

Application Site Address	Land At Waterside Quarry Waterside Road Paignton TQ4 6LJ
Proposal	Outline consent with all matters reserved for three dwellings
Application Number	P/2019/0520
Applicant	Mr Adam Billings
Agent	Mr James Dawson - JD Architectural Design
Date Application Valid	11/06/2019
Decision Due date	06/08/2019
Extension of Time Date	15/07/2020
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due to the number of objections that have been received.
Planning Case Officer	Emily Elliott

**Location Plan:**



**2** Location plan  
1:1250

### **Site Details**

The site is an expanse of land within the upper section of Waterside Quarry that is adjacent to Waterside Road. The site was formerly a limestone quarry and there remains an exposed quarry wall face to the northern and western boundaries. The site is located within the Waterside, Goodrington Urban Landscape Protection Area (ULPA) and is within 250 metres of Saltern Cove SSSI. The exposed quarry face which forms the northern and western boundaries is designated as a Regionally Important Geology Site (RIGS) and County Geological Site (CGS) for its Middle Devonian (Givetian) limestone.

### **Description of Development**

The proposal seeks permission for outline planning permission with all matters reserved for three dwellinghouses. The submitted information includes a Design and Access Statement, a suitably scaled existing site layout, a suitably scaled cross-section of the site, a suitably scaled visibility splay plan which is accompanied by a traffic speed and count survey, and an indicative suitably scaled proposed site layout.

### **Pre-Application Enquiry**

Not applicable.

### **Relevant Planning Policy Context**

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

#### Development Plan

- The Torbay Local Plan 2012-2030 ("The Local Plan")
- The Brixham Peninsula Neighbourhood Plan 2012-2030

#### Material Considerations

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

### **Relevant Planning History**

P/2019/0617/OA: Three new dwellings with vehicular access. Refused 09/06/2020.

P/2016/0824/PA: Formation of a 2 storey dwelling with parking (revised documents inc revised layout received April 2017). Permission with legal agreement 06/04/2018.

P/2016/0822/RM: Reserved Matters Application for approval of the details for appearance, layout and scale of two no. two storey residential dwellings with associated parking and garages in relation to Outline approval P/2014/0045. (revised documents inc revised layout received April 2017). Permission with legal agreement 16/03/2018.

P/2014/0045/OA: 3 No. Detached dwellings and associated access/parking provision. Approved 23/01/2015.

### **Summary of Representations**

The application was publicised through a site notice and neighbour notification letters. 8 neighbour notification letters were sent to those neighbours which officers considered the development could affect or nearby. 40 letters of objection from 24 individuals (a number of objectors commented more than once) and 2 letters of support have been received.

Concerns raised in objection include:

- Overdevelopment
- Not in keeping with the local area
- Impact on local area
- Sets precedent
- Privacy/overlooking
- Designations in Development Plan
- Removal of allocation in Brixham Peninsula Neighbourhood Plan
- Residential amenity
- Traffic and access
- Trees and wildlife

Comments raised in support include:

- Impact on local area
- It provides houses

### **Summary of Consultation Responses**

#### **Brixham Peninsula Neighbourhood Forum:**

No response received.

#### **Torbay Council's Highways Engineer (Initial Response):**

For more specific details regarding parking, cycle storage, gradients and all other Highway issues, I would recommend the Developer to view The Highways Development Control Standing Advice for Minor Development Applications.

At the junction with Waterside Road the access would be required to have a visibility of 43m x 2.4m x 43m, this is the recommendation for a 30mph road. This distance

could be reduced if the developer carries out speed readings in the immediate vicinity to prove a lower 85th percentile speed.

**Future Proposals:**

If the number of dwellings that will be served from the access with Waterside Road increase to 5 Dwellings or more in future proposals, Highways would normally require the developer to enter into a Section 38 agreement to bring the road up to an adoptable standard. This would involve a 5.5m shared surface and would have to include a suitable turning area of Highway specification.

If the Developer requests for the road to remain private, this would be a departure from our normal policy.

The lane serving the dwellings would require at least one passing bay due to its width and length. Also checks with the fire service may be required to ensure that a fire appliance could, if required, reach all dwellings and operate effectively.

The Developer would need to check if refuse vehicles would be prepared to pick up at the proposed collection point.

**Torbay Council's Highways Engineer (Further Response – 23/06/2020):**

After studying the Highway report, Torbay Highways Department would have no objections.

The only one thing is the wing walls at the access should be clear of Landscaping obstructions and the walls ideally kept to 600mm to 800mm high so there is clear visibility when sat in a vehicle exiting the access.

**South West Water:**

No objection subject to surface water being managed by means of soakaways as proposed.

**Torbay Council's Drainage Engineer:**

As the development is located in Flood Zone 1 and the developer is proposing to discharge his surface water drainage using soakaways, please use the recently agreed standing advice for this planning application.

**Devon County Council's Senior Ecology (Biodiversity):**

An Ecological Appraisal, Habitats Regulations Assessment Screening Report and Arboricultural Method Statement and Tree Protection Plan have been submitted with the application. The Local Planning Authority ecologist has completed a detailed Habitats Regulations Assessment of the proposals in relation to South Hams SAC greater horseshoe bats.

Designated sites

The application lies 5.5 km from South Hams Special Area of Conservation (SAC) and is located within the Berry Head South Hams SAC greater horseshoe bat Sustenance Zone. The application site is adjacent to a SAC greater horseshoe bat mitigation features associated with the approval of planning applications P/2016/0822 and P/2016/0824 (controlled lighting and landscaping). The application site is 300m east of Lyme Bay and Torbay SAC. The adjacent exposed quarry face is designated as a Regionally Important Geology Site (RIGS) and County Geological Site (CGS) for its Middle Devonian (Givetian) limestone.

### Habitats

The site comprises 0.3 hectares of remnant coastal limestone grassland sloping upwards to the western and northern boundaries of the application site to exposed quarry wall face. The site was cleared of scrub during the winter of 2015/16. The grassland is currently managed by cutting and mowing.

### Species

Plant species recorded on site are considered those typical of calcareous coastal grassland. The site has favourable habitat for bats, nesting birds and reptiles.

Bat surveys carried out at the application site between 2015 and 2017 in relation to the Brixham Peninsula Neighbourhood Plan identified no roosts within the site and bat activity was found to be low with common pipistrelle most frequently recorded. There is evidence from a suite of bat activity surveys between 2013 and 2016 on the adjacent approved development site (Land at Waterside Quarry P/2016/0822 and P/2016/0824) of the presence of c. 1 to 2 greater horseshoe bats and lesser horseshoe bats roosting throughout the year within a cave in the adjoining quarry face (under the ownership of the adjacent development site). Thermal imaging data in September 2016 recorded lesser horseshoe bat accessing the cave roost along the site boundary between Waterside Road and the cave and from land immediately south-east of the cave [the application site] over the top of the quarry face. It is postulated within the survey report submitted with the adjacent application that greater horseshoe bats are likely to use these same routes. The data suggest the adjacent cave is used by horseshoe bats throughout the year and is likely to form a greater horseshoe and lesser horseshoe mating roost. The adjacent applications were approved in 2018 further to Torbay Council's Habitats Regulations Assessment which concluded no adverse effect on South Hams SAC greater horseshoe bats, subject to planning conditions/obligations including provision of a Dark Areas Map, Integrated Landscape and Lighting Design Strategy, Construction Environmental Management Plan, Landscape and Ecological Management Plan and Ecological Monitoring Strategy.

No evidence of badger was recorded. No nesting bird activity was recorded although their presence is assumed given suitable habitat present on site. Surveys recorded no reptiles however their presence is assumed based on proximity of recorded presence within adjoining land.

### Impacts

Without appropriate mitigation, potential impacts during the construction phase of the development include harm to protected species including reptiles and nesting birds and potential disturbance to bats associated with the adjacent cave roost from noise and light.

The development would result in the permanent loss of improved and semi-improved calcareous grassland and scattered scrub. During the operational phase (the occupation of the development) light sensitive bat species including lesser horseshoe and greater horseshoe bat (both listed as Annex II species of the EU Habitats Directive) associated with the adjacent cave roost, without appropriate mitigation, are likely to be disturbed by increased levels of artificial lighting which may lead to disruption of roosting, commuting and foraging activity and abandonment of the adjacent cave roost.

### Mitigation

The proposals outline therefore mitigation design principles will inform the detailed design of the scheme to be brought forward at Reserved Matters. Biodiversity mitigation and enhancement principles are set out within the submitted Ecological Appraisal and within the submitted Habitats Regulations Assessment Screening Report (*Appendix 8: Ecological Management and Enhancement Plan*) and include:

- Recommendations for soft landscaping
- Erection of a variety of bird boxes
- Ecological supervision
- Mitigation and enhancement measures for reptiles
- Restricted lighting during construction
- Appropriate lighting design including avoiding sensitive areas and fitting properties with blinds before sale
- Provision of a home user guide
- Sensitive management of hedgerows
- New native hedgerow
- A detailed Landscape Strategy and Landscape and Ecological Management Plan to be provided at Reserved Matters
- Removal of non-native invasive plant species from the quarry face

### Habitats Regulations Assessment

In line with the 2019 South Hams SAC Greater Horseshoe Bats Habitats Regulations Assessment Guidance and in accordance with the Conservation of Species and Habitats Regulations 2017 (as amended) a detailed Habitats Regulations Assessment has been carried out by the Local Planning Authority ecologist in relation to effects of the proposals alone or in-combination with other plans or projects on European Sites.

Subject to implementation of mitigation measures and additional recommendations and conditions requiring as part of any reserved matters application a Dark Areas Map, an Integrated Landscape and Lighting Design Strategy, a Construction Environment Management Plan and a Landscape and Ecological Management Plan, the Council has concluded that the proposals would not adversely affect the integrity of South Hams SAC. Natural England in its consultation response has advised no objection, concurring with the Council's conclusion of 'no adverse effect on SAC integrity' and considers no likely significant effect on South Hams SAC based on the small scale of development, sub optimal location, proximity of a minor roost and low greater horseshoe bat activity.

### Biodiversity Net Gain

Natural England in its consultation response advises that in the Chancellor's 2019 Spring Statement, the government announced that it will mandate net gains for biodiversity on new development in England to deliver an overall increase in biodiversity. Accordingly to future proof the proposed development Natural England advises that it would be useful to demonstrate the delivery of biodiversity net gain, with the use of a recognised biodiversity metric mechanism. To provide a consistent and reliable approach to the calculation of biodiversity net gain, Natural England recommends use of the defra biodiversity net gain metric.

### Biodiversity Policy

Policy NC1 of the Torbay Local Plan and guidance within the NPPF seeks for development to duly consider biodiversity and take opportunities for enhancement proportionate to the context and development. Policy NC1 also requires that development around the edge of the built-up area that is within the Berry Head SAC Sustenance Zone will provide features to maintain and improve the ecological coherence of the landscape, necessary to maintain the Torbay population of Greater Horseshoe Bats in 'favourable conservation status'. This will include maintaining light levels at 0.5 lux.

Policy SS8 (1) requires 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 including particular attention to Greater Horseshoe Bat flightpaths.

Policy E8 Brixham Peninsula Neighbourhood Plan provides that development 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 National Planning Policy Framework and conforms with Policy NC1 of the Torbay Local Plan (2012-2030).

## Recommendations

Without appropriate mitigation, development has the potential to impact light sensitive bat species (including Annex II lesser horseshoe bats and greater horseshoe bats) associated with an adjacent year-round cave roost, adjacent commuting and foraging habitat and mitigation features. To satisfy the Local Planning Authority that development will result in no harm to protected sites and species it is recommended conditions/obligations are attached to any outline approval to require the following:

- There should be no light spill within 10m of the top of the adjacent quarry face greater than 0.5 lux. In order to demonstrate this a 'Dark Areas Map' shall be submitted to show all of the areas of the site and adjacent habitat that will remain unlit with light levels no greater than 0.5 lux;
- At Reserved Matters an Integrated Landscape and Lighting Design Strategy by suitably qualified lighting consultant for the 'dark areas' shall be submitted as part of any Reserved Matters application;
- A detailed biodiversity mitigation and enhancement strategy, including a biodiversity metric/ budget to provide for a biodiversity net gain shall be submitted at Reserved Matters;
- A Landscape and Ecological Management Plan (LEMP);
- A Construction Environmental Management Plan (CEMP);
- There shall be no vegetation removal or clearance works during the bird breeding season from March to September inclusive, except in the presence of a suitably qualified ecologist following written approval by the Local Planning Authority.

### Reason:

To ensure that development will result in no adverse effect on protected sites and species and provide for a biodiversity net gain in accordance with the NPPF, Torbay Local Plan Policies NC1 and SS8; Policy E8 of the Brixham Peninsula Neighbourhood Plan and the Conservation of Habitats and Species Regulations 2017 (as amended).

### **Devon County Council's Senior Ecologist (HRA):**

Habitats Regulations Assessment completed. The proposal would not result in adverse effects to the South Hams SAC, subject to securing mitigation measures.

Natural England: Thank you for your Habitat Regulations Appropriate Assessment consultation. Our advice relating to Green Infrastructure, and Biodiversity Net Gain also applies to application P/2019/0520.



### South Hams Special Area of Conservation (SAC) - No objection

Natural England concurs with the conclusion of your Appropriate Assessment that the proposals will not result in adverse effects upon the integrity of the South Hams SAC. We note the small scale of the development, sub optimal location, proximity of minor roost, and low greater horseshoe bat activity. Based upon these considerations, it might have been sufficient to carry out a simple Habitats Regulations Assessment screening and conclude no likely significant effect upon the South Hams SAC.

### Green Infrastructure

The proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. Evidence and advice on green infrastructure, including the economic benefits of GI can be found on the Natural England Green Infrastructure web pages.

As part of Torbay Council's commitment towards Green Infrastructure, we are keen to see the integration of this important element into the proposals. This will facilitate a holistic approach and ensure that the development proposals are capable of delivering an environmentally sustainable package. If you have not already done so, we would encourage you to liaise with Torbay Council's green infrastructure officer to explore opportunities to strengthen Green Infrastructure.

### Biodiversity net gain

In the Chancellor's 2019 Spring Statement, the government announced that it "will Mandate net gains for biodiversity on new developments in England to deliver an overall increase in biodiversity".

Accordingly and to future proof the proposed development, we advise that the proposals are reviewed in light of this commitment towards the delivery of biodiversity net gain. It would be useful to demonstrate the delivery of biodiversity net gain, with the use of a recognised biodiversity metric mechanism. To provide a consistent and reliable approach to the calculation of biodiversity net gain, we recommend use of the defra biodiversity net gain metric.

#### **RSPB:**

No response received.

#### **Devon Wildlife Trust:**

No response received.

#### **Geopark Management Group:**

The English Riviera UNESCO Global Geopark (ERUGGp) supports, and is grateful for, the recognition of the importance of the Goodrington Quarry and Road Cutting Regionally Important Geology site (RIGS), a site which contributes to understanding the unique and internationally important marine Devonian geology of the Geopark territory, and the sites value towards retaining the UNESCO status for Torbay.

The ERUGGp's overall approach to any planning application connected to or near a designated site is that, should the application be granted, any development should deliver the protection and enhancement of geodiversity with the submission of sufficient survey information (by a suitably qualified person) that sets out the condition of sites, and containing clear goals for the management of identified aspects and areas to protect, promote public access (where appropriate), academic access for research by permission (where public access is not appropriate), appreciation and interpretation of geodiversity commensurate with the sites importance.

The site was considered as part of the overall work of Dr Kevin Page on the Geopark Condition Assessment and Management Recommendations report (2019) but that due to the area being private land and fenced it was not accessed or surveyed directly. The site is therefore noted currently as Unfavourable-declining and the recommendation within the report is for the site to be surveyed to determine if it recoverable.

ERUGGp acknowledges that previous planning applications have been granted on the land included in the designated area sold by Torbay Council in 2014. It is important to state that the Geopark was not aware of these events and had it been, the same recommendations below would have been made.

Therefore, considering all aspects, should the planning application be accepted, the recommendations the ERUGGp would encourage you to make are:

- a) that in addition to any structural geological survey, the entire RIGS site is surveyed by a geologist with specialist/credible knowledge on the Marine Devonian. The ERUGGp can recommend an expert with a record of working in this field.
- b) that any site clearance done to either enable the survey or that is carried out as part of site management is carried out holistically taking into account the geodiversity and biodiversity of the site, adhering to all relevant legislation.
- c) that any management and interpretation recommendations are completed.
- d) that, as the land is privately owned, access, by prior arrangement, for researchers and academics is permitted in future. This is not in any way anticipated to be frequent or onerous.

The ERUGGp is keen to support and assist all private owners of designated sites and therefore is happy to assist in any way it can moving forwards.

**Council's Head of Parks and Open Spaces:**

In essence the information provided is satisfactory with a fair assessment of the tree stock supported with a tree protection plan. However, the tree protection plan is not dimensioned - we would request that the plan is dimensioned to allow for accurate setting out of the fence that would also provide a stated metric for the ongoing site visits by the arboricultural consultant or tree officer that will enable confirmation that the tree protection fence is in the right place.

We would also, as a standard condition received prior to commencement, require an AMS detailing; a pre-commencement meeting, issuing of TPP, frequency of site visits, written confirmation of site supervision to be made available to the LPA and location of services and their impact on the development/retained trees.

All landscape planting should refer to BS: 8545:2014 Trees: from nursery to independence in the landscape - Recommendations.

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

1. Principle of Development
2. Impact on the Character of the Area
3. Impact on Residential Amenity
4. Impact on Highway Safety
5. Impact on Ecology and Trees
6. Flood Risk and Drainage
7. Affordable Housing Contributions

### **Planning Officer Assessment**

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

The proposal is for outline planning permission with all matters reserved for three dwellinghouses. Objectors have raised concerns regarding the designations of the site with regard to the Development Plan, brought attention to the deallocation of the site as a housing site in the Brixham Peninsula Neighbourhood Plan, they believe it would set a precedent and would constitute an overdevelopment of the site.

Policy H1 of the Torbay Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. At present the Council cannot demonstrate a 5 year housing land supply and therefore the tilted balance in favour of sustainable development is applicable as set out in the National planning Policy Framework:

Paragraph 11 of the NPPF states:

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

For **decision-taking** this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date<sup>7</sup>, granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed<sup>6</sup>; or

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

*Footnote 7: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.*

The impact of paragraph 11 of the NPPF in the assessment of this application is that development plan policies that are most important for determining this application are out of date and that planning permission should be granted unless any adverse impacts of do so would significantly and demonstrably outweigh the benefits.

The site is located within an established residential area. Those in support of the proposal have stated that the development would provide jobs and housing.

The site is located within the Broadsands Settlement Boundary as defined by Policy E2 of the Brixham Peninsula Neighbourhood Plan, which states that subject to compliance with the other policies of 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 per Policy BH5 of the Brixham Peninsula Neighbourhood Plan.

The application site was considered for inclusion as a housing allocation site within the Brixham Peninsula Neighbourhood Plan. Following a screening appraisal of the site by the Council's Ecologist and a review of the AECOM HRA of the Brixham Peninsula Neighbourhood Plan on behalf of Torbay Council, the site was removed from the plan on the recommendation of the independent Examiner's Report (McCann, July 2018):

*'My conclusion is that I am not satisfied that the HRA assessment of the site as submitted is adequate. The NPPF is clear that sites allocated should be both deliverable and developable. In my planning judgement there is sufficient uncertainty*

*about the deliverability and developability of the site that it should be deleted from the table'.*

This conclusion appears to be in light of Jacob's and Greenbridge's view that the adjacent confirmed greater horseshoe bat cave roost was not sufficiently considered at the time of the Brixham Peninsula Neighbourhood Plan HRA work carried out by AECOM on behalf of Brixham Parish Council/Brixham Peninsula Neighbourhood Forum. It should be noted that both this application and the other application which was recently determined (planning reference P/2019/0617) have had a Habitat Regulations Assessment commissioned, which does make proper consideration of the greater horseshoe bat cave roost, and therefore has the potential to overcome this previous concern.

Having regard to the lack of a demonstrable 5 year housing land supply it is necessary therefore to assess if the proposed development represents sustainable development including economic, social and environmentally and whether any adverse impacts of approving this development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

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

Paragraph 124 of the NPPF states 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. Paragraph 127(c) of the NPPF states that planning policies and decisions should ensure that developments 'are sympathetic to local character and history, including the surrounding built environment and landscape setting'. In addition, paragraph 130 of the NPPF states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. 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 Brixham Peninsula Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area.

The surrounding area is somewhat urban in character, but development is at a lower density than in some other parts of Torbay. Waterside Road consists of large, detached, two-storey, 1930s dwellinghouses within spacious plots. Such dwellinghouses have an appearance typical of their time with painted rendered walls and pitched roofs. Objectors have raised concerns that the proposed development would have a negative impact on the local area and it is not in keeping with the local area. The proposal however seeks outline consent with all matters reserved hence all matters of layout, scale, appearance and landscaping are reserved for future consideration should planning permission be granted.

It should be noted that there is some indicative detail that seeks to show the potential positioning of the plots, with the submitted Design and Access statement indicating the potential for two-storey development, with the lower floors being cut into the sloping ground to present two storeys to the east but only one storey to the west. Flat roofs are indicatively shown, similar to those dwellinghouses at Waterside View. It is considered that the indicative positioning of the footprints would provide an active and positive street frontage from Waterside Road. Consequently, it is also imperative to give consideration to the Urban Landscape Protection Area (ULPA) designation on site in relation to the potential impact the proposal may have.

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

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

In terms of landscape impact it is relevant to consider the cumulative effects of the dwellinghouses previously approved (3 x 4 bed dwellinghouses have been granted planning permission under planning references P/2016/0822 and P/2016/0824 and are currently under construction on the site – these are located north-west in relation to the current application site) and validly implemented on the site currently under construction by Coyde Construction, and the proposed dwellings on the upper eastern site (this application site). It is considered that the application site is mainly screened when viewed from Dartmouth Road, given the topography of the land. The site would however be visible from Waterside Road. A cross-sectional plan of the site has been provided, the indicative height is considered to be acceptable, a planning condition is recommended to ensure that at reserved matters stage the design and scale of the proposed development does not exceed such heights. The submitted Design and Access Statement shows indicative landscaping, which would mitigate the visual impact of the proposed development on the character and appearance of the site and locality. It is considered that the proposed development would not have a significant adverse impact on the special qualities and characteristics of the ULPA, subject to a suitable landscaping scheme and ensuring the height of the dwellinghouses does not exceed the indicative height shown on the cross-sectional plan. It is considered that it is possible to develop the site for the type and quantum of development as set out in the proposal without having an unacceptable adverse impact on the ULPA in terms of the proposal not undermining the value of the ULPA as an open or landscaped feature within the urban area and making a positive contribution to the urban environment and enhance the landscape character of the ULPA, subject to suitable landscaping and other matters being resolved at the reserved matters stage.

It is considered that the proposed development in terms of visual amenity and impact on the ULPA is acceptable and accord with Policies DE1 and C5 of the Local Plan, Policy BH5 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

Policy DE3 of the Local Plan states that all development should be designed to provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring and surrounding occupiers. The Brixham Peninsula Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 127 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.

The proposal is for outline planning permission with all matters reserved for three dwellinghouses. Whilst the proposal only seeks outline planning permission with all matters reserved, it does detail an indicative proposed site layout in order to try and demonstrate that appropriate residential environments could be achieved. Due to the scale of the plots it is likely that a good standard of residential environment could be achieved for future occupiers of the site. All habitable rooms should provide sufficient outlook and levels of natural light. In terms of internal floorspace requirements, Policy DE3 of the Local Plan sets the minimum standards that all new development proposals should adhere to. Furthermore, Policy DE3 of the Local Plan states that all new dwellinghouses should provide a minimum of 55 square metres of outdoor amenity space, which are useable and relatively private. Given the spacious site area, it is considered that this would be achievable.

Objectors have raised concerns regarding residential amenity and privacy/overlooking. It should be noted that given the contour lines, the site is on higher ground than the Coyde Construction site. The nearest dwellinghouses would be those sited on Waterside View with No.3 Waterside View being some 24 metres away from 'House 3' which is proposed, and other nearby dwellinghouses are those currently under construction on the Coyde Construction site, there would be some 33 metres distance indicatively shown between the proposal and the under construction dwellinghouses. There is a considerable difference in land levels between the proposed site and the Coyde Construction site. The indicative layout demonstrates that acceptable separation distances are achievable onsite. In regard to neighbouring occupiers should planning permission be granted, subject to a well resolved reserved matters application, that duly considers scale, proximity and detailed design in terms of the relationships to adjacent buildings and private gardens, it is likely that three dwellinghouses could be delivered without undue impact upon adjacent occupiers.

All matters considered the proposal, subject to a well resolved reserved matters, is likely to provide and retain acceptable living environments for future occupiers in accordance with Policy DE3 of the Development Plan and NPPF.

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

Para. 108 of the NPPF guides that when assessing developments it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be (or have been) taken up, given the type of development and its location; (b) safe and suitable access to the site can be achieved for all users; and (c) 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.

Para. 109 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

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

Objectors have raised concerns regarding traffic and access. The proposal seeks outline consent with all matters reserved hence all matters including access are reserved for future consideration should planning permission be granted. When determining such an application, the Local Planning Authority need only decide whether there is a reasonable prospect of a vehicular access which:

- i. complies with the Highway Design Guide; and
- ii. will afford each of the proposed dwellings with policy-compliant levels of parking; and
- iii. is otherwise acceptable in Planning terms (e.g. impact on neighbouring dwellings)

As required by the Town and Country Planning (Development Management Procedure) (England) Order 2015, the outline application must indicate the area where access to the proposed development would be situated. Any reserved matters application must not diverge from the outline permission, and a reserved matters application cannot be used to bring in matters completely outside the scope of the original permission. If a new means of access, not sought at outline stage, is proposed



in detailed plans, this would be a departure from the outline consent, entitling the Local Planning Authority to refuse to approve the plans.

The proposed vehicular access is indicated on the submitted plans (plan references '1927 PL2' received 15/05/2019 and '1927 PL4 B (Access Visibility)' received 22/06/2020). The proposed access road should comply with the Council's "Highway Design Guide for New Developments". The design guide states that a shared private drive (a shared surface which forms a cul-de-sac or courtyard serving a maximum of 5 houses) whose length exceeds 25 metres should provide a turning area for refuse vehicles and passing bays. The access road from Waterside Road indicates that the driveway to House 3 would be accessed close to Waterside Road and Houses 1 and 2 would share approximately a 20 metre section of driveway, this is considered to be acceptable.

The Council's Highways Engineer has stated that at the junction with Waterside Road the proposed access would be required to have a visibility of 43 metres x 2.4 metres x 43 metres, which is the recommendation for a 30mph road. The applicant has submitted a visibility splays plan, which is accompanied by a speed and traffic volume study. The Engineer has assessed the submitted information and has stated that the Local Highway Authority has no objections. The Engineer noted that the wing walls at the access should be clear of landscaping obstructions and the walls ideally kept to 600mm to 800mm high so there is clear visibility when sat in a vehicle exiting the access.

It is considered that impacts relating to highway matters are acceptable and accord with Policies TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Brixham Peninsula Neighbourhood Plan and guidance contained within the NPPF.

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

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the Brixham Peninsula 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 with Policy NC1 of the Local Plan.

The application site is approximately 5.5km north-west of the Berry Head to Sharkham

Point component of South Hams Special Area of Conservation (SAC). The site is within the Berry Head roost Sustenance Zone.

The application is supported by an Extended Phase 1 Habitat Survey & Ecological Appraisal (Sunflower International, August 2019); a Habitats Regulations Assessment Screening Report incorporating Ecological Management and Enhancement Plan (Professor John Altringham, dated March 2018); and a Habitats Regulations Assessment Screening Report, Lower Western Site (Adam Billings, dated May 2019). Objectors have raised concerns regarding the impacts on wildlife. Natural England, the RSPB, the Devon Wildlife Trust and Devon County Council's Senior Ecologist have been consulted on this application. A Habitat Regulations Assessment (HRA) was commissioned and undertaken by Devon County Council's Senior Ecologist.

The habitats within the site boundary comprises of approximately 0.3 hectares of damp limestone grassland and quarry face. The site was cleared of scrub during the winter of 2015/16 and is currently managed by mowing and scrub cutting. The site slopes upwards to the western and northern boundaries of the application site to the exposed quarry wall face. The grassland habitats are assessed by Sunflower International as containing species typical of coastal limestone grassland, with higher species diversity towards the top of the slope and lower diversity within the development footprint.

The site is on the west side of Waterside Road within an urban location on the southern edges of Paignton close to the main Paignton/Brixham Road (A379 - Dartmouth Road). Waterside Road is a cul-de-sac off Dartmouth Road which links housing and terminates in Waterside Holiday Park. The site was quarried for limestone until the 1960s and there are exposed quarry faces along the northern and western boundaries. The site was sold as one of five plots by Torbay Council in 2014 (3 sold as development land, 2 including this site as amenity land). The site is located within an ULPA. The site is not allocated in the Torbay Plan or the Brixham Peninsula Neighbourhood Plan.

The wider site comprises the Upper Eastern Site (this application site), the Lower Western Site (application P/2019/0617 which was recently refused outline consent for 3 dwellings) and the adjacent development site to the north-west (P/2016/0822 and P/2016/0824) for 3 dwellings (approved and under construction) (under different ownership). The site is approximately 5.5km from the South Hams SAC. The site is within a greater horseshoe bat 'Sustenance Zone' as defined by Natural England (2010).

The proposed works would result in the permanent loss of improved and semi-improved grassland and scattered scrub.

Mitigation measures outlined in Sections 13 and 14 of the HRA, will ensure that likely significant effects on the South Hams SAC greater horseshoe bats around the site and

in combination with other projects are avoided. A planning condition is recommended to secure said mitigation measures. Subject to the aforementioned mitigation measures, it is therefore concluded that this proposal will not have an adverse effect on the integrity of the South Hams SAC.

Natural England concurs with the conclusion of the Appropriate Assessment that the proposals will not result in adverse effects upon the integrity of the South Hams SAC. Natural England notes the small scale of the development, sub optimal location, proximity of minor roost, and lower greater horseshoe bat activity. Based upon these considerations, Natural England have stated that it might have been sufficient to carry out a simple Habitats Regulations Assessment screening and conclude no likely significant effect upon the South Hams SAC. The RSPB and the Devon Wildlife Trust did not respond to the consultation request.

Devon County Council's Senior Ecologist has stated that should outline consent be granted mitigation design principles should inform the detailed design of the scheme at the detailed reserved matters stage. Further planning conditions should include a Dark Areas Map, an Integrated Landscape and Lighting Design Strategy, a Construction Environment Management Plan and a Landscape and Ecological Management Plan. Biodiversity mitigation and enhancement principles are set out within the submitted Ecological Appraisal and within the submitted Habitats Regulations Assessment Screening Report (Appendix 8: Ecological Management and Enhancement Plan) and should be undertaken.

Natural England have stated that the proposed development is within an area that Natural England considers could benefit from enhanced green infrastructure (GI) provision. Multi-functional green infrastructure can perform a range of functions including improved flood risk management, provision of accessible green space, climate change adaptation and biodiversity enhancement. Natural England have advised that it would be useful to demonstrate the delivery of biodiversity net gain, with the use of a recognised biodiversity metric mechanism.

The exposed quarry face which forms the eastern boundary is designated as a Regionally Important Geology Site (RIGS) and County Geological Site (CGS) for its Middle Devonian (Givetian) limestone. The Geopark Management Group were consulted on the application and has stated that the English Riviera UNESCO Global Geopark (ERUGGp) supports, and is grateful for, the recognition of the importance of the Goodrington Quarry and Road Cutting Regionally Important Geology site (RIGS), a site which contributes to understanding the unique and internationally important marine Devonian geology of the Geopark territory, and the sites value towards retaining the UNESCO status for Torbay. A planning condition is recommended to ensure that the proposed development has regard to the importance of the RIGS.

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

Objectors have raised concerns regarding the trees. The proposed development would result in the loss of insignificant vegetation. The application is supported by a Tree Appraisal Plan and a Tree Plan, it states that no trees are to be felled. The Council's Head of Parks and Open Spaces has assessed the proposed development and states that in essence the information provided is satisfactory with a fair assessment of the tree stock supported with a tree protection plan. At the request of the Officer, the Tree Protection Plan has been suitably scaled.

A pre-commencement planning condition is recommended to secure an Arboricultural Method Statement, which details a pre-commencement site meeting, issuing of a Tree Protection Plan, frequency of site visits, written confirmation of site supervision to be made available to the Local Planning Authority and location of services and their impact on the development/retained trees. All landscape planting should refer to BS: 8545:2014 Trees: from nursery to independence in the landscape - Recommendations. Subject to the aforementioned planning condition, the proposal is considered to comply with Policy C4 of the Local Plan.

It is considered that impacts on matters of biodiversity, geology and trees are acceptable and accord with Policies NC1 and C4 of the Local Plan and Policy E8 of the Brixham Peninsula Neighbourhood Plan, subject to appropriate mitigation.

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

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment. The Council's Drainage Engineer and South West Water raise no objections to the proposed development and method of surface water drainage. Given the nature of the proposal, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice. Subject to the use of a planning condition to secure the intended means of surface water drainage, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

## **7. Affordable Housing Contributions**

The proposal falls below the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on greenfield sites of 10% for three to five dwellings which is delivered through a commuted payment.

## **Sustainability**

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The NPPF definition of sustainability has three aspects which are economic, social and environmental. Each of which shall be discussed in turn:

### **The Economic Role**

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

Once the dwellings were 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.

There are no adverse economic impacts that would arise from this development

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 additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

Impacts on neighbour amenity have been discussed above where it is concluded that it would be possible to develop this site as proposed without significant harm to residential amenity.

On balance, the social impacts of the development weigh in favour of the development

### **The Environmental role**

With respect to the environmental role of sustainable development, the elements that are considered to be especially relevant to the proposed development are impacts on the landscape in particular the ULPA; ecology and bio-diversity and surface and foul water drainage. These matters are considered in detail above.

The environmental benefits identified are either marginal in the case of any biodiversity net gain or essentially mitigation as in the case of any landscape/ecological measures to be applied to the development. Moreover, those 'benefits' have to be set against the loss of an area of open greenspace, leading to a change in the local environment and landscape. These impacts are not considered to be significant however.

The proposed development is in a sustainable location inasmuch as it is within the existing urban area and is located in close proximity to local amenities and good public transportation links.

It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### **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 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**

S106:

Not applicable.

CIL:

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule. The CIL liability for this scheme is Nil.

## **EIA/HRA**

EIA:

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

HRA:

The application site is within a sustenance zone associated with the South Hams SAC. A Habitat Regulations Assessment has been carried out for this development. The proposed development is unlikely to have a significant effect on the South Hams SAC or the functionally-linked supporting habitat associated with this either alone or in combination with any other plans or projects, subject to mitigation measures secured by condition and/or obligation and being implemented in full.

## **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing.

## **Conclusions and Reasons for Decision**

In the absence of a 5 year housing land supply applications for sustainable development should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.

The proposal is considered acceptable in principle; would not result in unacceptable harm to the character of the area or local amenity; would provide an adequate standard of living accommodation and provide acceptable arrangements in relation to access, ecology and flood risk. 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.

## **Officer Recommendation**

Conditional approval subject to the conditions detailed below. Final drafting of conditions, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director for Planning, Housing and Climate Emergency.

## **Conditions**

### **Standard Time**

That in the case of any reserved matter, application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and

That the development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case of approval on different dates, the final approval of the last such matter to be approved.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

### **Reserved Matters**

An application for the following reserved matters shall be submitted to the Local Planning Authority for its approval in writing:

- (i) layout,
- (ii) scale,
- (iii) access,
- (iv) appearance, and
- (v) landscaping.

The details of the reserved matters shall be consistent with the details submitted and approved pursuant to the outline consent.

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced, and the development shall be undertaken in accordance with the approved reserved matters.

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

### **Bats and Breeding Birds**

No removal of hedgerows, trees or shrubs shall take place between 1st March and 31st August inclusive in any given year, unless prior to the commencement of works a detailed biodiversity survey by a competent ecologist has been submitted to and approved in writing by the Local Planning Authority. The survey shall include the details of the check of vegetation for active birds' nests immediately before the vegetation is cleared and provided written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting birds on the site. The development shall then be carried out in accordance with the details submitted.



Reason: In the interests of protected species and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

### **Flood Risk Assessment**

The development hereby approved shall be undertaken in full accordance with the submitted site specific flood risk assessment, including the flood mitigation measures contained within the site specific flood risk assessment referenced " P2019-0520-1", received 15<sup>th</sup> May 2020. The flood mitigation measures shall be provided prior to the occupation of the development and shall be retained as such thereafter.

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

### **Arboricultural Method Statement**

Prior to the commencement of the development hereby approved, an Arboricultural Method Statement shall be submitted to and approved in writing by the Local Planning Authority. The Arboricultural Method Statement shall include, but not be limited to, a pre-commencement site meeting, issuing of a Tree Protection Plan, frequency of site visits, written confirmation of site supervision to be made available to the Local Planning Authority and location of services and their impact on the development/retained trees. The development shall thereafter be carried out in accordance with the approved details or any variation as may subsequently be agreed in writing by the Local Planning Authority.

Reason: To protect trees in the interests of visual amenity in accordance with Policies DE1 and C4 of the Torbay Local Plan 2012-2030 and Policy PNP1(c) of the Paignton Neighbourhood Plan. These works are required prior to commencement in order to ensure the natural environment is protected during the development period.

### **Height of Development**

The development hereby approved shall not exceed the height indicated on plan reference '1927 PL3 B (site sections)' received 4<sup>th</sup> June 2020.

Reason: In the interests of visual amenity in accordance with Policies DE1 and C5 of the Torbay Local Plan 2012-2030 and Policy PNP1(c) of the Paignton Neighbourhood Plan.

### **Construction Method Statement**

No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. 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, where appropriate
- (e) wheel and/or highway washing facilities
- (f) measures to control the emission of dust and dirt during construction
- (g) measures to minimise noise nuisance to neighbours from plant and machinery.
- (h) 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.

The approved Statement shall be adhered to throughout the construction period.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of the convenience of highway users. These details are required prior to commencement of development to secure suitable parameters for the construction phase.

### **Construction Environmental Management Plan**

No development shall take place (including ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP: Biodiversity) has been submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall be prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following.

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of 'biodiversity protection zones'.
- c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).
- d) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs.
- e) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP: Biodiversity, and the actions that will be undertaken.
- f) Responsible persons and lines of communication.
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of protected species and residential amenity and in accordance with Policies NC1 and DE3 of the Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan. These details are required prior to commencement of development to secure suitable parameters for the construction phase.

### **Landscape and Ecological Management Plan**

No development shall take place, including ground works and vegetation clearance until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The content of the LEMP shall be prepared in accordance with the specifications in BS42020; clause 11.1 and shall include the following

- a) Description and evaluation of features to be managed.
- b) Ecological trends and constraints on site that might influence management.
- c) Aims and objectives of management.
- d) Appropriate management options for achieving aims and objectives.
- e) Prescriptions for management actions.
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- g) Details of the body or organisation responsible for implementation of the plan.
- h) On-going monitoring and remedial measures for biodiversity features included in the LEMP.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(s) responsible for its delivery.

All post-construction site management shall be undertaken in accordance with the LEMP.

Reason: In the interests of protected species and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

### **Permitted Development – Micro Wind Turbines**

Notwithstanding the provisions of Class H of Part 14 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking or re-enacting that Order with or without modification), no installation of wind turbines shall take place to the approved dwellings, unless permission under the provisions of

the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In the interests of protected species and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

### **Ecological Mitigation Measures**

The development hereby approved shall be carried out in strict accordance with the recommendations of the Ecological Management and Enhancement Plan (plan reference 'P2019-0520-4 Screening Report' received 15<sup>th</sup> May 2019) and Habitats Regulations Assessment Screening Report (plan reference 'P2019-0520-3 Habitat Regulations Asses' received 15<sup>th</sup> May 2019).

Reason: In the interests of protected species and in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy E8 of the Brixham Peninsula Neighbourhood Plan.

### **Lighting Assessment and Design Strategy**

Within the application for reserved matters, a Lighting Assessment and Design Strategy by an accredited Lighting Consultant shall be submitted to and approved in writing by the Local Planning Authority. Such assessment and strategy shall include a 'dark areas' plan and demonstrate how there shall be no light spill within 10 meters of the top of the quarry face and adjacent tree line (at the northern boundary of the application site). The strategy shall support lighting measures incorporated into the development of the adjacent land. The development shall proceed fully in accordance with the approved details.

Reason: In the interests of the amenity in relation to neighbouring properties and biodiversity, and in order to accord with Policies DE3 and NC1 of the Torbay Local Plan 2012-2030.

### **Goodrington Quarry and Road Cutting Regionally Important Geology Site**

No development shall take place, until a structural geological survey is undertaken by a geologist with specialist/credible knowledge on the Marine Devonian and submitted to and approved in writing by the LPA. The approved structural geological survey shall be adhered to and implemented throughout the development strictly in accordance with the approved details unless otherwise agreed in writing by the local planning authority.

Reason: In the interests of the visual amenity and geology, and in order to accord with Policies DE1 and NC1 of the Torbay Local Plan 2012-2030. These details are required prior to commencement of development to ensure geological features are not harmed.

### **Electric Charging Point**

Prior to the occupation of the development hereby approved, a scheme for the insertion of 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 in accordance with the requirements of Policy TA3 of the Torbay Local Plan and Policy PNP1(d) of the Paignton Neighbourhood Plan.

### **Informative(s)**

01. For the avoidance of doubt, any works to be undertaken within the public highway will require the separate consent of the Highway Authority.

02. Responsibilities of the applicant / developer:

All bats are protected by law. If bats are found, works must immediately cease and further advice be obtained from Natural England and / or a licensed bat consultant. Works must not resume until their advice has been followed. Nesting birds are also protected by law. During site clearance and construction works, suitable safeguards must be put in place to prevent threat of harm to legally protected species, including nesting birds and reptiles all of which are protected under the Wildlife & Countryside Act 1981 (as amended). Where works are to involve cutting or clearance of shrubs, hedges or other vegetation, which can form nesting sites for birds, such operations should be carried out at a time other than in the bird breeding season (which lasts between 1 March - 15 September inclusive in any year). Schemes must be in place to avoid threat of killing or injuring reptiles, such as slow worms. Slow worms may shelter beneath vegetation as well as among any stored or discarded sheeting, building and other materials. Further details can be obtained from a suitably qualified and experienced ecological consultant, or please refer to published Natural England guidelines for protected species.

03. 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.

#### 04. Community Infrastructure Levy (CIL)

This development is liable for contributions under the CIL regulations to provide essential infrastructure to support development in the Borough.

CIL next steps required under the CIL Regulations 2010 (as amended):

Where planning permission has been granted for development, the Council (as the collecting authority) requires the developer, landowner or another interested party to assume liability for the levy by submitting an assumption of liability form. The Council, as the collecting authority, will then as soon as reasonably practicable, issue a Liability Notice to the applicant, the developer, and/or whoever has assumed liability for the scheme, which sets out the charge due and details of the payment procedure.

Any claims for exemption or relief can only be considered from parties who have already assumed liability, prior to commencement of development.

The relevant liable person(s) must then submit a notice to the Council setting out when development is going to start - a Commencement Notice. The Commencement Notice must be submitted to the Council for their written acknowledgement at least 48 hours prior to the start of any development on the site. No development must commence without written acknowledgement of receipt of a Commencement Notice.

The Council will then issue a demand notice to the landowner, or whoever has assumed liability, setting out the payment due dates in line with the payment procedure. On receipt of the demand notice and commencement of the development, the landowner, or whoever has assumed liability, should follow the correct payment procedure.

Failure to inform the Council of Commencement or to follow the CIL process and payment procedure correctly may result in the addition of surcharges and/or late payment interest. It must be noted that it is an offence for a person to 'knowingly or recklessly' supply false or misleading information to a charging or collecting authority in response to a requirement under the levy regulations (Regulation 110 as amended by the 2011 Regulations).

Further CIL information and Forms can be found at <https://www.gov.uk/guidance/community-infrastructure-levy#forms-and->

[template-notices](#)

05. Approved plan '1927 PL3 B (site sections)' received 4<sup>th</sup> June 2020 is only approved in so far as it relates to condition 6 (Height of Development).

**Relevant Policies**

C4 – Trees, Hedgerows and Natural Landscape Features

C5 – Urban Landscape Protection Areas

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

H1 – Applications for New Homes

H2 – Affordable Housing

NC1 – Biodiversity and Geodiversity

SS3 – Presumption in favour of Sustainable Development

TA1 – Transport and Accessibility

TA2 – Development Access

TA3 – Parking Requirements

BH5 – Good Design and the Town and Village Design Statements

BH8 – Access to New Dwellings

E2 – Settlement Boundaries

E8 – Internationally and Nationally Important Ecological Sites