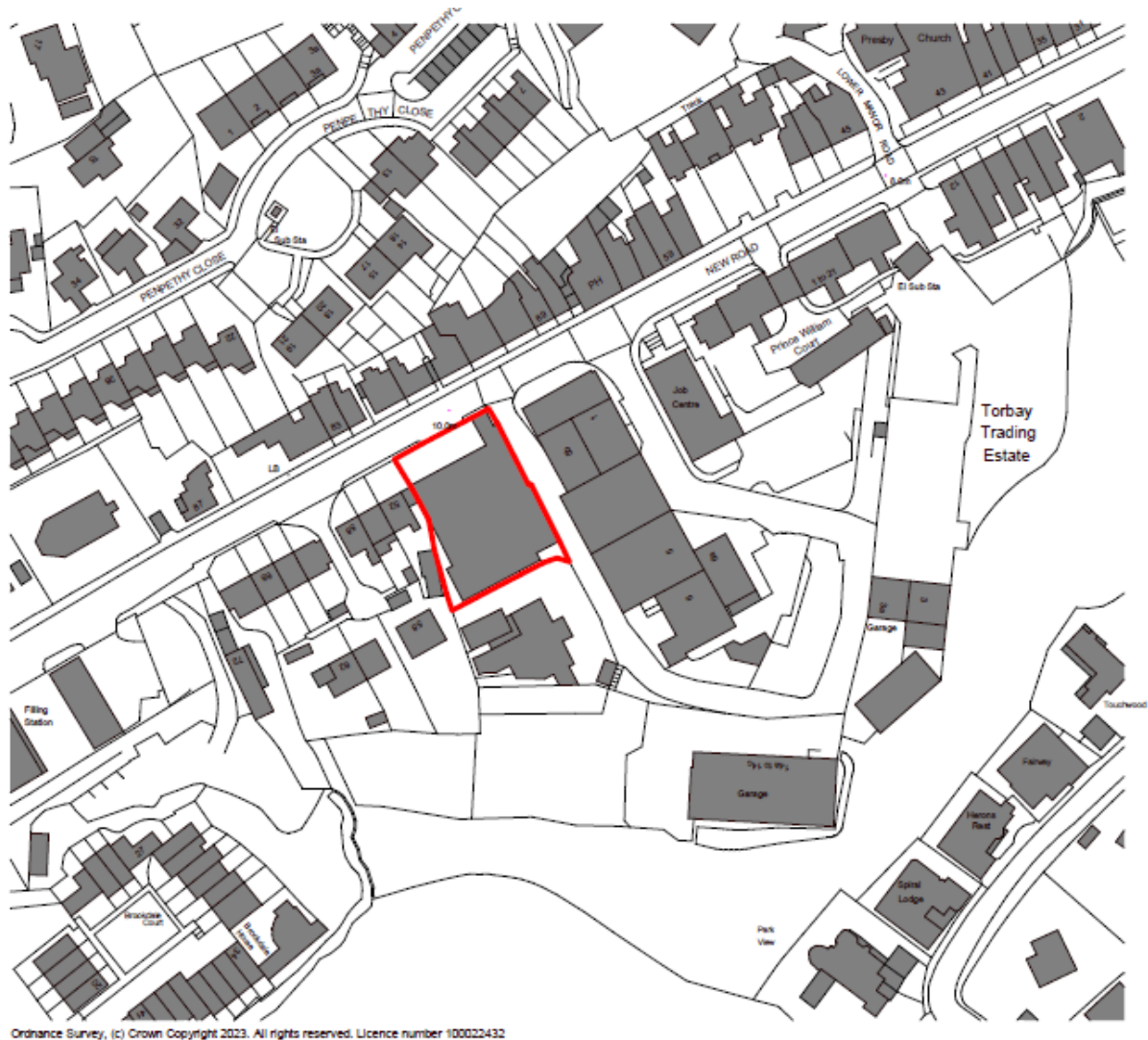


TORBAY COUNCIL

| | |
|---|---|
| Application Site Address | Unit 12 - 12A Torbay Trading Estate New Road Brixham TQ5 8NF |
| Proposal | Redevelopment of the former Jewson site consisting of demolition of existing commercial building and construction of four and five storey residential building comprising 23no. two-bedroom flats. |
| Application Number | P/2025/0760 |
| Applicant | McCarthy Contracting & Development Ltd |
| Agent | Kay Elliott |
| Date Application Valid | 15/01/2026 |
| Decision Due date | 16/04/2026 |
| Extension of Time Date | 01/05/2026 |
| Recommendation | <p>Approval: Subject to;</p> <p>The planning conditions as outlined below with the final drafting of planning conditions delegated to the Divisional Director of Place Strategy;</p> <p>The completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.</p> <p>If Members of Planning Committee are minded to refuse the application against officer recommendation, final drafting of the reason(s) will be delegated to the Divisional Director of Place Strategy and in consultation with the chairperson.</p> |
| Reason for Referral to Planning Committee | The application has been referred to Planning Committee due to it being of a major nature. |
| Planning Case Officer | Emily Elliott |

Location Plan:



Site Details

The site, Unit 12-12A, Torbay Trading Estate, New Road, Brixham, comprises of a parcel of land that contains a large industrial unit on the southern flank of New Road, Brixham. The site comprises a site area of 963 square metres.

The site is currently occupied by a tenant operating the existing buildings as a single unit as a car garage. The site forms part of a former large paint manufacturing facility. The existing building has been extended and adapted over the years which detracts from its original art deco style façade. The existing building is considered to be in a relatively poor condition. The western flank has a large dominating wall to separate the frontages of the application site from the adjacent residential use.

The site is allocated under Policy BH3 of the Brixham Peninsula Neighbourhood Plan as a housing site for 20no. affordable units (Former Jewson) not open market units.

The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshoe Bat colony at Berry Head). The site is partially designated as Flood Zone 3 and the remainder of the application site is designated as Flood Zone 1 and within a Critical Drainage Area. The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The application site is located approximately 300 metres to the west of the designated Brixham Town Centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site.

Description of Development

The proposal seeks permission for the redevelopment of the former Jewson site consisting of demolition of the existing commercial buildings and the erection of new four to five storey residential building to comprise 23no. two-bedroom flats, together with access, landscaping and associated works at Unit 12-12A Torbay Trading Estate, New Road, Brixham. The vehicular access would be from the southern side of New Road and 12no. unallocated parking spaces are proposed.

The proposed development is four to five storeys in height. The proposed building would have an approximate height at the highest point of 16.4 metres (excluding the lift overrun), an approximate width of 22 metres, and an approximate depth of 27.6 metres (excluding balconies). The proposed design incorporates a flat roof and the built form of the frontage (north elevation) is stepped back.

The proposed material palette includes a stone clad plinth to the ground floor and partially to the first floor, a white rendered finish to the first, second and third floors, and hung slate cladding to parts of the elevations. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

Relevant Planning History

P/2024/0311: Redevelopment of the former Jewson site consisting of demolition of existing commercial building and erection of new three and four storey residential building to comprise 17 two-bedroom flats. Permission with legal agreement 01/08/2025.

Relevant Planning Policy Context

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on

local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise. The following development plan policies and material considerations are relevant to this application:

Development Plan

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

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- Published Standing Advice; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Summary of Representations

The application was publicised through a site notice, newspaper advert and neighbour notification letters. At the time of writing approximately 28 letters of objection and 3 letters of representation have been received. The following provides a summary of the main issues identified:

Objections include:

- Drainage
- Loss of light
- Overshadowing
- Noise
- Privacy/overlooking
- Sets precedent
- Residential amenity
- It removes an eyesore
- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Traffic and access
- Overbearing
- Utility infrastructure
- Highway safety
- Trees and wildlife

- Pollution/contamination
- Odour
- Party wall matters
- Density
- Agent of change
- Party wall agreement (not a material planning consideration)

Comments include:

- Pest control (not a material planning consideration)

Summary of Consultation Responses

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

Brixham Town Council:

Response dated 12/02/2026

The Council objects to the proposal on the grounds of over-massing, which is considered disproportionate to the size and context of the site.

It is considered that the scale, bulk and siting of the development would result in harm to neighbouring residential amenity through loss of privacy, loss of light and an overbearing impact. Furthermore, the proposed development would appear out of keeping with the prevailing character and appearance of the street scene.

Torbay Council's Principal Climate Emergency Officer:

Response dated 12/02/2026

I have the following comments to make:

- In May 2024, a Sustainability Checklist and Low Zero Carbon Study was submitted to support the previous application for this site (P/2024/0311). My previous comments do not appear to have been taken into full consideration. No updated documents have been submitted for this latest application.
- As previously outlined, upon review of the submitted Sustainability Checklist there is reference to a low carbon fabric approach to be taken to inform external materials and construction methods (3b of the checklist). However, The Low Zero Carbon Study submitted is only a review of low carbon options and recommendations to the applicant.

- The Low Zero Carbon Study submitted is also not a commitment from the applicant to adopt a low carbon approach and install low carbon measures. It is just a list of recommended measures. It recommends net zero solutions, but their installation is not confirmed by the applicant. A revised net zero and energy statement must include what final fabric first measures will be installed and confirm, with details, that PV and ASHP with heat network will be installed (as per the original recommendations from the report).
- A revised net zero and energy statement should also:
 - Clearly demonstrate how taking a low carbon approach has influenced the design strategy for the development proposed.
 - Be clear on how low-carbon design will be achieved, what will be installed/integrated 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 (in sequential order):
 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.
- Policy SS14 also states that buildings should be re-used where possible to save embodied carbon and energy otherwise lost through demolition. It is stated that it is not viable to reuse the existing building by the applicant, therefore, this further supports the need for this application to clearly demonstrate how a low carbon approach will be incorporated into the new development's design.

Reason: To meet policies ES1 and SS14 of the Torbay Local Plan, and Policy BH7 Sustainable Construction of the Brixham peninsula Neighbourhood Plan.

Torbay Council's Senior Environmental Health Officer:

Response dated 20/01/2026

Noise - This application includes a noise impact assessment which concludes that a good standard of acoustic amenity can be achieved for future residents in line with BS 8233 provided windows are acoustically insulated to achieve an Rw+Ctr noise reduction of 35dB. However, mechanical ventilation will be required in order to achieve this.

As such, should this application be approved, we would recommend the following condition is included in any consent:

Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.

Reason: To protect the amenity of the occupants of the development.

Ground Contamination - With respect to contaminated land a ground gas report is included with the new application which concludes that methane and CO2 ingress should not be an issue, and only protection against radon is required. However, there is no further detail provided concerning contaminated land, or information to demonstrate that the risk of pollution and/or harm is acceptable.

There are three potential strands to this objection. These are that:

1. The level of risk posed by this proposal is unacceptable due to the sites former use as a former Jewson's timber/builders merchant.
2. The application fails to provide assurance that the risks of pollution are understood, as a preliminary risk assessment (including an adequate] desk study, conceptual model and initial assessment of risk) has not been provided. Planning Policy Guidance takes a precautionary approach. It requires a proper assessment whenever there might be a risk, not only where the risk is known.
3. Under the NPPF and Planning Policy Guidance, the application should not be determined until information is provided to the satisfaction of the Local Planning Authority that the risk of pollution and/or harm has been fully understood and can be addressed through appropriate measures. This is not currently the case.

Reason: There is a potential for contamination to be present at the site as it is a former Jewsons timber/builders merchants, but no adequate preliminary risk assessment has been submitted with the application. The risk is considered unacceptable because there is no evidence to indicate otherwise. The potential for contamination may be suspected on the basis of past and/or current use or experience of contamination issues at similar types of sites.

Recommendation: As such, we would recommend that should this application be approved then the following condition be included:

No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a scheme which has previously been submitted to and approved in writing by the Local Planning Authority.

The results of the site investigation shall be submitted to and approved by the Local Planning Authority before any development begins. If contamination posing unacceptable risks is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved use shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

If, during the course of development, contamination posing unacceptable risks is found, which has not been identified in the site investigation, additional measures for the remediation of this shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

Torbay Council's Principal Policy and Project Planner:

Response dated 11/03/2026

I refer to the above application for 23 two bedroom flats at 12-12a Torbay Trading Estate aka the former Jewsons store. The site has permission for 17 units granted under P/2024/0311. The site is allocated for 20 affordable homes in Policy BH3 (H3 I8 and footnote 18) of the Brixham Peninsula Neighbourhood Plan. I set out the case for increasing the density of development in my comments of 6th June 2024 to the former application. The increase in 6 units will make a moderate but valuable contribution towards meeting Brixham's housing needs on a brownfield site within the settlement boundary.

Brixham has a very pressing need to boost housing numbers and no opportunity for urban expansion on land that is not AONB (National Landscape) and/or Greater Horseshoe Bat sustenance zone. Achieving the highest number of dwellings possible on brownfield sites should be given the highest priority in order to minimise the need to develop land subject to NPPF Footnote 7 constraints. I appreciate that the proposed 4 storey building will cause legitimate concern about bulk, massing and amenity issues, the prevailing character of the area and impact on the listed building opposite the site (no. 85 New Road). Brixham Town Council has quite reasonably raised such concerns, but is nevertheless the Neighbourhood Planning that prepared the BPNP. Supporting a lower density of development in this location will mean greater loss of land within the AONB – and I note that such proposals are also very contentious.

As such the application raises a wider strategic issue for Torbay, and Brixham in particular about how it meets its housing needs.

The application is CIL liable at £70 per sq m, as I understand that it is vacant. As such the council would not seek “sustainable development” s106 contributions. However, it is liable for 20% affordable housing as a minimum i.e. 4.6 units which should be provided on site where possible. If the Affordable Housing Manager agrees an offsite contribution, this would be 4.6 x £115,400. I would welcome a 100% affordable scheme in this location, particularly given the BPNP designation as affordable housing. It is important that Social Housing Exemption from CIL is sought prior to commencement of works.

A S106 contributions will be required as a site deliverability matter to mitigate recreational impact on the Berry Head SAC (calcareous grassland), currently at £135 per dwelling.

I note that it is proposed to discharge surface water into the exiting watercourse, and that Dave Stewart has raised no objections to this. In general, the council would seek to introduce sustainable drainage/water conservation measures on sites, but this may not be practical in this instance. The proposal does not have footway along New Road, but this issue was also present in the previous application. It is for Highways to identify any pedestrian safety measures they would seek through S278 agreement to offset any road safety matters – and these would be a site deliverability matter.

Torbay Council’s Affordable Housing Manager:

Response dated 20/03/2026

This application has been submitted on a former Brownfield site in Brixham. The current building is still in situ on New Road. The previous application P/2024/0311 was granted consent in August 2025. This application was deemed not to be viable to provide any Affordable Housing contributions on or off site. This new planning application was submitted for 23 units of housing which the applicant has stated remains unable to provide any Affordable Housing either on or off site due to viability issues.

Policy Position

This application offers 23 units of accommodation on a brownfield site. H2 of the adopted Local Plan policy states that on brownfield sites of 20+ dwellings, 20% should be of an affordable tenure. Therefore, this site should provide 4.6 units of Affordable Housing.

The applicant has stated that this proposal cannot provide any on or offsite Affordable Housing as it is not viable. However, Local Plan policy SS7 states that when seeking

planning obligations, regard will be given to the evidence of viability. The viability will be examined by an independent expert.

The applicants agreed to allow Miller Commercial to undertake an independent viability assessment of the site. The report has now been concluded, and the findings have been provided to the Council in a comprehensive report. This assessment has also concluded that the scheme is not viable to make any provision for Affordable Housing either on site or as an off-site payment to be used elsewhere within Torbay.

Housing Need

There are currently over 1700 households on the Devon Home Choice register in bands A – D in Torbay. The need is recognized, and whilst this development cannot provide any Affordable Housing through the planning process, the enabling team will continue to seek any other solutions that may include an opportunity for those on the housing register.

Conclusion

Unfortunately, this application will be unable to secure any Affordable Housing as a planning obligation on the grounds that it is not viable to meet this policy requirement of H2 of the Local Plan.

Torbay Council's Drainage Engineer:

Response dated 02/03/2026

I can confirm that providing the flood resistance and resilience measures identified within the site specific flood risk assessment are included within the construction of the development, and the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, I have no objections on drainage grounds to planning permission being granted for this development.

South West Water:

Response dated 25/02/2026

Asset Protection

Our records show a 1050mm Environment Agency surface water sewer is within the site.

The applicant will need to liaise with the EA regarding protections this pipe will require.

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable

(with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Discharge to surface water body

Having reviewed the applicant's current information as to proposed surface water disposal for this development, the method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy.

The applicant proposes to discharge to a nearby culvert as detailed in drawing AT2624 03 Rev A Oct 25.

Water Conservation

The applicant is strongly advised to consider maximising the use of water efficiency opportunities within the design of their proposals. The current average water use in the UK is approx. 142 litres/person/day [l/p/d] (Water UK, 2020), with the South West experiencing a higher-than-average consumption rate than the rest of England. With climate change progressing with trends set to add further stress upon available water resources, SWWL would support the LPA imposing a condition requiring the optional Building Regulations requirement (G2) of 110 l/p/d for the proposed residential development.

Clean Potable Water

South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

Foul Sewerage Services

South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services. For more information and to download the application form, please visit our website:

www.southwestwater.co.uk/building-and-development/services/pre-development-services

Informatives

South West Water response relates to surface water discharge to our network, where the discharge is from buildings and yards belonging to buildings. Where the applicant has highlighted that the surface water does not connect to South West Water network, we are not commenting on this as it is not our responsibility.

South West Water has no duty to accept land drainage runoff, flows from natural watercourses or groundwater to the public sewer system, and this is not permitted to discharge to the South West Water network. The applicant should make alternative arrangements to deal with this separately during the development and once the construction work is complete.

South West Water are not responsible for Highway Drainage and our comments do not relate to accepting any of these flows. The applicant should discuss and agree with the Highway Authority, where the highway water connects to.

If the applicant wishes to connect this development to the South West Water network, they should engage with us separately to see if we can accommodate this. No highway drainage will be permitted to be discharged to SWW foul or combined public sewer network either directly or indirectly.

If the applicant is looking to have their sewers adopted (surface and foul), they should design and construct the sewers to the current version of the Design and Construction Guidance. The process for doing this can be found on South West Water's website at [Adoption of new sewers | Building & Development | South West Water](#)

Environment Agency:

Response dated 03/02/2026

No objections to the proposed development subject to the inclusion of a condition on any permission granted. The suggested wording for this condition and the reason for this position is provided below.

Before you determine the application, your Authority will also need to be content that the flood risk Sequential Test has been satisfied unless (or until) a site-specific flood risk assessment demonstrates that no built development within the site boundary would be located on an area that would be at risk of flooding now and in the future, in accordance with paragraph 175 of the NPPF Dec 2024. As you will be aware, failure of the Sequential Test is sufficient justification to refuse a planning application.

Condition – Implementation of the Flood Risk Assessment

The development shall be carried out in accordance with the submitted flood risk assessment (ref. AT2624 issue P3 by AquaTech dated 27 Oct 2025) and the mitigation measures proposed in section 9 of the document. These mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the scheme's timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: To reduce the risk of flooding to the proposed development and future occupants.

Reason – Flood Risk

The site is located partially within flood zone 3 according to the indicative flood maps published by the Environment Agency. In broadest terms we concur with the findings of the submitted flood risk assessment (FRA) by Aquatech version P3 dated 27 Oct 2025. It is evident that New Road, and the proposed forecourt/and lower parts of the proposed car park would be in an area at 'high' risk of flooding from both fluvial and surface water.

We acknowledge that all accommodation, and the 'secondary pedestrian access off the adjacent Torbay Trading Estate access road to the rear of the building', (paragraph 8.1.4 of the FRA), would be elevated above flood levels. Your authority should be mindful in making your decision given that the hazard rating which the flooding poses within New Road and the forecourt/front part of the undercroft parking area would be likely constitute a 'Danger to all – including emergency services' when in consideration of Table 13.1 of R&D report GUIDANCE FOR NEW DEVELOPMENT FD2320/TR2' in a 1 in 100 year plus climate change scenario based upon the findings of the applicants flood risk assessment.

The duration of the peak of hazardous flooding is unlikely to exceed a few hours albeit this has not been expressly mentioned in the FRA. The onset of flooding is likely to be short given the steep partly urbanised nature of the catchment in question and this is alluded to in the FRA. These are material safety issues that your authority should take into consideration in determining the application. We would recommend that you consult with those within your authority with a remit for Emergency Planning.

We also recommend the following informative is provided to the applicant:

Informative

We note the presence of a culverted watercourse through the site, such being the Lupton Stream which is designated as an 'ordinary' watercourse. All parties should be aware that riparian ownership responsibilities will apply here for which the landowner is responsible. It is therefore in the interests of the applicant to ensure the development layout is such that it does not compromise the ability to carry out future repairs,

replacement works for which the landowner is responsible. We strongly advise the developer to engage with Torbay Council's Lead Local Flood Authority team regarding the presence of the culverted watercourse within the site boundary given they may be party to information of relevance to the planning application.

SWISCo's Senior Tree Officer:

Response dated 27/01/2026

No objection. The existing site is a commercial premises, the structures of which dominates the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity.

A tree survey (BS5837) has been undertaken relative to the proposal for this site. This identified trees which are unsuitable for retention based on their current condition.

The proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene.

Proposed planting should be taken forward in this area and further detail on the soil planting volumes and appropriate tree species should be secured by a planning condition including soft and hard landscape details. The use of structural soils and or bespoke tree planting pits may be required if trees are to be successfully integrated into the frontage of the property. Porous surfaces above tree pits may help with surface water management, and soil rooting volumes should be consistent with advice from the Tree Design Action Group / Green Blue Urban to ensure species suitability for the available space. Magnolia grandiflora 'Exmouth' merits consideration as a local specimen tree cultivar with flowering interest and an upright form.

Recommendation

The provision of two trees on the roadside frontage should be incorporated into the detailed hard and soft landscape design for the development. A planning condition should secure all the relevant information to enable new tree planting to be secured, established and to for the chosen trees to achieve their species potential at maturity.

Devon County Council's Ecologist:

Response dated 29/01/2026

South Hams Special Area of Conservation for Greater Horseshoe Bats

The Site falls within the South Hams SAC Sustenance zone for Greater Horseshoe Bats. However, the proposal would not impact upon a potential commuting route,

foraging habitat or cause increased illumination of these habitats due to the urban nature of the Site. HRA is therefore not required.

South Hams Special Area of Conservation Berry Head Recreational Zone

The HRA developed and agreed with Natural England for the Torbay Local Plan concluded that as long as the s106 contributions as described above are implemented as part of development in the Brixham Peninsula, development in this area will have no adverse effect upon the integrity of any of the European sites and the conservation objectives would be sustained.

Recreational Impacts on Berry Head: in order to mitigate the potential recreational impacts on the protected site the applicant needs to make the agreed payment, as per the Supplementary Planning Document on Recreational Impacts on Berry Head. HRA Conclusion - With this measure secured, there will be no adverse effect on the integrity of the SAC.

Financial contribution per dwelling, as per the Torbay Local Plan and supplementary planning document, to mitigate recreational impacts on the South Hams SAC – these contributions will be secured via a S.106 agreement.

Bat Roosts – Buildings/Trees

- The building had corrugated metal or asbestos roof material. This type of roofing is unsuitable for bats, due to its poor thermoregulation and lack of crevice features that bats could use.
- There was wooden soffits and lip-lap boarding on the third section. However, the boarding was single-skin and did not provide any crevice habitat. The soffit was quite open and attached to a metal structure, it was checked but it was considered to have negligible potential.
- The structure of the buildings were flimsy and made of pannels. The first structure was more substantial but made of concrete and breeze blocks. No crevice features were present that bats could use.
- There are areas of ivy growing on the exterior of the building but this did not cover any potential crevice spaces or provide any features that bats could use.
- The site is in a very built-up area with possible flight lines constrained by near-by buildings and a lack of vegetation present which bats could fly into.
- No signs of any bat use were discovered.
- The interior of all three sections were open, with windows (partially broken) skylights present. The internal joists were mostly metal and did not provide any crevice opportunities, as shown in photo 2.
- There was no attics or any other cavity spaces that bats could use.

- Most of the roof material was unlined except the area in section 3, shown photo 3. However, this was under metal roofing material, which would cause too much temperature fluctuations for bats. The boarding was also tight and no potential entry points could be seen.
- 2025 walkover – there is no change to the site since the 2023 survey. There were no potential crevice or cavity spaces that bats could use. The building was draughty with abundant light ingress.

The LPA concurs, the building has negligible potential for bat roosts.

There is negligible potential for bats using this building so the proposals do not have to consider the presence of bats.

In the unlikely event of bats being found using this structure or any other on the property by anyone before or during the proposed development works then those carrying out the works must stop immediately and contact an ecologist.

Informative: Bats and their roosts (resting/breeding places) are protected by law. In the event that a bat is discovered then works should cease and the advice of Natural England and/or a suitably qualified ecologist should be obtained. Works should not resume until their advice has been followed.

Nesting Birds/Schedule 1 Birds

The 2019 survey noted gulls on the roof of the lift building. These could not be seen in this position or anywhere else on the roof during this 2023 inspection. However, herring gulls were noted flying around and there was evidence of them sitting on a roof ridge as shown in photo 4 by the presence of their droppings. Therefore, gull breeding could not be ruled out at a different time.

Inside pigeons were roosting on the rafters. However, there was no evidence of nesting activity.

There is a small area of very young, colonised trees and bramble at the end of section 3, with dense ivy. Sparrows were flying in and out of this area indicating likely breeding. The area that the trees occupy is a gap between the building and the boundary wall, less than 0.5m wide.

The 2025 survey did not note any roosting or breeding by birds. This maybe because it was December. However, there was no change to the buildings structure so the 2019 and 2023 surveys are still valid. The dese ivy area was also colonised by bramble that was spreading across the roof of the building. This has increased the size of potential habitat to sparrows and other nesting birds. However as long as the mitigation is implemented in this report the threat to breeding birds will be removed.

The LPA concurs. The ivy and bramble growth on the roof in particular provides suitable habitat for nesting birds.

The vegetation at the rear and some of the western side of the building MUST be removed between September and February or in March, July or August following a check by an ecologist. It cannot be removed April to June as it is likely that birds will be breeding. The vegetation can be removed prior to demolition if it means its removal avoids the bird breeding season.

The building can be demolished between September and February with no ecological check or at other times if an ecologist has carried out a check and confirms that there are no birds breeding either in or on top of the building. If bird breeding is confirmed work must be delayed until all young are fledged.

LPA: The LPA notes as pigeon were observed roosting within the building, there is potential for nesting activity within the buildings as well as the ivy and bramble growth. As such a pre works check for nesting birds should be carried out before works begin to any potential nesting habitat if being carried out in the breeding season.

Informative: Nesting birds are protected by law. If any nesting birds are discovered using the areas to be affected, work should not proceed until breeding has finished and all fledglings have departed the nest.

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

Net Gain

The site is exempt from BNG under the de minimis exemption, this is a development that does not impact a priority habitat and impacts less than 25 square meters. As it is entirely on hardstanding, using an existing building's footprint it falls under this exemption.

This development is not subject to the statutory Biodiversity Gain Plan condition because it is exempt as under the de minimus exemption.

Due to the construction of the building integrated features are not possible so a similar woodcrete external bat box and an insect house such as must be fitted such as a single bees block

.

Additional to this to mitigate for the loss of sparrow breeding habitat climbers must be included on the walls of the new building. Due to the height of the building swift features must be included (sparrows are known to use these too) near the climbers at a minimum height of 5m. These must have at least 4 holes such as Swift Four Chamber Nest Box or four single holed bricks/nest boxes arranged together.

Agent/applicant/ecologist to confirm what further enhancements could be implemented.

Police Designing Out Crime Officer:

Response dated 30/01/2026

Having reviewed the documents submitted for the proposed development I support and welcome the addition of the detailed Crime Prevention Statement. I would respectfully ask that a condition is in place should planning be granted for the measures detailed within this document to be undertaken. My rationale for this request is in line with DE1 of the Torbay Local Plan and BH5 of the Brixham Peninsula Neighbourhood Plan.

It is noted that the bicycle storage within the undercroft parking is open; in order to reduce potential thefts, it would be beneficial to enclose this, if space allows and does not impact on the parking provisions. It would also be recommended that the bicycle storage system meets the requirements as detailed within the Secured By Design Residential Guide.

As detailed within the Crime Prevention Statement the use of Secured By Design products and practices, may result in the development achieving a Secured By Design award, should the applicant be seeking this I would request they make early contact with me, and I will be happy to assist and discuss the process.

WSP on behalf of the Local Highway Authority:

Response dated 03/02/2026

Trip Generation

The applicant has provided a Traffic Impact Assessment to assess the likely trip generation of the proposed site. The proposed trips have been predicted and derived from TRICS traffic generation against the extant use of the site as a builder's merchants. This is an acceptable methodology.

Table 5-3 of the Transport and Travel Plan Statement contains the estimated peak hour vehicular trips for the proposed site. The table shows that there will be 10 two-way movements between the peak hours of 08:00 – 09:00, and 10 two-way

movements between the peak hours of 15:00 – 16:00. In comparison to the existing use, this proposed site will generate one extra movement during 08:00-09:00 and one less movement between 15:00-16:00. Due to the number of extra trips generated and scale of the development, the Highway Authority are satisfied that the number of trips generated by the proposed development are likely to have a negligible impact on the surrounding local highway network.

Highway Safety

The Highway Authority have reviewed the Personal Injury Collisions (PIC) which shows that one collision occurred opposite the petrol station on New Road (August 2024, Slight) and a collision at the junction of New Road and Penpethy Close (November 2020, serious). Based on the existing collision history, there are no significant highway safety concerns near the proposed site.

Pedestrian and Cycle Access

Access to the site will remain as existing, via New Road. The applicant has proposed that a secondary pedestrian access will also be provided to the west, between the proposed site and the neighbouring property, as shown in the Proposed Site Plan (drawing no. 12001). The retained pedestrian access from New Road is proposed to have stairs whereas the secondary pedestrian access to the rear of the proposed site is a flat surface.

It is noted there are no dropped kerbs or tactile paving on the side road crossing adjacent to the site, and the footway immediately across the site is very narrow. This is contradictory to DfT's Inclusive Mobility Guide which states that a minimum width of 2m should be provided.

It is also noted that in response to P/2024/0311, the conclusion regarding the footway adjacent the site was that the applicant should demonstrate how the proposed layout will tie into the existing footway network. At present, it is not clear from Drawing 4959-KEA-ZZ-XX-DR-A-12001-A4-P5 how the site will connect to the footway on New Road.

Cycle Parking

The applicant has provided Proposed Internal Floor Plans (drawing no. 22010) which shows double stacked cycle storage with space for 24 cycles on the ground floor in the car park. The number of cycle stands is in line with Appendix F of the Torbay Local Plan. However, the Highway Authority are concerned that double stacked bike storage is unsuitable for cyclists who may have larger, heavier bikes. Cycle parking should be inclusive for all cycle types and users of all mobilities. Alternative cycle parking arrangements should be considered.

Public Transport Access

The nearest bus stops are located a 2-minute walk east of the proposed site on New Road. Both bus stops have bus stop markings and a flag and pole arrangement. Both bus stops service the 12 and 13, which provide access to Brixham Town Centre, Newton Abbot and Torbay Hospital. It is recommended that both bus stops have a Kassel Kerb arrangement, in line with DfT's Inclusive Mobility Guide, so as to allow level boarding for all users and mobility types.

Paignton Train Station is located approximately 5 miles north of the proposed site making it an unlikely travel choice.

Vehicular Access

It is understood that vehicular access to the site is to remain as existing via New Road as shown in the Proposed Floor Plans (drawing no 22010). The Transport and Travel Plan Statement states that landscaping on-site will ensure a visibility splay 2.4m back from the carriageway edge and 43m along the carriageway, with a vertical line drawn at 1.05m driver height is achievable as per the previous application. This is reasonable.

Car Parking

It is understood from the Proposed Internal Floor Plans (drawing no. 22010) that there will be 12 parking spaces on site (8 covered parking bays and 4 external parking bays at the site entrance). According to Appendix F of the Torbay Local Plan, there should be 1 car parking space per flat, with 20% of allocated parking spaces to have EV charging points. However, the applicant states that the site has good accessibility and therefore parking requirements can be reduced. The Highway Authority accept this approach, however to support this position, the applicant must ensure the site is safely accessible for all users. As mentioned previously, this would require - at minimum – ensuring site access ties in with the that the footway outside of site and that it is accessible for all users so as to encourage safe sustainable travel into Brixham and along New Road.

Due to the under provision of parking, the applicant should also detail how parking on-site is to be managed / allocated between residents to manage demand.

The applicant has stated provision of EV charging will be provided in accordance with Policy and Building Regulations. This must be demonstrated. Furthermore, it is understood that the applicant has not provided any disabled parking. In line with the Torbay Local Plan, the applicant must allocate 10% of car parking spaces to be dedicated and appropriately designed for disabled people.

Refuse / Servicing / Emergency Access

According to the Application Form and the Proposed Internal Floor Plans waste and plant material is to be stored in the ground floor car park, located to the south of the

parking area. The applicant states that refuse collection will be taken from the kerbside. This arrangement is suitable.

Based on the existing arrangement of the site, it appears that emergency vehicles can access the front of the property on New Road. However, it is recommended that the Planning Officer should consider whether a Fire Statement or strategy is required for access to the rear of the building.

Trees

The applicant has stated that U-category trees are to be removed, which are located to the rear of the site by the existing boundary wall. The applicant has stated that the lost trees are to be replaced with soft landscaping.

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.

Construction Traffic Management Plan

A Construction Traffic Management Plan will be required to ensure construction vehicles will not have a detrimental impact on the vicinity of the site and a condition will be required to provide adequate parking for construction vehicles on-site to prevent on-street conflict and impacts to the highway safety. A Construction Traffic Management Plan will be required for all phases of the construction, including demolition, excavation and construction of all elements of the building. A condition should be attached to any planning consent granted for these proposals setting out the requirement for a CTMP.

Conclusion

The application is similar to the previous submission at the site (P/2024/0311), proposing an increase to the number of dwellings previously submitted, and the pedestrian and vehicular access remains the same. Therefore, the Highway Authority's overall position remains as per the comments previously given to application P/2024/0311, and the Highway Authority does not wish to raise an objection subject to the recommended planning conditions.

Any sustainable travel obligations / CIL should be determined by the Planning Officer.

A Construction Traffic Management Plan which follows the standard Torbay Council wording must also be implemented to any granting of permission.

The recommended conditions are:

- Pedestrian Access: *Prior to commencement of the hereby approved application, notwithstanding the access design shown on Drawing No. 4959-KEA-ZZ-XX-DR-A-12001-A4-P5, a detailed design that demonstrates how the proposal ties in with the existing footway network must be submitted to the planning authority for approval.*
- Cycle Parking: *Prior to commencement of the hereby approved application, notwithstanding cycle parking design shown on submitted drawing no. 4959-KEA-ZZ-ZZ-DR-A-22010-A4-P7, a design that provides secure and practical cycle stands in line with the DfT's LTN1/20 cycle parking best standards must be submitted to the planning authority for approval. Once approved, the cycle parking design must be retained and maintained across the full lifetime of the site.*
- EV Parking: *Prior to commencement of the hereby approved application, detail of two EV charging points (including specification and location) must be submitted to the planning authority for approval.*
- Disabled Parking: *Prior to commencement of the hereby approved application, detail of one allocated disabled parking bay must be submitted to the planning authority for approval. This bay should be designed in accordance with the requirements of the Local Plan which stipulates Parking spaces for disabled persons should be a minimum of 4.8m by 3.6m.*

Torbay Council's Principal Historic Environment Officer:

No response received.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design, Visual Appearance and the Character of the Area
3. Impact on Designated and Non-Designated Heritage Assets
4. Impact on Residential Amenity
5. Impact on Highway Safety
6. Impact on Trees
7. Impact on Ecology and Biodiversity
8. Impact on Flood Risk and Drainage
9. Affordable Housing Contributions
10. Designing Out Crime
11. Low Carbon Development

1. Principle of Development

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

Employment

Policy SS5 of the Local Plan outlines that proposals for the loss of employment space will be considered on the basis of the impact on the economic prosperity of Torbay, the appropriate mix of uses within a locality and on amenity. Where there is no reasonable prospect of a site being used for other (non-Use Class B) employment purposes or such a use would conflict with the Local Plan, alternative uses that support sustainable local communities will be supported. Where the proposed loss of employment space is agreed, the Council will seek financial contributions to mitigate the loss of employment.

The proposal will result in the loss of an employment use, albeit small scale with a tenant operating the premises as a vehicle mechanics workshop. The adjacent Torbay Trading Estate will remain unaffected by the proposed development and will continue to operate. It is noted that the Neighbourhood Plan allocates a portion of the adjacent Trading Estate for housing (15no. units). As the application site is allocated for housing, albeit the proposal is for a larger quantum of housing than the allocation, the loss of employment is anticipated and therefore the proposal is considered to accord with Policy SS5 of the Local Plan.

Housing

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 20no. affordable units (Former Jewson). The building currently in this location has no constraints with regards to its retention and the principle of meeting the Neighbourhood Plan allocation is considered to be acceptable. The proposed development is for 23no. residential units in this location, which is above the policy allocation. The Council's Principal Policy and Project Planner has stated that the increase from the previous consent by 6no. units will make a moderate but valuable contribution towards meeting Brixham's housing needs on a brownfield site within the settlement boundary. Objectors have raised concerns regarding the density of the proposal.

Policy BH3 of the Neighbourhood Plan allocates residential development for the Neighbourhood Plan area, subject to proposals demonstrating that there is no likely

significant effect, either alone or in combination with other plans or projects on the integrity of European sites. As previously confirmed, the application site is an allocated residential development site, known as “H3-I8 Former Jewson”.

The Housing Site Assessment describes the application site as *“The detached industrial building fronts the main road and has forecourt car parking. The main section is of two-storey construction with two, single-storey bays to the rear. The site was previously used as the main Brixham branch of the national builder’s merchants Jewson until their relocation to purpose designed premises elsewhere in the town. The building has been re-let but its future is unclear”*.

In terms of the quantum of development, the Assessment states: *“There is a proposal as received in the Regulation 14 consultation from an experienced local affordable housing developer stating his interest in developing the site for 20 small affordable homes. This is a high site density. However, the specialist local knowledge of the developer is acknowledged as is the pressing need for affordable housing within the town. On this basis it is considered to allocate the site for 20 smaller affordable homes. The affordable housing need in the Bay has been outlined in Torbay Council’s Housing and Health Needs Assessment (November 2015) which states: “Affordable housing is an issue in Torbay with an undersupply of social housing and relatively expensive property prices. There is a large waiting list for social housing. There is a pressing need for affordable housing in Torbay to meet the needs of local people who are unable to afford open market house prices or rents.”*

The Assessment outlines the opportunities for the application site as *“The site provides a real opportunity for a number of affordable homes for the young people of the town located at a short distance from the town centre.”*

Policy BH4 of the Neighbourhood Plan outlines that subject to compliance with other policies in the Neighbourhood Plan, residential development on brownfield site in preference to greenfield sites will be encouraged and supported. Policy BH4 confirms that brownfield sites within defined settlement boundaries, as designated under Policy E2 of the Neighbourhood Plan, are the preferred locations for development. The application site is brownfield in nature.

The NPPF at Paragraph 124, promotes the effective use of land in meeting the need for homes and other uses, and also guides that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and promotes support for the development of under-utilised land and buildings, especially where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

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

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites.

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

There is a pressing need for homes in Torbay. The Government published the most recent Housing Delivery Test in December 2024. Torbay's result is 66%. The Council have recently reported that their housing land supply figure has decreased to 1.72 years through a recent planning appeal (ref: APP/X1165/W/24/3354507) and the Council's most recently published figure is 1.65 years supply. The Housing Delivery Test requires that the presumption in favour of sustainable development and a 20% buffer be applied as per Paragraph 11 of the NPPF.

It is relevant to appreciate that the Council cannot currently demonstrate a 3- or 5-year housing land supply and for decision making this means that the policies most important for determining applications for housing in the Local Plan are considered to be out of date.

Paragraph 11 of the NPPF states:

- 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 [Footnote 8], granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] 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 [Footnote 9].

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 194) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.

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

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Development Plan which are most important for determining the proposal are out-of-date. The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply.

As concluded within this report neither of the above positions are breached in order to signify the proposal should be refused. The provision of housing and the local housing supply context weighs heavily in favour of the grant of planning permission.

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

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed and beautiful places” offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 139 states that ‘development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design’. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan requires that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. To achieve good design, an important part is to

respond to and integrate with local character and landscape context as well as the built environment. Policy BH5 reiterates the NPPF, that planning permission will be refused where poor design fails to take opportunities available for improving local character and quality of an area and the way it functions.

The application site comprises of an existing building which has been extended and adapted over the years which detracts from its original art deco style façade. There is an area of hardstanding and existing access from New Road, as well as a secondary access from the private road. The application site is allocated for residential development and there are no constraints to resist the demolition of the existing buildings onsite. The existing building has an approximate height of 10.8 metres, an approximate width of 24.4 metres without accounting for the large wall adjacent to the building and No.52 New Road, and an approximate depth of 29.3 metres excluding the wall.

The proposal seeks permission for the redevelopment of the former Jewson site consisting of the total demolition of the existing commercial buildings and the erection of a new four to five storey residential building to comprise 23no. two-bedroom flats. The vehicular access would retain the existing access from the southern side of New Road. The proposed building would have an approximate height at the highest point of 16.4 metres (excluding the lift overrun), an approximate width of 22 metres, and an approximate depth of 27.6 metres (excluding balconies). When considering the existing and proposed layouts, the existing built form has a larger footprint of the plot than the proposed built form. The main bulk of the proposed development, first floor and above, would maintain the building line of the nearby terraces Nos.52-70 New Road. The proposed building would be stepped back on the north elevation as it increases in height. Objectors have raised concerns that the proposal would set an unwanted precedent, constitute an overdevelopment, removes an eyesore, but would have a negative impact on the local area and would not be in keeping with the local area.

The proposed material palette includes a stone clad plinth to the ground floor and part of the first floor, a white rendered finish to the first, second and third floors, and hung slate cladding several areas of the elevations. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

The use of materials and stepping back as the built form gains height has assisted at breaking up the massing of the proposal. Given the constraints of the application site, namely that the application site is partially within Flood Zone 3. It should be considered that the allocation for residential development and the quantum of 20no. units within the Neighbourhood Plan, was likely to anticipate a built form of several storeys. There is a varied height of existing development in the nearby vicinity, Torbay Trading Estate lies to the east and south of the application site, and residential development lies to

the north and west of the application site. The residential development is mainly two storeys in height with some flatted development being three storeys. The adjacent industrial buildings increase in height as become further away from New Road, increasing the perceived massing of the buildings. Whilst New Road appears relatively flat, the topography to the south of New Road increases in height further to the south, which the other units of the Torbay Trading Estate fail to positively relate to.

The siting, scale and design of the development is considered acceptable given the context. The scale of the proposed building would be one storey greater than the extant planning permission (ref: P/2024/0311), however it is considered that the proposal will sit comfortably aside the existing Torbay Trading Estate that forms part of the immediate and broader visual context. The proposal positively and considerably breaks up the principal facade into a stone clad plinth at ground floor level, white render with recessed colour render panels at first, second and third floors, and hung slate cladding to the fourth floor. The proposed recessed colour render panels will reflect the site's history as a former paintworks. Planning conditions are recommended to secure details of the external materials and boundary treatments.

The use of recessed vertical panels creates a rhythm to the main facade and contrasting colours will add depth and animation. The proposed palette of materials takes note of the existing buildings on this part of the site, whilst providing a modern and contemporary feel. The design and detail are considered to harmonise well with the adjacent neighbouring uses.

The proposal is considered to maintain the character and qualities of the area and would be in keeping with the appearance of the locality. Given the proposed siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality. Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy DE1 of the Local Plan, Policies BH5 and BH6 of the Neighbourhood Plan, and the guidance contained within the NPPF.

3. Impact on Designated and Non-Designated Heritage Assets

It is incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 66(1)), to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, and (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

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

Paragraph 210 of the NPPF goes on to state that in determining applications, local planning authorities should take account of:

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

Paragraph 212 of the NPPF considers that *“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.

Paragraph 213 of the NPPF states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), requires clear and convincing justification.

Paragraph 215 of the NPPF outlines that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

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

The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092). The Council’s Principal Historic Environment Officer has previously verbally confirmed that the extant permission would have a neutral impact on the Brixham Town Conservation Area and the setting of the Grade II listed building. Given that the proposed development is for an additional storey but has the same design ethos, it is considered that the impact would be similar. Therefore, the proposed development is considered to accord with Policy SS10 of the Local Plan and Policy BE1 of the Neighbourhood Plan.

The above conclusion has consideration of Paragraph 212 of the NPPF which identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

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

4. Impact on Residential Amenity

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

Internal Living Space

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 135 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

Policy DE3 of the Local Plan sets out the minimum floor space standards for new dwellings and apartments. The proposed 23no. two-bedroom residential units all comply with the nationally described space standards.

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

The application site is adjacent to the remainder of the Torbay Trading Estate. Paragraph 200 of the NPPF outlines that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. The NPPF states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after

they were established, therefore where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed. Objectors have raised concerns regarding the agent of change and odour.

Having undertaken a review of the planning history relating to the Torbay Trading Estate, it can be confirmed that such units were given permission as the former B1 use class, which is now use class E(g)(iii). The definition of use class E(g)(iii) is for an industrial process which can be carried out in any residential area without causing detriment to the amenity of the area. It should be noted that there are many uses within Brixham that alongside residential development and the existing Torbay Trading Estate including the application site is adjacent to residential development. Also, the application site is allocated for residential development where amenity and 'agent of change' issues would have been taken into account prior to the allocation. The Council's Senior Environmental Health Officer has been consulted on the application, the application was supported by a Noise Impact Assessment which demonstrates that the levels of environmental noise affecting this site would require mitigation in order to achieve suitable internal and external noise levels, a planning condition is recommended to secure an Acoustic, Insulation and Ventilation Plan. The Officer previously recommended, in relation to the extant permission, that a planning condition is employed in relation to plant, such is also relevant should planning permission be granted for this application.

External Amenity Space

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

The proposed layout demonstrates that several apartments include balconies and terraces. There would be no outdoor amenity space for some of the future occupiers. However, the site is within close proximity to public open spaces, which mitigates this deficit and it is appreciated that town centre living, albeit the application site is not in the town centre but in very close proximity, often comes without the ability to deliver outdoor space due to the natural constraints of its location. Therefore, it is considered that the proposal broadly accords with Policy DE3 of the Local Plan.

Neighbour Amenity

Objectors have raised concerns regarding loss of light, overshadowing, overbearing, noise and privacy/overlooking. The application site is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site. The proposed development will be in close proximity to No.52 New Road and No.58 New Road. The existing building adjoins No.52 New Road and is higher than No.52's adjoining neighbour. The proposal will separate the proposed built form from No.52 New Road by approximately 2.3 metres.

The proposal would be approximately 11.5 metres from No.58 New Road. It is noted that No.58 New Road sits behind the terrace of Nos.52-56 New Road and is at a higher level given the topography.

In terms of the finished development, the residential use aligns with the residential uses nearby and the proposed use would not result in undue noise or general disturbance. The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction/Demolition Management Plan, which is recommended as a planning condition. Subject to the recommended planning condition, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of noise.

With regards to privacy and overlooking, there are several kitchen windows (Flats 2, 8, 12, 14, 18 and 23) that have the ability to overlook or have intervisibility issues with adjacent neighbours, so a planning condition is recommended to ensure such windows are obscurely glazed, this is considered acceptable given that the kitchens are not considered habitable rooms as they do not offer seating. The proposal also includes projecting balconies which will provide future occupiers with an amount of outdoor amenity space, however given the position of the application site and proximity to neighbours, it is considered necessary to secure privacy screens on several balconies to maintain an acceptable level of privacy for both future and neighbouring occupiers. Furthermore, the proposal included elements of outdoor amenity spaces for Flats 7, 13 and 19, however similar to the previously consented scheme, concerns are raised regarding the potential for overlooking into adjacent existing neighbours. Therefore, a parapet to the roof edge has been introduced to reduce visibility and well as recommending a planning condition to prevent use of the balconies except for cleaning and maintenance purposes. Subject to the recommended planning conditions, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of privacy/overlooking.

In terms of loss of light, the application has been supported by a sun path analysis to show the summer and winter solstices in relation to the existing building and the proposed building. The existing building overshadows No.52 New Road in the morning summer solstice, in terms of their outdoor amenity space and their southern elevation. In terms of the summer solstice, the proposal would increase the level of overshadowing in the morning to both Nos.52 & 54 and late afternoon to No.52. It is noted that given the existing built form, Nos.52-56 New Road has overshadowing to their frontages in the summer mornings and the proposal would increase such but it is considered to not have a detrimental impact on their access to natural light. In terms of the winter solstice, the proposal would result in a very minor increase of overshadowing than the existing situation to adjacent neighbours.

Several planning conditions are recommended to protect the amenity of adjacent neighbours, including obscure glazing, privacy screens and restrictions to flat roof areas to prevent intervisibility/overlooking. Subject to the aforementioned planning conditions, given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, or access to natural light, and therefore the proposal is considered to accord with Policy DE3 of the Local Plan.

5. Impact on Highway Safety

Paragraph 115 of the NPPF guides that in assessing specific applications for development 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.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The application site is located on the southern side of New Road (A3022), which is an adopted public highway and a classified road. New Road is the main arterial route into Brixham. New Road is a single carriageway, two-way road that connects Brixham to the rest of Torbay. It features footways on either side and property access frontages. New Road is subject to a 30mph speed limit and on-street parking restrictions on both sides of the road. Objectors have raised concerns regarding highway safety, traffic and access.

The proposal seeks to maintain the existing access from New Road. The application site is located approximately 300 metres to the west of the designated town centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site. The nearest bus stops are within 60 and 120 metres of the application site.

Access

The access for the proposed development will remain as per existing arrangement from the New Road. The Highway Authority are satisfied with the retention of the existing arrangement.

The supporting Transport and Travel Plan Statement states that the existing structures, kiosk and wall, that currently obstruct visibility when emerging from the application site will be removed as part of the proposals and thereby removing the current obstruction to visibility in both directions. The areas will be replaced with ground level soft landscaping and a boundary treatment so as not to impede a visibility splay plotted 2.4m back from the carriageway edge and 43m along the carriageway, with a vertical line drawn at 1.05m driver height to a point 0.60m above the carriageway. Additionally, the supporting Transport and Travel Plan Statement highlights that junction sight lines, visibility splays, will be in accordance with the requirements of Manual for Streets for 30mph speed limit of New Road. The Highway Authority have considered such acceptable.

Traffic Impact

A comparative assessment has been undertaken, assessing the likely trip generation arising from the proposed residential land use in the context of the extant use of the site. The Highway Authority has accepted the methodology. Due to the scale of the proposed development, and the extant use, the Highway Authority are satisfied that trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

The Highway Authority have confirmed that based on the existing collision history, there are no significant highway safety concerns near the proposed site.

Pedestrian and Cycle Access

New Road features footways on both sides of the carriageway for the majority of its length. To the east of the site, the south side footway ends near the Lower Manor Road bus stop, while the north side footway extends to the junction with Market Street, Fore Street, and Bolton Street. To the west, footways on both sides continue to the junction with New Road and Monksbridge Road. The footway network also features

dropped kerbs at the side road accesses and property driveways, enhancing overall pedestrian connectivity.

The supporting Transport and Travel Plan Statement indicates that nearly all of Brixham is accessible within a 25-minute walk from the application site, with the town centre a 10-15 minute walk. It notes that all local amenities and facilities, including key services such as education, hospital, and shops, are within a 20-minute walk. The development proposal includes delivering a new segregated pedestrian access from New Road along the western boundary, leading to stairs to the first floor of the proposed built form. The supporting Transport and Travel Plan Statement also demonstrates that nearly all of Brixham is accessible within a 10-minute cycle time of the application site.

The existing footway in front of the application site is not shown to be part of the adopted highway network. The Highway Authority previously noted that the existing footway across the application site is narrow (approximately 1 metre). The Highway Authority previously suggested that the applicant should explore footway widening to enable safe and suitable access for pedestrians which would also increase access towards Brixham town centre. Whilst it is acknowledged that widening the existing footway would provide a safer and more suitable pedestrian access for all ages and abilities, by doing so would only affect a small portion of New Road given that if such would happen, the existing footway would remain narrow in front of Nos. 52-70 New Road and in front of the Torbay Trading Estate Units which front New Road.

Car and Cycle Parking Provision

Appendix F of the Local Plan requires 1no. car parking space (of which 20% should provide electric vehicle charging infrastructure) and 1no. cycle parking space should be provided per apartment. The proposal is for 23no. apartments. This calculates a total requirement of 23no. car parking spaces across the application site (of which 20% of the car parking spaces should provide electric vehicle charging infrastructure) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 12no. car parking spaces will be provided across the site. The submitted plans do not include details of electric charging facilities, a planning condition is recommended to secure such. The submitted layout also includes a communal area of cycle storage, however it is unknown whether such would be secure. The proposed cycle storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of covered and secure cycle storage prior to the first occupation of the development. The proposed parking provision is considered to be acceptable, therefore a planning condition is recommended to secure such prior to the occupation of the development.

Bin Storage

Policy DE3 of the Local Plan requires the satisfactory provision for the storage of containers for waste and recycling. Policy W1 of the Local Plan states that as a

minimum, all developments should make provision for appropriate storage, recycling, treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes.

Building Regulations H6 stipulates that “*Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority*”.

The submitted plans indicate an area of bin storage on the ground floor for the proposed development. The proposed plans lack detail on whether the proposed bin store would be suitable for the number of waste and recycling containers required. The proposed bin storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of bin storage prior to the first occupation of the development.

Sustainable Travel Contributions

The Local Highway Authority have confirmed that they would seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Section 4.3 of Planning Contributions and Affordable Housing Supplementary Planning Document (2022) seeks additional Sustainable Transport contributions for major schemes.

Concluding Remarks

The Highway Authority has no objection subject to planning conditions for a Construction Traffic Management Plan, Pedestrian Access, Cycle Parking, Electric Vehicle Charging Parking and Disabled Parking.

The proposed development is therefore considered to comply with Policies TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

6. Impact on Trees

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

The application is supported by a Tree Survey. SWISCo’s Senior Tree Officer has been consulted on the application and has raised no objections to the proposed

development. The application site is a commercial premises, the structures of which dominate the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity. The Officer has confirmed that the proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene. A planning condition is recommended to secure soft and hard landscaping details.

Subject to the recommended planning condition, the proposal is considered to have an acceptable impact on trees in accordance with Policy C4 of the Local Plan.

7. Impact on Ecology and Biodiversity

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plan states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms to Policy NC1 of the Local Plan. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 193 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity.

The site is within the Sustenance Zone of the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC). The application is supported by a Bat Preliminary Roost Assessment Update (Abbas Ecology, April 2023).

South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats (GHBs). Devon County Council's Principal Ecologist has confirmed that the application site does not contain any habitats that could support foraging or commuting by GHBs, furthermore the surrounding area is well lit by internal and external light sources. The Ecologist has concluded that it is unlikely that GHBs would pass through the site and therefore a Habitat Regulations Assessment (HRA) is not required and the proposal would not cause a likely significant effect on the SAC. It is

considered that excessive lighting should be discouraged and therefore a planning condition is recommended to be employed in relation to external lighting.

European and Other Protected Species

Devon County Council's Ecologist has confirmed that no impacts to roosting bats are anticipated, however the proposed enhancement measures are considered proportionate and are encouraged. A planning condition is recommended that the proposal is carried out in accordance with the supporting ecology report. Devon County Council's Ecologist has outlined that the demolition and vegetation removal would likely impact nesting birds and result in a loss of nesting opportunities. Therefore, a planning condition is recommended in relation to vegetation clearance and building works.

South Hams SAC Berry Head Recreation Zone

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

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwelling. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The local financial contributions section of this report states the anticipated contribution.

Biodiversity Net Gain

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) for major developments. This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application the site is absent of habitat and is a completely sealed surface. The development is deemed exempt from BNG.

Concluding Remarks

Subject to the aforementioned recommended planning conditions and securing the mitigation payment for the South Hams SAC Berry Head Recreation Zone, the proposal is considered to accord with Policies NC1 and SS8 of the Local Plan and Policy E8 of the Neighbourhood Plan.

8. Impact on Flood Risk and Drainage

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

The site is partially located within Flood Zone 3 (closest part of the application site to New Road) and the remainder of the site is within Flood Zone 1 and the Critical Drainage Area. The application is accompanied by a Site Specific Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage and utility infrastructure.

The supporting Flood Risk Assessment confirms that soakaway testing is yet to be undertaken. However, given the requirements of Building Regulations, the development layout has insufficient space to satisfactorily accommodate any form of soakaways to be compliant with such requirements. Therefore, infiltration drainage on site is not recommended. The nearest watercourse is the Lupton Stream which passes in a culvert through the site forecourt. The proximity to the watercourse allows the development the opportunity to dispose of surface water run-off directly to the stream. The proposed surface water design arrangement will include attenuation of the new drainage system and outfall to the adjacent stream culvert.

The Council's Drainage Engineer has reviewed the Site Specific Flood Risk Assessment and drainage strategy and has confirmed that providing the surface water drainage is constructed in accordance with submitted drainage layout drawing and the submitted hydraulic designs, and the flood mitigation measures identified within the site specific flood risk assessment are incorporated into the final development, the Engineer raises no objections on drainage grounds to planning permission being granted for the proposed development. The Environment Agency has been consulted on the application and provided a consultation response. The Environment Agency does not raise an objection to the proposed development subject to the inclusion of planning conditions relating to the implementation of the submitted Flood Risk Assessment. The Environment Agency has also suggested including an informative relating to a culverted watercourse.

Paragraph 174 of the NPPF outlines that the sequential test steers new development to areas with the lowest risk of flooding from any source. Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 027 Reference ID: 7-027-

20220825) confirms that the sequential test should be applied to 'major' and 'non-major' development proposed in areas at risk of flooding, however there are exceptions including where the site has been allocated for development and subject to the test at the plan making stage (provided the proposed development is consistent with the use for which the site was allocated and provided there have been no significant changes to the known level of flood risk to the site, now or in the future which would have affected the outcome of the test). As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the sequential test does not need to be applied to the proposal.

Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 035 Reference ID: 7-035-20220825) is clear:

The Exception Test should only be applied when following application of the Sequential Test, it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives).

Where a development proposal is in accordance with an allocation made in a Plan following the application of the Sequential and Exception Tests, it should not be necessary to repeat aspects of the Exception Test unless:

- Elements of the development that were key to it satisfying the Exception Test at the plan-making stage (such as wider sustainability benefits to the community or measures to reduce flood risk overall) have changed or are not included in the proposed development; or*
- The understanding of current or future flood risk has changed significantly.*

As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the exception test does not need to be applied to the proposal.

Subject to the recommended planning conditions, the proposal is therefore considered to accord with Policy ER1 of the Local Plan and the guidance contained in the NPPF.

9. Affordable Housing Contributions

Paragraph 65 of the NPPF states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The Planning Contributions and Affordable Housing Supplementary Planning Document (2022) have applied the NPPF threshold as a material consideration, despite the starting point being Policy H2 of the Local Plan. The current proposal is major in nature, as the proposed number of residential units is over 10no. residential units, and therefore it triggers the requirement for affordable housing contributions in Policy H2 of the Local Plan.

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

The proposal seeks to provide no affordable residential units. The application has been supported by viability information. An independent review of viability has now been undertaken by a third party RICS Valuer for the application site. The review concluded that it would not be viable for the scheme to provide any affordable housing on-site or off-site as a contribution, having made an assessment about scheme incomes and benchmark costs. The Council's Affordable Housing Manager has confirmed that the Council is prepared to accept the independent findings of the external valuer.

10. Designing Out Crime

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

The proposal includes a crime prevention statement. The Police Designing Out Crime Officer has been consulted and supports the supporting crime prevent statement. The Officer has commented that the bicycle storage within the undercroft parking is open and may lead to thefts and as such it would be beneficial to enclose such. A separate planning condition previously mentioned shall ensure bicycle storage is covered and secure.

It is recommended that a planning condition should be employed to secure the measures outlined within the submitted crime prevention statement. Subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan.

11. Low Carbon Development

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

Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating,

cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

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

The applicant has submitted a Low Zero Carbon Study and completed the Torbay Sustainability Checklist for Major Development. The Council's Principal Climate Emergency Officer has been consulted on the application and has provided a consultation response. The Officer has confirmed that there is reference to a low carbon fabric approach to be taken to inform external materials and construction methods. However, the Low Zero Carbon Study is only a review of low carbon options and recommendations to the applicant. It does not fully outline what will be installed by the applicant in the final design of the development.

The proposal would incorporate electric vehicle charging points and cycle storage to promote sustainable travel.

Given the limited information provided, a planning condition is recommended to ensure that the proposed development provides a low carbon fabric approach. Subject to the aforementioned planning 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

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

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

The proposal would result in the loss of an employment use, however the application site is allocated for 20no. residential units in the Neighbourhood Plan. Therefore, the loss of employment is anticipated.

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

The Social Role

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

The provision of housing would provide an appropriate use and offer units within a sustainable location. On balance, the social impacts of the development weigh in favour of the development.

The Environmental Role

The proposed development would have a neutral impact upon the Brixham Town Conservation Area and the Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The proposal is considered to have an acceptable impact on trees, biodiversity and drainage. A landscaping scheme has been submitted which results in street trees to provide visual amenity and the proposal will provide low carbon and energy efficiency measures.

The proposed development is located in a sustainable location within close proximity to local amenities and public transportation links. This weighs in favour of the proposal.

In respect of the environmental element of sustainable development, the balance is considered to weigh in favour of the development.

Sustainability Conclusion

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

Statement on Human Rights and Equalities Issues

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

balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

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

Local Finance Considerations

Ecology

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

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022).

Given the previous scheme, a unilateral undertaking was secured for 17no. residential units equating to an obligation of £2,295.00. Therefore, the monies from the extant permission will be transferred across to this application and then additional monies for the 6no. units which equates to £810 would amount to a total of £3,105.

Affordable Housing

Policy H2 of the Local Plan states that developments of 20+ residential units on brownfield sites should provide 20% affordable housing. No provision of affordable housing or affordable housing contributions are to be provided given the tested viability of the proposal.

Sustainable Transport

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

This equates to a contribution of £1,075 x 22 = £23,650 and £1,290 x 1 = £1,290, however, as the 23no. units are CIL liable such cannot be sought.

Public Open Space, Sport and Recreation

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are

expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

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

However, such contributions cannot be sought due to 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

Employment

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure loss of employment for use classes B2, B8 or E(g) uses, however such cannot be sought on the 23no. open market units as such are CIL liable and would be ineligible due to site deliverability matters.

Education

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

NHS Devon

The site is allocated in the Development Plan for 20no. units and as such the development in this area is anticipated and therefore the demand on the GP surgeries was considered at the time of allocation. The proposal is over the allocated amount by 3no. units, which is not considered to attract the contribution as this number of units (3no.) would be considered a windfall site.

Lifelong Learning Obligations

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 23no. open market units being CIL liable which would be ineligible due to site deliverability matters.

Waste and Recycling

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

CIL:

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

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

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

EIA/HRA

EIA:

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

HRA:

Due to the scale, nature and location this development will not have significant effects on the South Hams SAC does not require a formal HRA.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal and development plan policies.

Section 38(6) of the Planning and Compulsory Purchase Act 2004 places a duty on local planning authorities to determine proposals in accordance with the development plan unless material considerations indicate otherwise.

Development Plans often contain policies that pull in different directions and it is sometimes difficult to come to a view whether a proposal is in accordance with the development plan "taken as a whole".

The proposal is supported by policies in the Local Plan that seek to boost housing supply. As noted above, the Council has less than 5 years housing land supply and on this basis the Development Plan must be "deemed" to be out of date. At 1.65 years supply, the shortfall is serious and must be given significant weight in the planning balance. The proposal is for 23no. residential units, the NPPF outlines that substantial weight should be given to using suitable brownfield land which the proposal does given its allocation. Out-of-date policies can still carry weight in the planning balance, but in

practice attention shifts to other material considerations, especially the Presumption in Favour of Sustainable Development which is set out in Paragraph 11(d) of the NPPF. As concluded within this report neither limb of Paragraph 11(d) of the NPPF are breached in order to signify the proposal should be refused.

On balance, the public benefits of the scheme as a whole outweigh any identified harm, and are considered to justify the proposal and the proposal is considered to represent sustainable development when considering the Local Plan, Neighbourhood Plan and NPPF taken as a whole as there are no other adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits of the development.

Conclusions and Reasons for Decision

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

In terms of material considerations, the provision of 23no. residential units, is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded to housing supply is not insignificant where the most recent Housing Delivery Test in December 2024 stated Torbay's result is 66%. Torbay's most recent housing land supply (2025) is that there is 1.65 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post construction in terms of local household spend within the local economy. In addition, social, economic and environmental benefits associated with building and occupying homes weigh in favour of the development.

In-line with the above conclusions and the assessment within this report, the proposals are considered to be in principle accordance with the provisions of the Development Plan and to demonstrate that an acceptable scheme could be accommodated on the site. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay.

Due to the level of accordance with the Development Plan and in the absence of material considerations that weigh sufficiently against the proposal, the Officer recommendation is one of approval, subject to suitable planning conditions.

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

The NPPF guides that decisions should apply a presumption in favour of sustainable development and for decision making that means approving development proposals that accord with an up-to-date development plan without delay. For housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, the NPPF guides to granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a strong reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (23no. residential units), when assessed against the policies in the NPPF when 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. Subject to the recommended planning conditions and planning obligations, there are no impacts on protected areas or assets of particular importance to provide a strong reason for refusal.

Officer Recommendation

Approval: subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Place Strategy.
2. The completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone.
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Place Strategy, including the addition of any necessary further planning conditions or obligations.

Planning Conditions

1. Construction/Demolition Management Plan

No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.

- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or 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.
- j) Procedures for maintaining good neighbour relations including complaint management.
- k) 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.

Reason: In the interests of highway safety with regards to construction traffic and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

2. External Materials

Prior to their installation, technical details and/or samples of the proposed exterior materials including wall finishes, roofing materials, eaves, fascias and rainwater goods shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policies DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

3. Boundary Treatment

Notwithstanding the approved plans, prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the approved boundary treatment shall be maintained and retained for the life of the development.

Reason: To ensure a satisfactory completion of development in the interests of visual and residential amenity and to protect the privacy of future and neighbouring occupants in accordance with Policies DE1, SS10 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

4. Landscaping

Prior to first occupation of the development hereby approved a hard and soft landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- (a) size, species and positions for new trees and plants,
- (b) surfacing materials (including roadways, drives, patios and paths)
- (c) any retained planting and
- (d) a detailed programme of implementation.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with others of a similar size and the same species. All hard landscaping works shall be permanently retained thereafter in accordance with the approved details.

Reason: In interests of visual and residential amenity and in accordance with Policies C4, DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

5. External Amenity Spaces

The development hereby approved shall not be occupied or brought into use until the outdoor amenity spaces, including balconies, detailed on the approved plans (refs: '4959-KEA-ZZ-ZZ-DR-A-22010-A4-P7 (GF, 1F, 2F)' and '4959-KEA-ZZ-XX-DR-A-12001-A4-P5 (site plan)', received 27th November 2025, '4959-KEA-ZZ-ZZ-DR-A-22011-A4 P3 (3F, 4F)', received 2nd April 2026) have been provided in full. The outdoor amenity spaces and balconies shall thereafter be maintained and retained for the use of the development's occupiers for the life of the development.

Reason: In the interests of residential amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

6. Obscure Glazing

Prior to the occupation of the development hereby approved, the openings in the following locations:

- Kitchen window of Flat 2 (first floor - west elevation)

- Kitchen window of Flat 8 (second floor - west elevation)
- Kitchen window of Flat 12 (second floor - west elevation)
- Kitchen window of Flat 14 (third floor - west elevation)
- Kitchen window of Flat 18 (third floor - west elevation)
- Kitchen window of Flat 23 (fourth floor - west elevation)

Shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. The windows shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The windows shall thereafter be permanently retained in that condition.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

7. Privacy Screens

Notwithstanding the approved plans, prior to the following approved balconies being brought into use:

- Flat 2 (first floor)
- Flat 8 (second floor)
- Flat 12 (second floor)
- Flat 14 (third floor)
- Flat 19 (third floor)
- Flat 23 (fourth floor)

1.8m high obscure glazed privacy screens (to a minimum of Pilkington Level 4 or similar standard) shall be erected on the west elevation of the balconies and shall be maintained and retained as such for the lifetime of the development. The height of the privacy screens are measured from the finished floor level of the balconies.

Reason: In the interests of adjoining amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

8. Restricted Flat Roof Use

No part of the external flat roofs from the living room, bedroom 1 and bedroom 2 of Flats 7, 13 and 19 shall be accessed other than for cleaning and maintenance purposes.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

9. Parking Provision

The residential units hereby approved shall not be occupied or brought into use until the parking areas as detailed on approved plans (ref: '4959-KEA-ZZ-ZZ-DR-A-22010-A4-P7 (GF, 1F, 2F)', received 27.11.2025), have been provided in full and are available for use. The parking areas shall thereafter be permanently retained for the use of parking for the associated apartment for the life of the development.

Reason: In accordance with highway safety and amenity, and in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

10. Electric Vehicle Charging Points

Prior to the occupation of the development hereby approved, a scheme for the insertion of 3no. electrical charging points to be located within the site shall be submitted to and approved in writing by the Local Planning Authority. Details shall include design, location, specification and a timescale for insertion prior to occupation. The agreed electrical charging point shall be thereafter maintained and retained for the lifetime of the development.

Reason: To ensure the parking provision of the new residential units is in accordance with the requirements of Planning Policy TA1, TA3 and Appendix F of the Adopted Torbay Local Plan 2012-2030.

11. Bicycle Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for 23no. cycles shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and maintained and retained as such for the lifetime of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

12. Waste Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to

and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained and maintained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policies W1 and DE1 of the Adopted Torbay Local Plan 2012-2030.

13. Waste Management Plan

Prior to the first occupation of the development a Waste Management Plan for the building, setting out recycling and waste collections methods which follow the waste hierarchy to ensure locally established recycling targets at the that time are met, together with measures to review and respond to evolving targets, shall be submitted to and approved in writing by the Local Planning Authority. The approved Waste Management Plan shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason: To ensure that the private waste collection strategy for the apartment building, which will not receive waste collection from the local authority due to the location within a building, accords with locally established recycling rates, to accord with Policies W1 and W2 of the Adopted Torbay Local Plan 2012-2030.

14. Travel Plan

Prior to the first occupation of the development hereby approved a Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall outline measures to encourage non-car, sustainable forms of transportation, including a scheme of implementation, an annual review and travel surveys taken at appropriate timescales. The approved measures shall be undertaken in accordance with the approved scheme of implementation and shall be monitored and reviewed in accordance with the agreed Travel Plan targets to the satisfaction of the Local Planning Authority.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy TA1 of the Adopted Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

15. Ecology Report

The recommendations and ecological enhancements given in the approved ecological report (ref: '5562 (bat survey)', received 18.12.2025), shall be followed including the installation of 2no. sparrow terraces, 1no. bat box and 1no. bee block. The 2no.

sparrow terraces, 1no. bat box and 1no. bee block shall be installed prior to the first use of the development hereby approved and shall be retained thereafter.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

16. Vegetation Clearance

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

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the advice contained within the National Planning Policy Framework.

17. External Lighting

No external lighting shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, number, luminance, angle of illumination and type of each luminaire or light source and a lux diagram showing the light spill from the scheme. The lighting shall thereafter be installed, operated and maintained operated in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

18. Surface Water Drainage

The development shall proceed in full accordance with the approved drainage details and drainage strategy (ref: 'AT2624-P3 (inc. drainage calcs)', received 27.11.2025) and shall be fully implemented prior to the occupation of the development hereby approved. The drainage system shall then be maintained at all times thereafter to serve the development.

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

19. Flood Mitigation Measures

The development hereby approved shall be undertaken in strict accordance with the flood mitigation and resilient measures contained in the approved flood risk assessment (ref: 'AT2624-P3 (inc. drainage calcs)', received 27.11.2025). These mitigation and resilient measures shall be fully implemented prior to occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

Reason: In the interests of flood safety and in accordance with Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030.

20. Unexpected Contamination

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.

Reason: For the protection of controlled waters from contaminated discovered during demolition or construction and in the interests of public health and the natural environment in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and the guidance contained within the National Planning Policy Framework.

21. Investigation - Contamination

No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a scheme which has previously been submitted to and approved in writing by the Local Planning Authority.

The results of the site investigation shall be submitted to and approved by the Local Planning Authority before any development begins. If contamination posing unacceptable risks is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the approved use shall be submitted to and approved in writing by the Local Planning Authority before any development begins. The site shall be remediated in accordance with the approved measures and a verification report shall be submitted to and approved by the Local Planning Authority before any part of the development is occupied.

Reason: In order to ensure that the land is suitable for the intended uses and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors and in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and guidance contained within the National Planning Policy Framework.

This is a condition precedent because the works comprising the development have the potential to uncover harmful contamination. Therefore, these details need to be agreed by submission of an assessment report before work commences in addition to any assessment provided with the planning application. This condition does not restrict commencement of enabling works provided that these may be demonstrated to be entirely for the purposes of ground investigations deemed necessary to inform the risk assessment.

22. Designing Out Crime

The development hereby approved shall be undertaken in strict accordance with the approved Crime Prevention Statement (ref: '4959-KEA-XX-XX-RP-A-90002-P2 (crime prevention)', received 27.11.2025) and shall be fully implemented prior to the first occupation of the development hereby approved, and retained thereafter.

Reason: In the interests of crime prevention in accordance with Policy DE1 and SS11 of the Adopted Torbay Local Plan 2012-2030.

23. Sustainability

Notwithstanding the approved plans and details, a detailed energy and sustainability statement shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the development hereby approved. The statement shall identify the specific details that will be incorporated into the site including how the proposed 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 renewable technologies to achieve 20% reduction in carbon emissions,
4. Minimises water consumption and run-off,
5. Uses construction methods and materials to reduce carbon release,
6. Minimises waste.

The Statement shall be accompanied by detailed plans and elevations that demonstrate the incorporation of these details into the design of the development. The approved details shall be implemented in full prior to the occupation of the development and retained for the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.

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

24. Plant Noise

Cumulative noise from all mechanical building services plant shall not exceed a rating noise level of 51dB (07:00 to 23:00) or 17dB (23:00 to 07:00), measured in accordance with BS4142:2014 at 1 metre from the façade of any noise sensitive receptor.

Reason: In the interests of residential amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

25. Acoustic, Insulation and Ventilation Plan

Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.

Reason: In the interests of residential amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

Informative(s)

Positive and Proactive

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Culverted Watercourse

The Environment Agency has noted the presence of a culverted watercourse through the site, such being the Lupton Stream which is designated as an 'ordinary' watercourse. All parties should be aware that riparian ownership responsibilities will apply here for which the landowner is responsible. It is therefore in the interests of the applicant to ensure the development layout is such that it does not compromise the ability to carry out future repairs, replacement works for which the landowner is responsible.

We strongly advise the developer to engage with Torbay Council's Lead Local Flood Authority team regarding the presence of the culverted watercourse within the site boundary given they may be party to information of relevance to the planning application.

Relevant Policies

BE1 – Heritage Assets and Their Setting

BH3 – Delivery of New Homes

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

BH5 – Good Design and the Town and Village Design Statements

BH6 – Roofscape and Dormer Management

BH8 – Access to New Dwellings

C4 – Trees, Hedgerows and Natural Landscape Features

DE1 – Design

DE3 – Development Amenity

E2 – Settlement Boundaries

E8 – Internationally and Nationally Important Ecological Sites
ER1 – Flood Risk
ES1 – Energy
H1 – Applications for New Homes
H2 – Affordable Housing
NC1 – Biodiversity and Geodiversity
SDB1 – Brixham Peninsula
SS3 – Presumption In Favour Of Sustainable Development
SS5 – Employment Space
SS8 – Natural Environment
SS10 – Conservation and the Historic Environment
SS11 – Sustainable Communities
SS13 – Five Year Housing Land Supply
SS14 – Low Carbon Development and Adaptation to Climate Change
T1 – Linking of New Developments to Travel Improvements
TA1 – Transport and Accessibility
TA2 – Development Access
TA3 – Parking Requirements
W1 – Waste Hierarchy