parking demand is expected to be higher than predicted which could lead to overflow parking blocking the already below standard private access road. With that road not meeting minimum design standards and therefore not being adopted, maintenance and parking enforcement will be onerous for the Council to manage in the interests of public safety. Where improvements are considered, namely a pedestrian improvement in the form of steps, it is a compromise both in terms of safety and inclusivity. Given the above major concerns especially concerning traffic impact, access, parking, and access together with insufficient information to agree the impacts of the proposal upon the surrounding highway and detail of the scheme, the Highway Authority objects to the proposal which is contrary to Policies TA1, TA2, and TA3.

The applicant has stated that the inclusion of a footpath along the access road would render the scheme unviable due to the associated costs from retaining structures and works to widen the existing road as it joins Nicholson Road. The application submission has not demonstrated that all options for a suitable proposal have been explored, starting from the basis of achieving inclusive access for the site. It is from this point that the built elements of the design which add value (the units) should be considered. Insufficient information has been presented to satisfy Officers that the design process has evolved on that basis. The viability information provided to justify the lack of a safe access is noted although this information is very high level and does not suitably justify how the figures have been derived. It also appears to show that the scheme presented at present falls far below expected viability /profit margins.

Irrespective of if it was agreed that the addition of a footpath link would render the scheme unviable, the design of the site renders it inaccessible and therefore conflicts with the NPPF (paragraph 115) and the Torbay Local Plan. The NPPF is clear that when considering development proposals 'it should be ensured that safe and accessible access to the site can be achieved for all users.' This is considered to be

a fundamental site acceptability matter and one which the applicant has noted cannot be achieved due to viability.

Overall the proposal is contrary to Policies TA1, TA2 and TA3 of the Local Plan, and Paragraph 115 of the NPPF.

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. The Council's Waste Officer has confirmed no objection noting that the waste and recycling from industrial units is classified as commercial waste and the owner(s) will need to use a private commercial waste contractor, not the domestic collections. An appropriate waste and recycling management plan can be secured by condition.

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

Policy NC1 of the Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. Policy TE5 of The Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Guidance within the NPPF (paragraph 187) provides similar guidance to the above in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity.

The DCC Ecologist has reviewed the application and has noted that given the size and scale of the proposals, there are no potential pollution pathways between the application site and any non-statutory designated sites. The habitats on site comprise of other neutral grassland and mixed scrub, with a woodland belt to the south of the site. A Construction Exclusion Zone (CEZ) will be set up along the woodland habitats, at a minimum distance of 2m from the edge of the habitat and this should be secured via a Construction Environmental Management Plan (CEMP) condition. No ancient or veteran trees are found on site and no trees or buildings within the redline boundary provide features for roosting bats. Scrub onsite provides suitable habitat for nesting birds and any removal works should take place outside of bird nesting season which should be secured by condition. No mammals, or evidence of mammal activity (including badgers) was noted during the survey however a repeat survey for the presence of badgers is recommended to be secured by condition.

The DCC Ecologist notes that the consultant ecologist deems that the site offers some features suitable for commuting and foraging bats. Potential impacts of the development would be associated with lighting during both the construction and operational phases on habitats to the west of the development area. The ecology report states that 'Further bat surveys, following best practise guidance, should be undertaken prior to commencement of development to ensure that proposed mitigation is appropriate'. The ecology report states that a 'External Lighting Statement' has been supplied to the LPA, but this is not available. Furthermore, any dark corridors for bats need to be shown on a plan which can be approved as part of this outline application. Currently the location and width of the required dark corridors for bats is unknown and this information needs to be provided prior to determination of this outline application.

As a further matter in England Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021). This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application the site is BNG liable and therefore not exempt. The DCC Ecologist has noted that the habitat survey was undertaken in November 2023. This is outside the optimum survey season for grassland habitats. Therefore, the validity of the habitat survey and habitat conditions must be robustly justified by the consultant ecologist. If robust justification cannot be provided, then a habitat survey during the survey season will need to be carried out. Furthermore, the condition assessment sheets have not been submitted so therefore it is unclear how the onsite habitats were deemed to be the condition stated. The condition assessment sheets for the onsite habitats need to be submitted so the metric can be assessed thoroughly. The proposal (albeit outline) shows an overall loss of habitat units therefore the provision of offsite habitat units is required. There is no requirement to agree terms with any BNG providers at this stage, but full details will need to be provided to the LPA prior to commencement of any groundworks.

Following these comments the applicant's ecologist provided a condition assessment, updated post development plan and written letter. The DCC Ecologist confirmed that they were happy to accept their justification for the lack of requirement for updated bat activity surveys, as well as their explanation around the BNG condition assessments of onsite habitats. However, it is noted from the plan submitted that the dark corridor is proposed outside the redline boundary to the east of the site, located within the woodland belt. It is believed that the functionality of this proposed dark corridor location requires justification, as bats utilise linear features for foraging and commuting and rarely travel through woodland, especially species such as lesser and greater horseshoe that were recorded onsite during the 2020 bat activity surveys. As per the 'Maintaining dark corridors through the landscape for bats' guidance document (Devon County Council, dated January 2022), for developments such as this one, dark corridors for bats should consist of 'an open grassy corridor maintained next to a natural linear feature such as a hedge, woodland edge, or vegetated watercourse' – this doesn't appear to be what is proposed for this application. Therefore, it is believed

that the functionality of the dark corridor for bats needs to be justified. If robust justification cannot be provided, then the position of the dark corridor for bats may need to be amended.

The constant ecologist subsequently confirmed:

*To the west of the site is an area of dense scrub (also under the control of the applicant) that runs inside of the woodland belt. This provides a continual green corridor running along the woodland edge, which creates a linear feature for commuting and foraging bats to use. There is currently no grassy route in or out of the site and any bats commuting or foraging through the site would have had to access over scrub from either the west or the north east. It should also be noted that in interpreting their 2020 bat surveys on the site, Richard Green Ecology stated that "Common pipistrelle bats accounted for least 91% (often 96% +) of bat calls/activity recorded over the site by both the transect and static bat detector survey, often associated with bats foraging around street lighting on Nicholson Road and Rivera Way". Common pipistrelle were also the only species recorded to the west of the site.*

The DCC Ecologist confirmed they were happy to agree with the information provided and they believe that the justification for the bat corridors is sufficient.

With the addition of the conditions recommended by the Ecologist, the proposal is considered to accord with Policy NC1 of the Local Plan, Policy TE5 of the Neighbourhood Plan and the guidance contained within the NPPF.

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

An area of mature woodland has the benefit of a Tree Protection Order (2016.006) and this lies along the southern boundary of the privately owned plot between the Riviera Way highway and the application site.

The Council's Senior Tree Officer has confirmed he has no objections to proposed development on arboricultural grounds. Soft landscape details should be secured by a planning condition/the reserved matters stage. The development proposal sets out the proposed layout and site sections which is critical to successful tree retention. Trees T7 – T10 are proposed for removal. These are low-quality and could be replaced through a soft landscaping plan secured by a planning condition if planning permission

is granted. H1 is proposed for removal to form the vehicle access. Scope for mitigating this loss elsewhere in the site could be realistically delivered by soft landscaping. The site sections show minor ground level increase in a small area of the fringe of W6 where car parking is proposed within tree root protection areas. This is represented within the Aspect Tree Consultancy (Aspect) Tree Protection Plan (Drawing 06183.TPP. 23.10.24). Given the modest level of incursion and potential for avoiding ground compaction through an Arboricultural Method Statement, there is no objection to this proposal provided ground protection details are secured for implementation by condition. A planning condition should be applied to secure the implementation of the Aspect - Tree Protection Plan (Drawing 06183.TPP. 23.10.24) and further detail on the arboricultural method statement should be secured to avoid or minimise risks to W6 where car parking is proposed in a small root protection area. Ground protection should be load bearing, porous and ensure protected soils remain at a favourable soil bulk density for root growth. Soft landscaping details should be secured by a planning condition/the reserved matters stage. The scheme should include structural tree planting to mitigate the loss of T7 – T10 on the north-west boundary. Further woodland scrub planting should be undertaken on the south-west boundary and lower elevations of the site bordering W6. Structural tree planting using specimen trees should be undertaken on the south-east boundary of the proposed car park to provide natural screening.

With the addition of the recommended conditions the proposal is considered to accord with Policy C4 of the Local Plan, and the guidance contained within the NPPF.

## **6. Impact on Flood Risk and Drainage**

Policy ER1 Flood Risk 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 sits in an area with a low risk (Flood Zone 1) of flooding, however it does sit within a Critical Drainage Area as designated by the Environment Agency.

The Council's Drainage Engineer has confirmed that the as infiltration testing has previously demonstrated that the use of infiltration drainage is not feasible for this site, 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 surface water sewer system. No details of the proposed discharge rate have been submitted. The Torbay Critical Drainage Area requirements identify any surface water discharge rate from the site to the surface water sewer must be limited to Greenfield run off rate from the proposed impermeable area of the development for the 1 in 10 year storm event with attenuation designed so as there is no risk of flooding to properties or increased risk of flooding to adjacent land for the critical 1 in 100 year storm event plus 50% for climate change and 10% increase in impermeable area to allow for urban creep. It should be noted that where the Greenfield run-off rate for the site is below 1.5l/sec we

would accept a discharge rate of 1.5l/sec. Details of how the discharge rate has been calculated must be submitted in support of the planning application. No details of the proposed surface water drainage have been submitted with the planning application. The developer must submit a drawing showing the proposed surface water drainage for the development which includes manhole cover levels, invert levels, pipe lengths, pipe diameters, pipe gradients and pipe numbering used within the hydraulic model. In addition, there a drawing is required identifying the impermeable area discharging to each pipe length. All of these details will be required to be included within the hydraulic modelling in order to confirm whether there is a risk of flooding to properties on the site or an increased risk of flooding to property or land adjacent to the site for the critical 1 in 100 year storm event plus 50% for climate change and 10% increase in impermeable area for urban creep. 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% increase in impermeable area 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% increase in impermeable area for urban creep. Based on the above comments, before planning permission can be granted the applicant must address the points identified above.

The applicant queried the requirement to provide full drainage details upfront and requested that this matter was dealt with by condition.

Policy ER1 states that a more detailed FRA will be required for proposals with a site area of 1 hectare or greater within Flood Zone 1, including where they impact on catchments draining into Flood Zones 2 and 3, and for all new development within Flood Zones 2 and 3. The Kingsland appeal [APP/X1165/W/22/3291368 regarding P/2019/0710] was a major outline application or more than 1 hectare where the inspector agreed that full drainage information was needed upfront. The inspector notes in paragraph 16 - *I am mindful of Paragraph 55 of the National Planning Policy Framework (the Framework), and the appellants' contention that a planning condition would address the Council's concerns. However, it is clear that because of Policy ER1 of the LP, the CDA designation, the scale of development and the limited details available, I am unable to be confident that a planning condition would be effective in making the development acceptable in terms of flood risk.*

Torbay Council's local validation list notes sites over 1 hectare in a separate category which is interpreted as needing a site specific FRA; there is no wording to suggest that major developments under 1 hectare that are only in the CDA designation need a site specific FRA. The template FRA on the Torbay Council website does not indicate that the tick box cannot be used for major developments.

It is therefore considered that there is clear reasoning for the requirement of full drainage details when the site is larger than 1 hectare as ER1 explicitly notes this size as does the local validation list. The inspector in the noted appeal confirms it is needed due to ER1, the CDA and the scale of development. In this case the only comparison is that the site is within the CDA, as it is not of the same scale (being less than 1 hectare) and not specifically covered by ER1.

This reasoning was communicated to the Drainage Engineer who confirmed that as Lead Local Flood Authority they have a statutory duty to comment on all major planning applications for surface water flooding/drainage. As a result, he has always expected the full drainage details to be submitted with the planning application for all majors. In this instance the developer has failed to do this hence the previous consultation response. Having reviewed the information provided and checking the NPPF and guidance documents, it is agreed that if the developer appealed a refusal on drainage grounds for this site, we may lose the appeal, as we cannot further justify the requirements for supplying the full drainage details over the fact that it is a major planning application. As a result, it is considered that on this occasion, it is acceptable to condition the surface water drainage requirements.

Should planning permission be granted, a planning condition can therefore be employed to secure details of the surface water drainage strategy.

## **7. Designing Out Crime**

Policy SS11 of the Local Plan states that part of the criteria development proposals will be assessed against includes whether the proposal helps to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The Police Designing-Out Crime Officer was consulted on the application and has made recommendations intended to ensure that the proposal would be adequately designed to prevent opportunities for crime and anti-social behaviour. Should planning permission be granted, a planning condition should be employed to secure a scheme of crime prevention measures. The proposal is considered to accord with Policy SS11 of the Local Plan, and TH2 of the Neighbourhood Plan.

## **8. Low Carbon Development and Energy**

Paragraph 166 of the NPPF states that Local Planning Authorities should expect new development to:

- a) Comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or



viable; and

b) Take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

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.

The application is supported by an energy statement and a completed sustainability checklist. The Council's Principal Climate Emergency Officer has confirmed that the applicant refers to a range of measures in the submitted Sustainability Checklist and Energy Statement that are to be explored and/or included in the design of the development. However, the applicant states that the detailed design/specification has not yet commenced and that development briefs will specify a range of low carbon and climate resilient measures including fabric improvements, air source heat pumps, solar PV on all roofs, SUDs, grey water harvesting, a travel plan, bike stores and EV charging points. They also commit to a BREEAM certification. This is all welcomed, but to ensure Policy SS14 and ES1 of the Torbay Local Plan are fully met, commitment and a clear account of what will actually be delivered on site is now required.

A condition is therefore recommended, requiring a more detailed energy statement be submitted at the reserved matter stage. The detailed statement will need to outline the specific measures/approaches that will be incorporated into the site to meet Policy SS14 and ES1 of the Torbay Local Plan. Drawing out specifically how the development:

1. Conserves energy by reducing energy demand. This includes the use of landscaping to optimise solar gain, ventilation and cooling;
2. Uses energy efficiently within the fabric of the building;
3. Uses on-site or near-site renewable technologies to achieve further reductions in

carbon emissions; and

4. How a sustainability approach will be adopted and has influenced the choices of materials and constructions techniques to help create a sustainable development and reduce environmental impacts including carbon emissions.

5. How BREEAM certification will be achieved

6. Other - details on the proposed SUDs, grey water harvesting (to demonstrate resilience to a changing climate), travel plan and EV charging points

With the addition of this recommended condition 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**

The economic benefits of the proposal from direct and indirect jobs and spending are significant. There is a very pressing need to improve economic performance, which is key to reducing income and employment deprivation in Torbay. It will help to deliver the Torbay Economic Growth Strategy. The application is supported by an Economic Benefits Summary Statement, which draws on the evidence base for the Economic Growth Strategy. The new Economic Development Needs Assessment (EDNA) is currently under preparation, but the draft EDNA indicates a likely need for at least 14 ha of Class E(g) and B2 land by 2040. There is a shortage of well-accessed employment land with good transport connections, and a risk that employers will relocate out of Torbay if sufficient space cannot be provided.

In terms of the economic element of sustainable development, the balance is considered to be substantially positive and carries significant weight.

### **The Social Role**

The proposal fails to provide a well-designed and accessible place given the fundamental highway concerns.

The failure to provide a safe and accessible site for all users and the subsequent concerns relating to highway safety weighs significantly against the development.

### **The Environmental Role**

With respect to the environmental role of sustainable development, the development would result in the development of a local green space. Very special circumstances have not been demonstrated and this weighs significantly 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 Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

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

### **Local Financial Contributions**

#### **S106:**

Not applicable.

#### **CIL:**

The CIL liability for this development is Nil.

### **EIA/HRA**

#### **EIA:**

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

#### **HRA:**

There is no requirement for a HRA in this instance.

### **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 TA1, TA2 and TA3 of the Local Plan, and Policy TE2 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.

In terms of benefits, the proposal would result in significant economic benefits from direct and indirect jobs and spending. There is a very pressing need to improve economic performance, which is key to reducing income and employment deprivation in Torbay. It will help to deliver the Torbay Economic Growth Strategy. In terms of the economic element of sustainable development, the balance is considered to be substantially positive and this carries significant weight.

The design of the site and the lack of accessible footpath renders the site inaccessible and therefore conflicts with the NPPF (paragraph 115) and the Torbay Local Plan. The NPPF is clear that when considering development proposals 'it should be ensured that safe and accessible access to the site can be achieved for all users.' This is considered to be a fundamental site acceptability matter and one which the applicant has noted cannot be achieved due to viability. The proposal also fails to demonstrate an acceptable impact on the local highway network; whether the proposed development would achieve appropriate on-site manoeuvrability and space for vehicle movements; and whether the proposed development would achieve a safe and suitable access from the site onto Nicholson Road and with the County Court. This weighs significantly against the development.

Paragraph 108 of the NPPF states that "policies for managing development within a Local Green Space should be consistent with national policy for Green Belts". Footnote 45 clarifies that this excludes the provisions relating to grey belt and previously developed land. Paragraph 153 of the NPPF states "When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt, including harm to its openness. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations". Paragraph 154 of the NPPF states that development in the Green Belt is inappropriate unless one of the listed exceptions applies. The proposal does not fall within any of the listed exceptions. The proposal is contrary to Policy TE2 and paragraphs within the NPPF relating to local green space and green belt land. Whilst it has been put forward that Torbay has a very pressing need to identify additional employment land and that the agglomeration advantages around Nicholson Road and Torbay's pressing needs to improve the employment prospects in the area would result in a very special circumstance, as identified in the highway safety section of this report, the design of the site renders it inaccessible in addition to raising other highway safety concerns and the proposal therefore conflicts with paragraph 115 of the NPPF and the Torbay Local Plan Policies TA1, TA2, SC1 and SS11. The NPPF is clear that when considering development proposals that 'it should be ensured that safe and suitable access to the site can be achieved for all users.' This is a fundamental site acceptability matter which is not met and this results in other harm from the

development. Paragraph 153 of the NPPF is clear that 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. Given the level of harm caused from the proposal from the lack of safe and suitable access for all, the threshold of very special circumstances is not met and the proposal therefore conflicts with the NPPF.

The presumption in favour of sustainable development has been considered in this recommendation. Paragraph 11 of the NPPF states that for decision-taking:

- 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 strong reason for refusing the development proposed; 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, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

The identified harm to the local green space provides a strong reason for refusing the proposed development. Whilst there are significant economic advantages to the proposal, the harm to the local green space and the failure to provide a safe and accessible site for all users in addition to the other highways safety concerns noted means that 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**

In reaching a planning balance view, it is recognised that the Presumption in Favour of Sustainable Development at Paragraph 11 of the NPPF, as revised in December 2024 must be applied. Substantial weight has been given to the delivering of commercial development and the associated benefits.

However, based on the consideration of matters detailed within this report, it is concluded that the proposal would fail to demonstrate very special circumstances required to justify development of a local green space and the proposal presented would constitute inappropriate development. The proposal would also result in a failure to provide a safe and accessible site for all users and raises highway safety concerns.

It is concluded that the public benefits of the proposal do not outweigh the adverse impacts that would result to the local green space. This matter is considered to constitute a “strong reason” to refuse the application under Paragraph 11(d)(i) of the Framework.

It is further assessed that the failure to provide a safe and accessible site for all users and the highway safety concerns raised conflict with particular policies of the Framework that Paragraph 11(d)(ii) directs decision makers to have particular regard to when assessing whether adverse impacts of development would significantly and demonstrably outweigh the benefits.

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 site is located within a designated local green space and the proposal will result in the development of the site and the loss of the open space, fundamentally changing the character of the site. The proposal does not constitute very special circumstances and is inappropriate development. The proposal is therefore contrary to Policy TE2 of the Torquay Neighbourhood Plan and the guidance within the NPPF relating to impacts on local green space and proposals affecting green belt, notably chapters 8 and 13.
2. The design of the site and the lack of accessible footpath renders the site inaccessible and therefore fails to provide a safe and accessible access to the site for all users. The proposal also fails to demonstrate an acceptable impact on the local highway network; whether the proposed development would achieve appropriate on-site manoeuvrability, space for vehicle movements and parking; and whether the proposed development would achieve a safe and suitable access from the site onto Nicholson Road and with the County Court. The proposal is therefore contrary to Policies TA1 and TA2 of the Local Plan and paragraph 115 of the NPPF.

### **Informative(s)**

01. In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and creative way, however, it is considered that the concerns raised cannot be overcome in this case.

## **Relevant Development Plan Policies**

### **Torbay Local Plan Policies**

C4 – Trees, Hedgerows and Natural Landscape Features  
C5 – Urban Landscape Protection Areas  
DE1 – Design  
DE3 – Development Amenity  
ER1 – Flood Risk  
ER3 - Contamination  
NC1 – Biodiversity and Geodiversity  
SS1 – Growth Strategy for a Prosperous Torbay  
SS4 – The Economy and Employment  
SS5 – Employment Space  
SS3 – Presumption in Favour of Sustainable Development  
SS11 – Sustainable Communities  
SS14 – Low Carbon Development and Adaptation to Climate Change  
TA1 – Transport and Accessibility  
TA2 – Development Access  
TA3 – Parking Requirements  
SC1 – Healthy Bay  
W1 – Waste Hierarchy  
ES1 - Energy

### **Torquay Neighbourhood Plan Policies**

TE2 – Local Green Spaces  
TE5 – Protected Species, Habitats and Biodiversity  
TH2 – Designing Out Crime  
TH8 – Established Architecture  
TJ1 - Employment