

Application Number

P/2018/1213

Site AddressOrmonde Cottage
15 Newton Road
Torquay
TQ2 5DB**Case Officer**

Mr Scott Jones

Ward

Tormohun

Description

Construction of Twelve 2-Bedroom Townhouses (resubmission of refused decision P/2017/0406).

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, arranged in three mini-terraces. The dwellings are arranged over three floors which would provide 2-bed units with private amenity space at roof level. All properties would have a uniform internal floor area of 60.5sqm.

The design incorporates rendered walls with banded openings fitted with timber sliding sash windows and timber doors. There is metal balustrades enclosing small terraces and a rendered parapet enclosing flat roofs. The terraces are set relatively close to the front retaining wall with the highway and there is no on-site parking proposed.

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 would present a cramped and overdeveloped site, presenting development that is an incongruous addition in the area and detrimental to the streetscene and the setting, character and appearance of the adjacent Torre Conservation Area.

The proposal presents units with habitable floor spaces that are significantly below the space standards set out within the Torbay Local Plan, presents limited provision of outdoor amenity space, and all units would be without parking facilities. This would present a poor residential environment for future occupiers. The proposal would unacceptably affect wider local amenity by increasing the demand for street parking and increasing 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 (houses instead of flats) is also likely to create a more car-dependent development.

There 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 must provide two affordable housing units in order to accord with Local Plan policy, as the majority of the site is garden land. The applicant disagrees with this conclusion and considers that no affordable housing is necessary as the site should be considered 'brownfield' land.

It is concluded that due to the harm to the setting of the Torre Conservation Area, together with the level of conflict with policies within the Local Plan, the NPPF when taken as a whole, and the Referendum Version of the Torquay Neighbourhood Plan, the proposal is not considered acceptable on planning grounds notwithstanding the Council's inability to demonstrate a 5 year housing supply and the weight afforded broader public benefits of the scheme.

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

Recommendation

Refusal for the following reasons:

01. Poor design and visual impact, including harm to the setting of a heritage asset.
02. The creation of a poor residential environment for future occupiers of the dwellings.
03. Impact upon highway safety.
04. Impact on flood risk
05. The absence of a completed S106 Legal Agreement to deliver Affordable Housing.

Detailed reasons are provided at the end of this report. The final drafting of the reasons for refusal, and addressing any new material considerations that might come to light, to be delegated to the Assistant Director of Planning and Transport.

Statutory Determination Period

13 weeks - 7th March 2019.

Site Details

The site is the former residential plot of Ormonde Cottage, which was a relatively small 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. The site now sits with partial foundations showing to the west, and a shipping container and caravan sit in the eastern part of the site.

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. On 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 generally detached properties that are set back from the adjacent highway with parking to the fronts. The properties 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 beside the then existing cottage.

Date of Officer Site Visit: 14.12.2018 and 04.01.2019.

Detailed Proposals

The proposal is to provide 12 dwellings arranged in three mini-terraces, where each terrace contains four properties.

The dwellings are arranged over three floors. On the ground floor level there is one bedroom, at first floor level there is a lounge/kitchen, and at second floor level there is another bedroom. All properties have a uniform internal floor area of 60.5sqm.

The elevation treatment is render with a banding detail around the windows and doors. Each property has a narrow terrace to the front at ground floor and a narrow balcony above at first floor, enclosed by metal railings. The windows are timber sliding sash and the doors are timber. The roofs are flat set behind parapets.

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 waste stores which will be set underneath communal outdoor space.

In terms of external amenity space each dwelling has small terraces off the front elevation at ground and first floors, and there is communal space shown to the sides and to the rear of the western terrace.

There is no on-site parking proposed.

The proposal is similar in layout, massing and height to a scheme refused by the Authority in 2017, which had a more modern design concept with render and panelling with the upper floor clad in zinc with roof terraces.

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")

Material Considerations

- Referendum version of the Torquay Neighbourhood Plan*
- National Planning Policy Framework (NPPF)
- Planning Policy Guidance (PPG)
- Published Standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

*The Torquay Neighbourhood Plan has recently completed its Independent Examination. Full Council resolved in November 2018 that the Plan should proceed to Referendum. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post examination neighbourhood plan.

Summary Of Consultation Responses

Affordable Housing Team:

Affordable Housing policy in the adopted Torbay Local Plan indicates that for a scheme of 12 dwellings 20% of the units within the greenfield (former garden) area of the site should be affordable units. This equates to 2 units of affordable housing. In the absence of evidence that demonstrates that affordable housing cannot be provided on-site a proposal that does not secure 2 affordable dwellings is contrary to adopted policy and is not supported.

Heritage advice:

The site is outside of the designated Torre Conservation Area but clearly is of significance in terms of the setting of the Conservation Area.

The intensity of the proposed scheme in its revised form (from the 2017 proposal) will not enhance the setting of the Conservation Area but will still introduce a form and style of development which is out of keeping with the locality. The use of a flat roofed form and mass of the units is clearly at odds with the street scene which is characterised by pitched roofs or varying scales of a generally more elegant form. The proposed building line stands forward of the immediate neighbouring building to the west which will serve to expose the flat roof form of the units to the detriment of the street scene.

Whilst the elevational treatment seeks to reflect some of the period architecture in the locality, the terraced forms and small unit size do not appear to lend themselves to the fenestration proposed and the results tend to emphasise the poor proportions of the building and cramped nature of the development, in stark contrast to the generally well-proportioned buildings located in the Conservation Area opposite

It is considered that the previous refusal reason has not been adequately resolved and the reason should stand.

Strategic Planning Team (incorporating Highway Authority comments):

Object to the scheme. Previous concerns 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. In addition it has not been demonstrated how waste collection will not impact pedestrian movement in terms of 12 bins within the footway, and how highway movement would not be impacted, in terms of there being no obvious space for a collection vehicle adjacent to the site, on what is a busy strategic route. It is considered that the proposal is contrary to Policies, SS6.2, TA1, TA2, TA3 and DE1 of the Torbay Local Plan and Appendix F of the Torbay Local Plan.

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 40% 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:

Previous concerns raised in regard to the previous scheme are still relevant. 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 blank walls will create large concealed areas which is a concern and a lockable gate at street level is not recommended, as it is the movement thereafter and safety of persons using the cycle/waste store etc that is a concern.

Community Safety Team:

No objection subject to a condition requiring the submission and approval of construction management plan in order to control the impact of the construction phase on adjacent occupiers.

Summary Of Representations

Publication type: Neighbour notification letters/Site notice/Newspaper

advertisement

22 representations have been received, 21 objecting to the scheme and one in support.

Issues raised include:

- o Similar issues to the previous scheme that was refused by the Council
- o Overdevelopment
- o Impact upon the conservation area as the buildings relate poorly to the context.
- o Lack of parking and impact upon the highway
- o Loss of privacy
- o Overshadowing
- o Visual impact
- o Does not respond to the buildings and character of the area
- o Construction impacts on the busy highway
- o Impact on wildlife
- o Impact on retaining walls
- o Poor access for occupiers
- o Too large for the context
- o Noise and disturbance from use of the roof terraces
- o Impact upon the historic property the "Knoll".
- o Drainage impacts
- o Development of garden space contrary to national policy.
- o Will impact upon the quality of adjacent holiday accommodation.

The supporting letter raises that it will provide much needed housing in a sustainable location, and puts the site to its best use.

Relevant Planning History

Pre-Planning Enquiries:

DE/2016/0468: 12 Dwellings - not supported

Planning Applications:

P/2017/0406: Construction of 12x 2-bed dwellings: Refused 13.12.2017

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

Policy H1 of the Torbay Local Plan states that proposals for new homes within the built-up area (as is the case in this instance), will be supported subject to consistency with other policies in the Local Plan.

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 residential 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, national guidance, and the emerging Referendum Version of the Torquay Neighbourhood Plan, with the key issues 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 of the Torbay Local Plan.

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 locality.

In terms of local character the northern and southern sides of this section of Newton Road display different characters. To the south side of the road, within the Torre Conservation Area, Victorian villa development dominates. To the north 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 17.5

metres wide with 6 metre wide gaps between them. The scale is three storeys under a flat roof and the form and detail appears to seek to mimic elements of Victorian development in the area, where the walls are rendered with banding strips and banded openings accentuating the windows and doors, which are timber sliding sash and timber panelled. The flat roof is metal seamed and concealed by a parapet.

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 and set back from the highway. 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. It is clear that the footprint of the development affords limited space to the front and around the buildings, which is also at odds with the defining local character where buildings are set within garden plots and generally set further back from the edge of the highway. 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 area. 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.

In terms of general form and massing the presentation of three-storey flat-roofed buildings in such close proximity to the highway will present a development that clearly jars with its context and mimicking elements of the local built vernacular does little to positively address the harm borne by the siting, massing and arrangement of the development as a whole.

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 and thus the character and appearance 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.

In regard to emerging policy the proposal, for the reasons set out above, is considered contrary to Policy TH8 - Established architecture of the Referendum Version of the Torquay Neighbourhood Plan, which seeks that development must be of good quality design, respect the local character in terms of height, scale and bulk; and reflect the identity of its surroundings.

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 60.5sqm. 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. 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. The dwellings therefore fail to meet the size standards identified within the Torbay Local Plan and are considered to provide an unsatisfactory living environment for future occupiers. The limited internal space afforded each unit is also considered an indicator of an overdevelopment of the site.

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 lowering of the ground level that is proposed reduces the number of steps necessary and, although it is not ideal for there to be an absence of level access, the arrangement is an improvement on the access to the previous dwelling and is better than that to adjacent properties.

In regard to ancillary facilities there is combined waste and cycle storage that is provided with level access, which would appear to provide satisfactory levels of storage, in-line with Policies DE1, W1 and TA3 of the Torbay Local Plan. There is however no designated collection area and it would appear that the waste facilities would resultantly have to be left on the adjacent footpath, which is not ideal on such a scale (12 wheelie bins, 24 recycling boxes and 12 food caddies), as it may present an obstruction to pedestrians and potentially a hazard to highway users.

In terms of outdoor amenity space Policy DE3 of the Torbay Local Plan identifies a guiding minimum of 55sqm for dwellings. There are small balconies/terraces off that provide private semi-private outdoor space and 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 is also an indicator that the proposed development cramps and overdevelops the site.

To conclude the internal living environment would appear inadequate as it falls

demonstrably below the size standards set out in the Torbay Local Plan, and the proposal does not afford future occupiers adequate outdoor amenity space, and is therefore contrary to Policies DE1 and DE3 of the Torbay 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 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 proposal sits at a similar height to the amended height of the 2017 scheme, where the agent had sought to respond to the concerns of neighbours by lowering the development by 1.8 metres through the course of the previous application. The development therefore 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. 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. Although it is unfortunate that the building and the proposed boundary treatment 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 border treatment and the adjacent land and land levels. The current proposal is 1.2m lower than the previous proposal due to the parapet being lower than the previous roof terrace enclosure. The result is the development will be neither overbearing nor prominent. Again there would be no overlooking due to the land levels.

The impact upon the amenity afforded neighbouring occupiers behind the easterly terrace is slightly 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 current scheme will present a building approximately 2.8 metres above the adjacent garden level at the eastern end, compared to the previous scheme being approximately 4m above the garden level. The previous proposal in 2017 was considered unduly large in such close proximity to the border with an unacceptable level of impact upon the outlook of occupiers to the north towards the eastern end. The reduction in height presents a less dominant level of impact that is, on balance, considered an acceptable relationship.

For the reasons above the proposal is considered to comply with Policy DE3 of the Torbay Local Plan as it would not unduly impact the amenities afforded neighbouring occupiers.

5. Highway Safety and Parking

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.

The adjacent highway is also a major strategic route and there is some concern that the additional pressure for parking in combination with the creation of 12 dwellings that will require waste collection, may also present some conflict within the road network were there appears little scope to secure space for a collection vehicle near to the site. Linked to this the development in the absence of a collection facility at roadside the development is likely to result in a large number of waste bins being stored on the footpath which may present conflict with pedestrians and potentially road users.

For the reasons above the proposal is considered contrary to Policies SS6, 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 40% 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 and that buildings are not located within 3m of a Public Sewer. South West Water have provided information that clearly shows a Public Sewer running under the site and have said that development over/within 3m of a Public Sewer will not be allowed by them, but they have not objected on these grounds

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.

8. Other Considerations

5 year housing supply

The Council has between around 3.8- 4.5 years' housing supply based on an assessment at December 2018.

Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay, or the granting of permission where there are no relevant development plan policies or where the most important policies are out-of-date. A lack of a demonstrable 5 year housing supply principally renders the most relevant policies of an otherwise up-to-date development plan out-of-date.

In such circumstances, permission can only be refused (according to the NPPF) according to two tests-

- 1) There are specific policies in the NPPF that provide a clear reason for refusal, or
- 2) The adverse impacts of granting permission would significantly and demonstrably outweigh the benefits (when assessed against the Framework as a whole)

This presumption in favour is often referred to as the 'tilted balance'.

It must be remembered that whilst the NPPF is a material consideration, it has no power to supersede an adopted development plan. However it does set out clearly that decision makers must give significant weight to housing supply considerations.

Notwithstanding the above as the proposal is considered to cause less than substantial harm to a heritage asset the proposal should be considered without using the 'tilted balance', as laid out Paragraph 11 of the NPPF. The benefits of the scheme are still relevant as a material and the provision of 12 homes would in some way help address the lack of a 5 year housing supply and the public benefit of this should still be afforded due weight in the decision making process. In the absence of a 5 year housing supply these are important considerations and must be weighed in favour of the development.

Torquay Neighbourhood Plan

The Torquay Neighbourhood Plan has recently completed its Independent Examination. Section 70(2) of the Town and Country Planning Act 1990 (as amended) provides that a local planning authority must have regard to a post-examination draft neighbourhood development plan, so far as material to the application.

Relevant policies for this application are:

Policy TS1 (Sustainable Development):

The Torquay Neighbourhood Plan provides a framework which contributes to the achievement of sustainable development in Torquay. Development proposals should accord with the policies contained in the Torquay Neighbourhood Plan,

where relevant, unless material planning considerations indicate otherwise.

Policy TH8 (Established Architecture):

This policy requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings.

Policy TH9 - Parking facilities:

All housing developments must meet the guideline parking requirements contained in the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or, the development is within the town centre and an easy walk of a public car park which will be available to residents for the foreseeable future.

Policy TH2 - Designing out crime

New development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

For the reasons cited within this report there is considered to be substantial conflict with Neighbourhood Plan Policies.

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 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 NPPF by land in built up areas such as residential gardens being specifically excluded from the definition of previously developed land (brownfield land).

It remains the opinion of officers that the scheme should secure affordable housing. As the proposal is considered unacceptable in other respects, 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:

Sustainable Development 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 726sqm, which would actually equate to a CIL liability of £21,780.

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.

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.

Proactive Working

In accordance with paragraph 38 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

On balance, having considered the lack of a demonstrable 5 year housing supply and the benefits of the scheme it is considered that the harm of the proposal and the broad conflict with the Local plan, the NPPF when taken as a whole, and the Emerging Torquay Neighbourhood Plan, would demonstrably outweigh the benefits of the scheme.

It is considered that the proposal would be harmful to the streetscene, along with the setting, character and appearance of the Torre Conservation Area; would provide a poor residential environment for future occupiers; would result in unacceptable harm to the amenities of adjacent occupiers; and would have an unacceptable effect on highway safety. For these reasons, and given the lack of an 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. It is therefore recommended that the application be refused.

Condition(s)/Reason(s)

01. The proposal, due to its massing, form and detailed design, which is exacerbated by its elevated position at the 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.
02. The proposal, due to the limited internal floor areas of each dwelling, 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.
03. 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; the lack of designated bin collection storage at the roadside for multiple bins, which is likely to result in bin storage on the footway that may impede pedestrian movement and impact highway safety; and the lack of parking for waste collection vehicles on a major strategic route, would be detrimental to local amenity and highway safety, contrary to Policies TA1, TA2, TA3, DE1 and SS6 of the Torbay Local Plan 2012-2030.
04. 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 adjacent land and buildings would not be increased within a Critical Drainage Area, contrary to Policies ER1 and ER2 of the Torbay Local Plan 2012-2030.
05. The proposal, in the absence of a completed S106 Legal Agreement, fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030.

Relevant Policies

SS1 - Growth Strategy for a prosperous Torbay
SS3 - Presumption in favour of sustainable dev
SS8 - Natural Environment
SS8 - Natural Environment
SS10 - Conservation and Historic Environment
SS11 - Sustainable Communities Strategy
SS12 - Housing
SS13 - Five Year Housing Land Supply
SDT1 - Torquay
TA1 - Transport and accessibility
TA2 - Development access
TA3 - Parking requirements

C4 - Trees, hedgerows and natural landscape
H1LFS - Applications for new homes_
H2LFS - Affordable Housing_
DE1 - Design
DE3 - Development Amenity
ER1 - Flood Risk
ER2 - Water Management
W1 - Waste management facilities