

**Application Number**

P/2017/0406

**Site Address**

Ormonde Cottage  
15 Newton Road  
Torquay  
TQ2 5DB

**Case Officer**

Mr Scott Jones

**Ward**

Tormohun

**Description**

Provide 12 No. 2 Bedroom Townhouses (as revised by plans received 16.11.2017).

**Executive Summary**

The site is the former residential plot of Ormonde Cottage, a detached dwelling that was demolished in 2016. It is a wide, shallow plot that is elevated above Newton Road, bounded by a high stone retaining wall that extends along the northern side of Newton Road close to the junction with Barton Road.

The proposal is to provide 12 dwellings, which are arranged in three mini-terraces, as revised by plans received 16th November 2017 which lower the buildings and the front retaining wall by 1.8 metres.

The dwellings are arranged over three floors which would provide 2-bed units with private amenity space at roof level. All properties have a uniform internal floor area of 71sqm.

The design is modern with two floors of mixed render and timber effect panelling under a third floor of vertical zinc cladding.

The proposed layout, massing and form is considered to present development that would be out of character with the prevailing urban grain and local form which, which would present a cramped and overdeveloped plot that would be an incongruous addition in the urban area and detrimental to the streetscene and the setting of the adjacent Torre Conservation Area.

Additionally the extent of development, which presents limited provision of outdoor amenity space and presents a number of units without parking facilities, would present a poor residential environment for future occupiers. The proposal would also impact wider local amenity by increasing the demand for street parking and increase the risk of danger to highway users in the area. Although a car-free development of 4 flats was approved by the Council in 2014 the scale of the

proposal before members is far greater and the form of units is also likely to create a more car-dependent development. The previous scheme is not considered a precedent that the Council is constrained by in terms of accepting a different form of car-free development.

Although revised plans have been submitted that lower the development by 1.8 metres there remains concern that the height of the development to the rear is likely to unduly impact residential amenity due to the overbearing nature of the development and a loss of outlook .

There also remains insufficient detail to satisfactorily demonstrate that an adequate attenuated and controlled discharge to the public sewer can be achieved, which is necessary to ensure that the development does not increase the risk of flooding within a critical drainage area.

The proposal is also considered to trigger an affordable housing provision (2 units) in order to accord with the Local Plan Policy, as the majority of the site is garden land. The applicant disagrees with this conclusion and considered that no affordable housing is necessary as the site should be considered 'brownfield' land.

The proposal is considered to conflict with a number of key policy tests and officers do not support the application.

### **Recommendation**

Refusal: Due to the following reasons:

1. The proposal, due to its massing, form and detailed design, which is exacerbated by its elevated position at roadside, would result in a cramped and overdeveloped site that would present a visually discordant form of development which responds poorly to the prevailing local character, which would be harmful to the streetscene and setting of the Torre Conservation Area, contrary to policies H1, DE1 and SS10 the Torbay Local Plan 2012-2030.
2. The proposal, due to the lack of adequate outdoor amenity space and inadequate parking facilities and limited street parking within the vicinity, would result in a poor residential environment for future occupiers of the dwellings, contrary to Policies H1, DE3 and TA3 of the Torbay Local Plan 2012-2030.
3. The proposal, due to the height and massing of the development in close proximity to the northern boundary, would be overbearing, result in undue impact upon the amenity afforded neighbouring occupiers through visual intrusion and the loss of outlook, contrary to Policy DE3 of the Torbay Local Plan 2012-2030.
4. The proposal, due to the lack of provision of adequate off-street parking, which is likely to exacerbate the pressure upon street parking in the area, would

be detrimental to local amenity and highway safety, contrary to Policies TA2 and TA3 of the Torbay Local Plan 2012-2030.

5. The proposal, due to the lack of a detailed design for the management of surface water, fails to provide certainty that the risk of flooding to land of buildings adjacent would not be increased, within a critical drainage area designated by the Environment Agency, contrary to Policies ER1 and ER1 of the Torbay Local Plan 2012-2030.

6. The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030.

### **Reason for Referral to Development Management Committee**

Major Planning Application.

### **Statutory Determination Period**

13 weeks - agreed extension of time by the applicant to permit revised plans to be submitted and referral to the December Development Management Committee.

### **Site Details**

The site is the former residential plot of Ormande Cottage, a detached dwelling that was demolished in 2016.

It is a wide, shallow plot that is elevated above Newton Road, where it is bounded by a high stone retaining wall which extends along Newton Road close to the junction with Barton Road. The height of the wall is approximately 4-5 metres.

To the rear of the application site the land rises again and the site is backed by a further high stone retaining wall which forms the garden boundary to domestic dwellings on Barton Road to the north.

Generally, the character of development in the immediate area is mixed. To the south on the opposite side of Newton Road sizeable Victorian Villas prevail, which are largely in hotel use. These are located in the Torre Conservation Area. The northern side of Newton Road development is principally that of interwar properties of a more domestic form and scale and in a range of differing styles and characters. These are largely in use as dwellings and small guesthouses.

Planning permission has been granted in the past for residential developments on this site, the latest being for 4 flats in the garden aside the cottage.

Date of Officer Site Visits: W/C 24.07.2017 and W/C 20.11.2017.

### **Detailed Proposals**

The proposal is to provide 12 dwellings arranged in three mini-terraces, with each containing four properties, as revised by plans received 16th November 2017 which lower the development.

The dwellings are arranged over three floors. On the ground floor level there is one large bedroom. At first floor level there is a lounge/kitchen. At second floor level there is another large bedroom. There is access steps from the second floor up to enclosed roof terraces. All properties have a uniform internal floor area of 71sqm.

The design is modern with two floors of render and timber effect panelling under a third floor of vertical zinc cladding. The roofs are flat and there is a roof terrace enclosed by the zinc cladding topped with glazed screening between properties (approximately 450mm of glass).

There are two pedestrian access points proposed off Newton Road which are located between the gaps in the terraces. The proposed dwellings would be accessed via steps from these points. The access points also provided access to communal cycle and bin stores.

In terms of external amenity space each dwelling has small terraces off the front elevation at each floor and also has access to a roof terrace that is approximately 22sqm in size.

The revised plans submitted on the 16th November present a lower scheme with the height of the building dropped 1.8 metres by lowering the ground levels and the highway retaining wall by a similar height. The amended plans show the bins stores to be at street level which has increased the size of these storage areas and the central steps into the areas have been removed. Aside the above the arrangement and form of the scheme remains largely unaltered. In addition revised plans have been submitted on the 24th November that introduces a glazed enclosure detail to the front of the roof terraces.

### **Summary Of Consultation Responses**

*Design consultant:* The general proposition of the development, in terms of it making a satisfactory and satisfying contribution to the urban setting is difficult to assess.

There is potential impact upon the amenity of occupiers to the rear through overlooking as the wider cross-section is absent.

Although amended the access is still only by means of a stepped approach and

the combined bin and cycle store is also not an ideal arrangement.

Concern on the lack of parking as the street already appears heavily utilised.

The internal layout poses some concern with ground floor bedrooms adjacent to the access routes.

In summary it would appear that the site is not ideally suited for this use and the dwellings as shown would provide a poor living environment for residents. A smaller number of larger semi-detached units (of just two storeys) might be a better prospect but the difficulties regarding access and the lack of on-site parking would remain.

*Conservation officer:* The density of the development on this narrow strip is considerable. Though the site is outside the Torre Conservation Area it literally and spatially overlooks it. Buildings on the site will have a marked impact on the street scene and development should be at a lower density that is more reflective of the local character. A row of twelve units is not the right approach.

*Strategic planning officer incorporating Highway Authority comments:* Object to the scheme. Previous concerns at pre-app stage have not been addressed. The site is on a main bus route and close to Torre Station, nevertheless it is not in the town centre. 12 dwellings will inevitably lead to additional on street parking on Newton Road or nearby side roads. This is likely to create congestion and potential community conflict over parking. It is considered that the proposal is contrary to Policy TA3, Appendix F and Policy DE1 of the Torbay Local Plan.

*Council engineer:* Due to the potential impact upon the retaining wall a condition similar to previous permissions should be attached should permission be granted in terms of submitting and approving engineering detail.

*Drainage engineer:* Due to the topography of the site infiltration drainage will not be feasible and this is agreed. Torbay is within a Critical Drainage Area and the applicant must demonstrate that the surface water drainage design will not result in any increased risk of flooding to properties or land adjacent to the development for the critical 1 in 100 year storm event plus 30% for climate change. This has not been shown. Before this planning permission can be granted the applicant must supply details to ensure that the risk of flooding would not be increased.

*South West Water:* South West Water has no objection subject to any surface water to be discharged to the public sewer in the event of soakaway drainage not being possible being attenuated to a rate to be agreed.

It should also be noted that a public sewer lies within the site as shown on the attached and that no buildings will be permitted within 3 metres of it.

*Police Designing out Crime Officer:* It cannot be assumed that residents from the proposed development will prefer to walk, cycle, or use public transport over the use of owning a private vehicle, and it is not possible to predict the exact number of vehicles that the proposal is likely to attract but given that each dwelling has 2 double bedrooms it is realistic to assume that each dwelling could attract a minimum of 2 vehicles, thus greatly introducing an increase in the number of vehicles and movement to the immediate area and placing additional demand on the local highway in terms of parking. There is a concern that this has the potential to create conflict locally amongst residents, which could escalate to criminal activity, fear of crime and/or unacceptable or aggressive behaviour due to safety and vehicle parking related issues.

The open access steps from the lower ground (street level) appear that they will be fully concealed from view. This has the potential to attract inappropriate or unwanted gatherings and provide cover for criminal activity and as such likely to increase the fear of crime, especially during the hours of darkness.

The Police Designing Out Crime Officer does not support the proposal.

*Waste and recycling team:* Access to the two bin stores should be level and accessible from the public highway. In addition the design of the bin store should meet the standards specified in section 4 of the Council's guidance document (Refuse Storage for new and converted residential properties: A Guide for Developers).

It is likely that individual containers would be provided for each property and it needs to be demonstrated that adequate space has been allocated for 1 x 240L wheeled bin, 2 x recycling boxes and 1 x food waste caddy per property and that the design of the store will enable adequate access to the containers.

The expected level of containers would require more space to be allocated to the bin store than the initial submission shows.

*Ecology consultant:* There are no major ecological constraints to the development.

The site has the potential to support nesting birds and any vegetation removal required as part of the development should be duly managed and undertaken outside of the bird nesting season (March to September inclusive). If not it should be suitably managed by an ecologist.

There is potential for reptiles to be present on the site, particularly slow-worm and possibly grass snake, therefore any vegetation clearance should be undertaken in a phased and controlled manner under an ecological watching brief.

There is little potential for enhancement of this urban development in relation to biodiversity. The National Planning Policy Framework (NPPF) seeks to maintain and enhance biodiversity within planning policies and decisions, with regards to new development. Where new builds are to be erected, the inclusion of integrated habitat by design for birds and bats should be considered.

Post development opportunities should be taken with any landscaping, to further enhance the biodiversity relative to that currently presented on site. Incorporating native tree and shrub species into the landscape design will benefit biodiversity. The addition of external insect and bird boxes within the landscaped areas, will also benefit the site in relation to biodiversity.

The above matters would address Policies C4 and NC1-Torbay Local Plan 2012 - 2030.

### **Summary Of Representations**

Publication type: Neighbour notification letters/Site notice/Newspaper advertisement

33 representations have been received objecting to the scheme.

#### **Issues raised include:**

- Overdevelopment
- Impact upon the conservation area as the buildings relate poorly to the context.
- Lack of parking and impact upon the highway
- Loss of privacy
- Overshadowing
- Visual impact
- Does not respond to the buildings and character of the area
- Construction impacts on the busy highway
- Impact on retaining walls
- Poor access for occupiers
- Too large for the context
- Noise and disturbance from use of the roof terraces
- Impact upon the historic property the "Knoll".
- There are restrictive covenants over the land
- Drainage impacts
- Development of garden space contrary to national policy.
- Will impact upon the quality of adjacent holiday accommodation.

### **Relevant Planning History**

#### ***Pre-Planning Enquiries:***

DE/2016/0468: 12 Dwellings - not supported

### *Planning Applications:*

P/1988/0452 :	Erection of 1 dwelling: Refused 21.04.88.Subsequent appeal dismissed.
P/1988/2785:	Erection of detached house; Approved 17.02.89
P/1990/0500:	Erection of 2 dwellings; Approved 15.05.1990
P/1995/1063:	Renewal of above. Refused, subsequent appeal dismissed 17th March 2003.
P/2011/0272:	Erection of 4 flats (in outline): Withdrawn.
P/2012/1231:	Erection of 4 Flats (in outline): Approved. 17.09.2014

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

The main concerns relate to the principle of development, its visual impact, the quality of accommodation provided, the impact on neighbours, highway and parking issues, flood risk and ecology. These will be discussed below.

#### **1. Principle of residential development**

Although absent of a dwelling since Ormonde Cottage was demolished in 2016 it is reasonable to consider the site as a residential plot in the knowledge that the dwelling was contained to the western end of the site with the remainder, a large proportion of the site, being garden.

As the majority of the development is across the former garden area the principle of development within gardens is relevant. Planning guidance in relation to garden development has been subject to change in recent years from encouragement to maximise the use of suitable garden land to provide housing opportunities, to moves to resist 'garden grabbing'. The shift in terms of the sensitivity of development within gardens is articulated in the National Planning Policy Framework (NPPF) by land in built up areas such as residential gardens being specifically excluded from the definition of previously developed land (brownfield land). The NPPF also suggests that LPAs should consider the case for setting out policies to resist inappropriate development of residential gardens, where development would cause harm to the local area.

In broad terms the use of garden land for housing development is normally resisted, unless it can be shown that its use produces a form of development that is in character with surrounding development, does not result in overdevelopment, nor have adverse impacts on amenity. Previously the scheme for 4 flats set in the garden aside the dwelling was considered to achieve such development, which was approved in 2014 (P/2012/1231).

Considering the context, where the site held a dwelling until relatively recently, and appreciating that it sits in a sustainable location in an area with an established residential character, the principle of some form of development is considered acceptable. The acceptability of the proposal for 12 dwellings as submitted is therefore considered to hinge on whether the extent and form of development is



appropriate when considering relevant Local Plan policy guidance, which is considered in more detail below. However in strategic terms the principle of a residential use of the site is supported in accordance with the aspirations of Policies SS1, SS11 and SS12.

## **2. Design and visual impact, including the impact upon the setting of the adjacent Torre Conservation Area**

In terms of context the site is located in an elevated and prominent roadside position adjacent to the northern boundary of the Torre Conservation Area. It is therefore important to consider whether the scale and form of the proposed buildings fits with the overall grain of the area and does not therefore adversely affect the setting of the conservation area and the streetscene.

In terms of local character the northern and southern sides of this section of Newton Road display different characters. To the southern side of the road within the conservation area Victorian villa development dominates. To the northern side the character is very different, with more domestic scaled properties that largely date from the interwar period. The exception to this is The Knoll, which is a mid-19th Century property set behind the interwar roadside ribbon development.

The proposal presents a series of three mini terraces, each approximately 17 metres wide with 6 metre wide gaps between them. The form is modern with three storeys under a flat roof, which contain enclosed roof terraces. The materials are a mix of render and timber effect cladding over the initial two floors with zinc standing seam cladding at the upper floor.

In terms of the general form of development, terraces are not characteristic of this section of Newton Road. The northern side on which this plot sits is interspersed with loosely arranged dwellings that were built on the urban fringe in the interwar period. These are nearly all detached buildings. Considering the context a formal terrace arrangement as proposed is considered to respond poorly to the prevailing local character and the presentation, in such a prominent roadside location, would jar considerably with the prevailing form. The amended plans submitted that set the buildings approximately 1.8 metres lower does not demonstrably lessen the prominence of the development or its level of visual discordance. It is clear that the footprint of the development affords very little space around the buildings, which is also at odds with the defining local character where buildings are set within garden plots. When considering the extent of the built footprint and the limited extent of space around the buildings the proposal is considered to clearly overdevelop and cramp the plot, to an extent that is out of keeping with the defining character of the areas. The previous dwelling, with its long linear side garden, responded to the narrow depth of the plot by affording much needed space to the side for amenity purposes. The scheme fails to provide any notable visual relief around the buildings, unlike the previous arrangement or previous consented scheme. It is noted that the buildings include use of the flat roofs for private

amenity purposes. Roof terraces are not evident in the area and the use of these areas, including the likelihood of associated paraphernalia, is discordant with the prevailing character. Amended plans have been recently submitted that replace the parapet wall to the front of the roof terraces with a 200mm stub parapet wall with 900mm of glazing above. The amendment will heighten the prominence of the roof terraces due to the more apparent use of glazing, and the glazing will also increase the prominence in terms of use and paraphernalia within these areas. The incorporation of the roof terraces within the scheme is considered to reinforce the conclusion that the scheme overdevelops and cramps the plot, as there is little scope for private garden space at ground level.

In terms of the detailed design, the use of grey zinc cladding at the upper level seeks to present a roof element and the concept is supported. The success of the arrangement is somewhat diminished by the additional bulk of the parapet to afford the necessary enclosure of the roof terrace and the use of glazing to the front and sides (as amended), together with the absence of an obvious recess. In terms of other aspects of the detailed design although render does reflect the prevailing building material timber cladding is not locally evident and the proposed timber effect cladding that is repeated throughout the scheme is considered a harmful element of the detailed design.

All matters considered the development is considered out of character with the prevailing grain of the area and form of development and hence the scheme is unacceptable on design grounds being harmful to the streetscene and the setting of the Torre Conservation Area. The proposal is considered to conflict with the aims and objectives of Policies DE1 and SS10 of the Local Plan, which seek to secure good design and the conservation and/or enhancement of heritage assets and their settings.

### **3. Quality of the proposed residential environment**

The proposal will provide two-bed dwellings set over three floors, each with an internal floor area of 71sqm. Policy DE3 provides size standards that all new development should accord with and although there is no standard for 2-bed dwellings over three floors the expectation for such a dwelling over two storeys is 70sqm, which is comparable. With consideration of the space afforded staircases it is a reasonable assumption that approximately 76sqm would be considered the guiding floor area necessary over three floors. Although slightly below this figure the scale of the internal floorspace is considered to provide a reasonable living environment.

In terms of light and outlook, although largely single aspect the principal elevation is south facing and there will be elevated and unobstructed vistas. The level of natural lighting and the quality of the living space would be acceptable in this circumstance.

In terms of pedestrian access, it is achieved via two access points and steps. The revised plans have reduced the number of steps necessary and although it is not ideal for there to be an absence of level access the arrangement has been improved considerably.

In regard to ancillary facilities, there is combined waste and cycle storage and following the revised plans these facilities are now provided with level access from the street and with a greater capacity due to the removal of a central staircase that previously stepped down to these facilities. There is some concern about a joint cycle and waste facility however, the scale would appear sufficient and there would also appear scope to subdivide the space to afford segregation between the two uses if considered necessary.

In terms of outdoor amenity space, Policy DE3 of the Torbay Local Plan identifies a guiding minimum of 55sqm for dwellings. The provision of roof terraces will provides each unit with 22sqm of private amenity space, although there is, as noted within this report, concerns on such a provision in respect of local character. There are also small terraces off each floor and to supplement these private spaces the proposed layout indicates pockets of communal space between and behind the buildings. It is uncertain that the limited areas between the buildings will afford pleasant and usable outdoor space when considering the oppressive nature of being enclosed on three sides with high walls. It is also uncertain how the amenity space to the rear of the western block, which is shown as being set at a higher level, will be accessed. On balance the proposal is considered to provide insufficient amenity space for the future occupants. The apparent lack of adequate space supports the previous concerns that the scheme cramps and overdevelops the site.

To conclude, although the internal living environment would appear adequate the proposal does not afford future occupiers adequate outdoor amenity space and is therefore contrary to Policy DE3 of the Local Plan.

#### **4. Impact upon the amenity of neighbouring occupiers**

The site abuts residential plots and the impact upon the amenity afforded adjacent occupiers is a key consideration.

Principally there is concern from a number of occupiers to the north in respect to the impact of the development in terms of loss of views, loss of outlook, loss of light and loss of privacy. Although the loss of a private view is not a material planning consideration the impact upon outlook, light and privacy are relevant considerations.

The agent has sought to respond to the concerns of neighbours by lowering the development by 1.8 metres. The development now extends to a similar height to the previous dwelling and to within a metre of the height of the approved scheme

for 4 flats. There is however a greater extent of development at this height and also there is a change in form to a flat roofed structure with roof terraces. In terms of impact the following is considered.

The impact upon the adjacent occupiers to the western side is considered acceptable as the adjacent property is set slightly higher than the development and the relationship is side-by-side, which will limit the extent of any impact.

The impact upon the occupiers of the properties to the rear of the western terrace is considered acceptable. The bordering properties and plots are set on higher ground to the development and there is a gap between the terrace and the communal boundary which reduces the proximity, although this does taper towards the east. It is apparent that adjacent occupiers benefit from open views southwards as the drop in levels negates the need for privacy screening at the boundary. Although it is unfortunate that the building and the proposed boundary fence will impact on the open views, adequate outlook from properties will be retained and the development will not result in undue overshadowing. There will be no loss of privacy due to the rise in land levels.

The impact upon the amenity afforded neighbouring occupiers to the rear of the central terrace is considered limited due to the established line of border hedging on the adjacent land. The terrace will protrude approximately 2-2.3 metres above the adjacent garden levels and hence will be neither overbearing nor prominent due to the height and level of screening. Again there would be no overlooking due to the land levels and parapet height of 1.8 metres enclosing the roof terrace.

The impact upon the amenity afforded neighbouring occupiers behind the easterly terrace is more sensitive, as the land levels start to fall eastwards and the gardens are smaller with buildings in closer proximity to the proposed development. From the submitted sections the lowered scheme still presents a building approximately 2.8 metres above the adjacent garden at the western end of the terrace. This rises to approximately 4 metres higher than the garden level at the eastern end. Although there is an established green border along this section that reduces the visual impact the scale of the development is considered unduly large in such close proximity to the border. There would appear an unacceptable level of impact upon the outlook of occupiers to the north, certainly towards the eastern end. For this reason the proposal is considered to conflict with Policy DE3 of the Torbay Local Plan as it unduly impacts upon the amenity of neighbouring occupiers.

## **5. Highway safety and parking, including the impact upon the highway retaining wall**

The proposal is for 12 dwellings with no associated on-site parking.

Policy TA3 and Appendix F of the Torbay Local Plan provides key policy guidance and for dwellings there is an expected requirement of 2 spaces per dwelling,

although there is appreciation that this standard can be reduced in locations such as towns centres. Although it is not a town centre site it is reasonable to consider it a similar context due to proximity to the town centre and proximity to various sustainable transport options.

The emphasis on parking standards has moved in recent years from a position of maximum standards that sought to limit the extent of parking to try and create a shift towards sustainable modes, to a minimum standard as now emphasised in the current Torbay Local Plan. It is important to understand though that parking policies are intended to allow for car ownership and limit the proliferation of on street parking.

The starting position is that the development should seek to provide 24 car parking spaces in-line with the size standards outlined within Appendix F of the Torbay Local Plan. The proposal is absent of any off-street parking and hence the future occupiers would be reliant on using the street to park, or to not own a vehicle. When considering the form of the units and the location, which would appear to be appealing to young couples or small families amongst others, there is likely to be a demonstrable level of car ownership within the future occupiers.

In terms of the context, street parking is somewhat limited and the area appears to already experience a high demand for street parking. In this context the provision of 12 dwellings with no parking is considered to present an unacceptable form of development. The context is likely to present a poor residential environment for future occupiers where available parking within close proximity of homes may be regularly unachievable. There is also concern that the absence of parking to support a development of this scale may also increase the likelihood of conflict due to the added pressure on street parking. It is noted that the Police have objected to the scheme on these grounds and noted that local conflict on matters of parking can easily escalate to anti-social behaviour and crime. The added pressure on parking and vehicular movement could also increase the risk of danger to highway users.

With due consideration of the context the development, which seeks to provide 12 dwellings with no on-site parking, is considered to provide inadequate vehicular parking facilities, notwithstanding its central location and relatively good access to other modes of transport.

This conclusion has taken into account the fact that a parking-free development of 4 additional units was granted consent in 2014 however, this decision was made before the new Local Plan was adopted in December 2015 and each proposal should be considered on its own merits. The 2014 consent was for 4 flats and this form of development, for a lower number of smaller units, sufficiently satisfied the Council that the parking and highway impacts were on-balance acceptable. However the judgment before Members is for a scale of development that demonstrably differs from the 2014 consented scheme with 12 family sized

dwellings being sought, which is likely to have a far greater level of car ownership and use associated with it. The current proposal will, as a result of its scale and form, have an unacceptable impact upon parking and highway safety in this area.

For the reasons above the proposal is considered contrary to Policies TA2, TA3 and DE3 of the Torbay Local Plan as it fails to provide adequate vehicular parking, which is likely to impact upon local amenity and highway safety.

## **6. Drainage and flood risk**

As Torbay is within a Critical Drainage Area the application needs to demonstrate that the surface water drainage design would not result in any increased risk of flooding to properties or land adjacent (for the critical 1 in 100 year storm event plus 30% for climate change) and the Local Plan Policy outlines a hierarchy.

Due to the topography of the site it is accepted that infiltration drainage will not be feasible. In such a circumstance attenuated and controlled discharge into the Public Sewer is an acceptable concept to follow. However the developer has failed to show that a discharge to the Public Sewer can be achieved without increase to the risk of flooding to land or buildings adjacent. Certainty is required on this prior to the grant of consent.

It is noted that South west Water has no objection subject to the discharge being attenuated to a rate to be agreed.

In the absence of a detailed drainage design that shows that surface water can be attenuated and discharged at an acceptable rate the proposal is considered contrary to Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.

## **7. Ecology**

There are no major ecological constraints to the development although the site has the potential to support nesting birds and reptiles.

It is recommended that ecology impacts can be duly managed by way of planning conditions that secure any vegetation removal required as part of the development is undertaken outside of the bird nesting season (March to September inclusive), or suitably managed by an ecologist, and for any vegetation clearance to be undertaken in a phased and controlled manner under an ecological watching brief in regard to reptiles.

Although there is little potential for enhancement of this urban development in relation to biodiversity, the inclusion of integrated habitat for birds and bats could be considered by way of condition to support the NPPF guidelines to achieve biodiversity enhancement.

In addition if supported post development opportunities should be considered by way of a landscaping scheme to seek to further enhance the biodiversity relative to that currently presented on site incorporating native tree and shrub species.

As there appears no constraint and with opportunity to respond to policy aspirations by way of detailed design elements the scheme accords with Policies C4 and NC1 of the Torbay Local Plan 2012-2030.

### **Human Rights and Equalities Issues -**

Human Rights Act: The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights.

In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance

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

### **Local Finance Considerations**

The proposal would support local construction and trade industries and future occupiers would add to the local economy in terms of household spend. However these benefits do not outweigh other concerns outlined within this report and it has not been demonstrated that a more acceptable form of development could not bring forward similar secondary benefits as a result of a residential use on the site.

### **S106/CIL and Affordable Housing -**

#### Affordable Housing:

Affordable housing provision/contribution is required from this development in accordance with Policy H2 of the Torbay Local Plan 2012-2030.

For a scheme of 12 dwellings within a split greenfield/brownfield context Local plan Policy H2 indicates that 2 affordable housing units should be secured, which would normally be on-site rather than via a commuted payment.

The submitted Design and Access Statement states that the applicant considers the plot to be brownfield land and as such no affordable housing is necessary as

it falls below the trigger of 15 units as stated within Policy H2 of the Torbay Local Plan.

As cited within the *Key Considerations* section of this report residential gardens within urban areas are explicitly excluded from the definition of previously developed land in the NPPF. The majority of the site is therefore considered to be greenfield land and should be considered in-light of this aside the requirements of Policy H2.

It remains the opinion of officers that the scheme should secure affordable housing. As the proposal fails broader policy this matter has not been taken further with the applicant.

Should members wish to grant consent this should be subject to the provision of 2 affordable housing units, secured through a S106 legal Agreement.

S106:

S106 contributions are not required from this development in accordance with Policy SS5/SS6/SS7/SS9/SS11/H2/Planning Contribution and Affordable Housing SPD.

CIL:

The application is for residential development in zone 1 where the Community Infrastructure Levy (CIL) is £30 per square metre of additional gross internal floor area created. The accompanying CIL form states an additional net liable floor-space of 1300sqm for this development.

The CIL liability for this development based on the above is £39,000.

It is noted that the internal floor area of the scheme as indicated within the submitted scaled drawings suggests a total new floor area of approximately 924sqm, which would actually equate to a CIL liability of £27,720.

As CIL is principally a tax on floor area the liability will be a result of what is granted. Members are simply highlighted of the discrepancy at this moment.

## **EIA/HRA**

**EIA:**

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

**HRA:**

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC. The proposed development is unlikely to have a



significant effect on the South Hams SAC.

Subject to achieving adequate drainage solution the proposal is unlikely to have a significant effect on the Lyme Bay and Torbay SAC.

### **Proactive Working**

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework the Council works in a positive and pro-active way with Applicants and looks for solutions to enable the grant of planning permission. However in this case the proposal has been unable to satisfy the policy tests for the reasons stated in this report.

### **Conclusions**

The proposal is considered harmful to the streetscene and setting of the Torre Conservation Area, is considered to provide a poor residential environment for future occupiers, and will unduly effect the amenity of adjacent occupiers and highway safety. For these reasons, and where there is a lack of acceptable drainage solution and unsecured affordable housing, the proposal is considered contrary to policies DE1, DE3, H1, H2, SS10, TA2, TA3, ER1 and ER2 of the Torbay Local Plan, and as such should be refused in the absence of material considerations that should deem otherwise. The proposed refusal reasons are outlined in more detail in the *Recommendation* section of this report.

### **Relevant Policies**

TA2 Development access  
TA3 Parking requirements  
ER1 Flood Risk  
ER2 Water Management  
SS7 Infrastructure, phasing and employment  
H2LFS Affordable Housing\_  
W1 Waste management facilities  
NC1LFS Biodiversity and Geodiversity\_  
DE1 Design  
DE3 Development Amenity

H1LFS Applications for new homes\_  
SS10 Conservation and Historic Environment