

Friday, 4 September 2020

PLANNING COMMITTEE

A meeting of **Planning Committee** will be held on

Monday, 14 September 2020

commencing at **5.30 pm**

The meeting will be held remotely via Zoom (the links to the meeting are set out below)

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Members of the Committee

Councillor Pentney (Chairman)

Councillor Brown

Councillor Barbara Lewis

Councillor Dart

Councillor Manning

Councillor Dudley

Councillor Jacqueline Thomas

Councillor Hill

Councillor Barnby

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Amanda Coote, Town Hall, Castle Circus, Torquay, TQ1 3DR

Email: governance.support@torbay.gov.uk - www.torbay.gov.uk

PLANNING COMMITTEE AGENDA

1. **Apologies for absence**

To receive apologies for absence, including notifications of any changes to the membership of the Committee.

2. **Disclosure of Interests**

- (a) To receive declarations of non pecuniary interests in respect of items on this agenda.

For reference: Having declared their non pecuniary interest members may remain in the meeting and speak and, vote on the matter in question. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

- (b) To receive declarations of disclosable pecuniary interests in respect of items on this agenda.

For reference: Where a Member has a disclosable pecuniary interest he/she must leave the meeting during consideration of the item. However, the Member may remain in the meeting to make representations, answer questions or give evidence if the public have a right to do so, but having done so the Member must then immediately leave the meeting, may not vote and must not improperly seek to influence the outcome of the matter. A completed disclosure of interests form should be returned to the Clerk before the conclusion of the meeting.

(Please Note: If Members and Officers wish to seek advice on any potential interests they may have, they should contact Governance Support or Legal Services prior to the meeting.)

3. **Urgent Items**

To consider any other items that the Chairman decides are urgent.

4. **Public speaking**

If you wish to speak on any applications shown on this agenda, please contact Governance Support on 207087 or email governance.support@torbay.gov.uk before 11 am on the day of the meeting.

5. **Land off Luscombe Road, Paignton P/2020/0360**

Reserved Matters pertaining to application P/2014/0938. Matters reserved: appearance, landscaping, layout and scale.

(Pages 5 - 17)

6. **39 Wall Park Road, Brixham P/2019/0594**

Outline application for 3 dwelling houses and associated improvements to the private access lane, with all matters reserved.

(Pages 18 - 42)

7. **Land Adjacent To County Court, Nicholson Road, Torquay P/2020/0484**

Construction of car park.

(Pages 43 - 72)

8. **Pier Point Cafe, Torbay Road, Torquay P/2020/0383**

(Pages 73 - 96)

Alterations and extensions to existing restaurant including change of use of part of site from retail (A1) to restaurant (A3). (revised plans received 27/08/2020)

9. **Site visits**

If Members consider that site visits are required on any of the applications they are requested to let Governance Support know by 5.00 p.m. on Wednesday, **before the meeting**. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Instructions for the press and public for joining the meeting

If you are using an iPad you will need to install Zoom which can be found in the App Store. You do not need to register for an account just install the software. You only need to install the software once. For other devices you should just be taken direct to the meeting.

Joining a Meeting

Click on the link provided on the agenda above and follow the instructions on screen. If you are using a telephone, dial the Zoom number provided above and follow the instructions. (**Note:** if you are using a landline the call will cost up to 13p per minute and from a mobile between 3p and 55p if the number is not covered by your inclusive minutes.)

You will be placed in a waiting room, when the meeting starts the meeting Host will admit you. Please note if there are technical issues this might not be at the start time given on the agenda.

Upon entry you will be muted and your video switched off so that only the meeting participants can be seen. When you join the meeting the Host will unmute your microphone, ask you to confirm your name and update your name as either public or press. Select gallery view if you want see all the participants.

If you have joined the meeting via telephone, your telephone number will appear on screen and will be displayed for all to see until the Host has confirmed your name and then they will rename your telephone number to either public or press.

Speaking at a Meeting

If you are registered to speak at the meeting and when it is your turn to address the Meeting, the Chairman will invite you to speak giving the Host the instruction to unmute your microphone and switch your video on (where appropriate) therefore please pause for a couple of seconds to ensure your microphone is on.

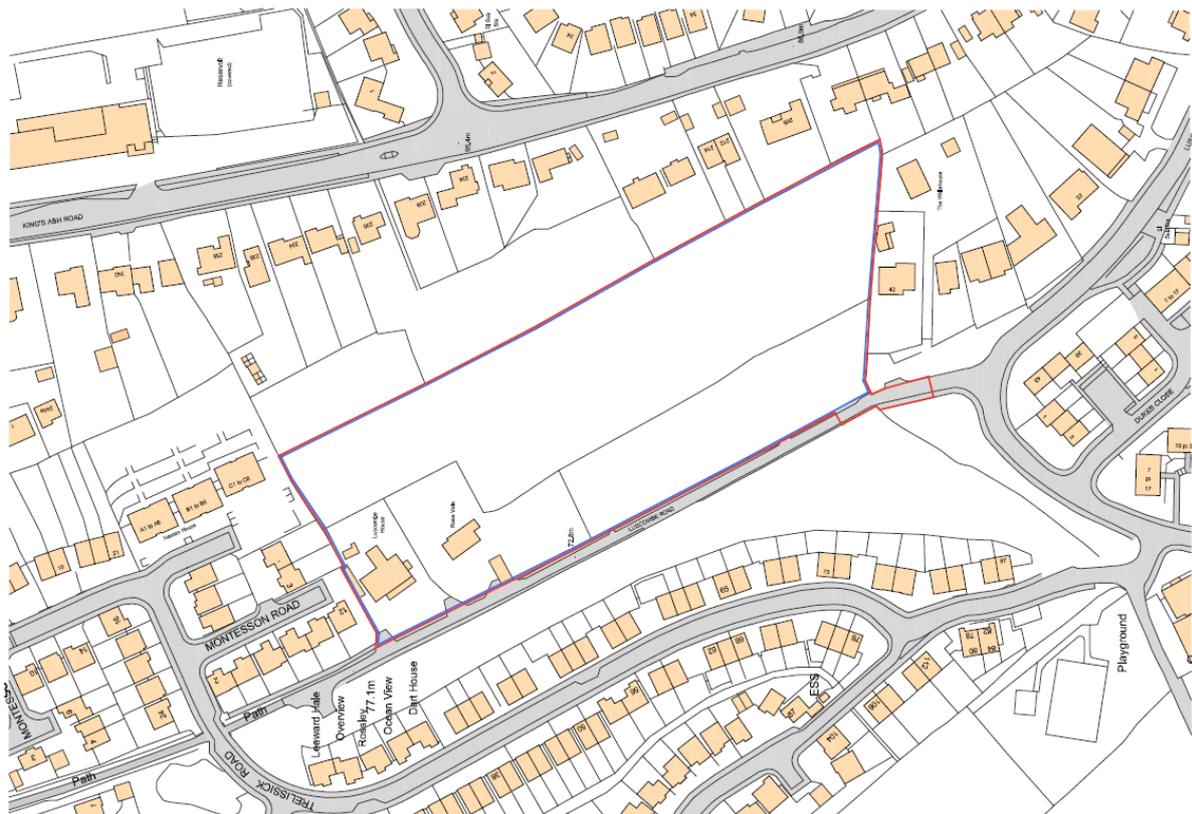
Upon the conclusion of your speech/time limit, the Host will mute your microphone and turn off your video.

Meeting Etiquette for Registered Speakers - things to consider when speaking at public meetings on video

- Background – the meeting is public and people will be able to see what is behind you therefore consider what you will have on display behind you.
- Camera angle – sit front on, upright with the device in front of you.
- Who else is in the room – make sure you are in a position where nobody will enter the camera shot who doesn't want to appear in the public meeting.
- Background noise – try where possible to minimise background noise.
- Aim to join the meeting 15 minutes before it is due to start.

TORBAY COUNCIL

Application Site Address	Land off Luscombe Road, Paignton
Proposal	Reserved Matters pertaining to application P/2014/0938. Matters reserved: appearance, landscaping, layout and scale.
Application Number	P/2020/0360
Applicant	
Agent	Persimmon Homes Ltd
Date Application Valid	01.05.2020
Decision Due date	01.07.2020
Extension of Time Date	
Recommendation	Conditional approval
Reason for Referral to Planning Committee	Major Reserved Matters Application
Planning Case Officer	Mr. Alexis Moran



Site Details

This 1.5 hectare site was allocated for housing in the previous Torbay Local Plan (H1.13) and is identified as a potential site for allocation for the Paignton Neighbourhood Plan (Policy SDP 3) in the adopted Local Plan. It is located to the east of Luscombe Road and to the north of its junction with Queen Elizabeth Drive. Two dwellings originally occupied the north-west corner of the site (one of these has been demolished) and the balance of the site is rough pasture but was previously used for camping. It falls within an established residential area.

The site occupies the south east slope of a valley and it slopes quite steeply from north east to south west across the site. The site is bounded to the west by the Luscombe Road designated cycle route and the boundary is defined by a mature hedgerow of 'important' ecological value, part of the hedge row and bank have been removed and is now in the process of being replaced.

A South West Water main runs north to south across the site and requires a substantial 6 metre easement to be retained free of development. The site is located within Flood zone 1.

Detailed Proposals

This is a Reserved Matters application relating to appearance, landscaping, layout and scale of 68 dwellings. The submitted layout plan broadly follows the master plan submitted as part of the Outline Application P/2014/0938 and is unaltered from the previously approved Reserved Matters applications.

The application is part retrospective with works being undertaken under Reserved Matters permissions P/2018/0522 and P/2019/0291. However an increase to the highway level has resulted in the development being raised higher than the permission granted resulting in most of the buildings being between 0.15m & 1.95m higher than previously approved. This application seeks to gain permission for the levels as built. The layout, the density and material appearance of the development is not altered from the previous approvals and are subsequently considered to be acceptable.

The western hedgerow was punctured in parts during the construction of the units currently on site, this has now been rebuilt and is to be replanted out. This issue is dealt with via a separate discharge of condition application.

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

- Emerging Paignton 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.

Summary Of Consultation Responses

Natural England: No comment

Environment Agency: No comments received

Drainage Engineer: *I can confirm that, providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawing and the hydraulic design calculations dated 18th May 2020, I have no objections on drainage grounds to the planning condition relating to surface water drainage being discharged.*

Ecology advisor: No objection

South West Water: No objection

Highways: No objection

Council's tree and landscape officer: The Arboricultural Method Statement and Tree Protection Plan are satisfactory, records of the site supervision will need to be submitted. The landscaping details are considered to be acceptable.

Architectural Liaison Officer: All gates that lead to rear gardens must match the same height and robust construction as the adjoining boundary treatment (1.8m as a minimum height requirement).

All gates that lead to rear gardens must be capable of being locked from both sides so that rear gardens are secure regardless of access or egress.

All garden dividing material must be a solid fence or wall to a height of 1500mm or a 1200mm solid fence or wall with the option of raising to 1500mm or 1800mm by use of trellis or ironwork topping.

Housing Delivery Officer: Comments from Housing Services on the previous RM submission were that they had no objection to the location of the affordable housing units. The locations of these units has not changed.

Paignton Neighbourhood Forum:

Paignton Neighbourhood Forum: object to the scheme and state that;

- *The housing density is substantially in excess of the guidance provided in the Torbay Local Plan. The site has 1.39 hectares which should contain no more than 41 dwellings, based on the maximum of 30 dwellings per hectare defined in the Local Plan. To accommodate 68 dwellings would require 2.27 hectares.*

Excessive housing density is not conducive to a comfortable and peaceful living environment, in contravention to Torbay Local Plan Policy DE3.

- *That the car parking provision does not meet the requirements of the Torbay Local Plan, Appendix F which provides a requirement of two parking spaces per dwelling. Furthermore, the tandem parking arrangements effectively tend to reduce the use of allocated parking, because people find it inconvenient to move both cars in order to use the one parked farthest from the road. Reliance on tandem parking in the design would require the provision of additional, unallocated spaces beyond the requirement of 2 per dwelling.*
- *The proposal fails to provide secure and covered storage for at least two cycles per dwelling, as required by the Torbay Local Plan, Appendix F, p.294. The Building for Life Assessment report notes that cycles can be stored in the garden at the rear of the property, but that the storage is not covered, in contravention to the Local Plan requirements. It also appears that to use the cycle would generally require that the cycle is brought through the house and down stairs in order to have access to the road.*

In addition, we are disappointed that the decision in October 2018 permitted the plans for development to proceed with only 20% of the dwellings developed as affordable housing, in contravention of Policy H2 of the Torbay Local Plan, which requires 30% affordable housing. Given that the need for housing in Torbay is predominantly for affordable and social housing, that 2018 decision was not in the interests of the community.

Summary of Representations

Seven objections and one representation to the scheme had been received at the point at which this report was written. The concerns raised are as follows.

1. Overdevelopment/out of character with surrounding residential area/cramming.
2. Impact on amenity/loss of privacy/overlooking through the increase in height from what was approved.
3. Impact on trees/wildlife and loss/removal of parts of the boundary hedgerow
4. Flooding
5. Impact on infrastructure.
6. Land destabilisation
7. Access from the site crossing cycle route.

It should be noted that a number of these aspects of the application have previously been approved by applications P/2018/0522 & P/2019/0291 with the only material change being that to the heights of the dwellings.

Relevant Planning History

P/2019/0291 - Reserved matters application relating to outline application P/2014/0938. This sought amendments to previous reserved matters approval (P/2018/0522) for the siting of 4 of the units as a result of the location on site of the SWW mains. Approved 12.06.2019

P/2018/0522 - Reserved matters application relating to outline application P/2014/0938 (formation of up to 68 dwellings with associated road and landscaping). Approved 12.12.2018

P/2014/0938 – Outline Application for the formation of up to 68 dwellings with associated road and landscaping; Approved 14.05.2018

Key Issues/Material Considerations

The principle of residential development of this site is long established through the previous allocation in the Local Plan and the granting of Outline planning permission for up to 68 dwellings. Reserved matters approval for the appearance, landscaping, layout and scale of the units has also previously been approved under application references P/2018/0522 & P/2019/0291.

The key issues of this application largely relate to the impact of the increase in height of 60 of the buildings from between 0.15m & 1.95m.

The matters for consideration are:

1. Layout, appearance and scale.
2. The impact on the surrounding properties in terms of amenity.
3. Proposed landscaping, impact on trees and ecology.
4. Flooding and drainage.
5. Highways impact.
6. CIL

Each will be addressed in turn.

1. Layout, Appearance, and Scale

An indicative layout was provided as part of the outline application, this was subsequently included in condition 1 of the outline permission P/2014/0938. This condition states that the submitted reserved matters shall be based on the approved Master Plan as shown in Plan No.3528 (12) 03 rev P1 and the design concepts outlined within the associated Design and Access Statement dated July 2014.

The layout matches the two previously approved Reserved Matters schemes P/2018/0522 and P/2019/0291. In total the proposal is for the provision of 68 residential dwellings, the development would achieve an average density of approximately 43 dwellings per hectare (16 per acre). This relates well to the existing density of development adjoining the boundaries of the site, and also accounts for the topography and retention of areas of vegetation and open space. The development would consist of two to four bedroom family sized homes.

In terms of scale, the change in building heights is considered acceptable and would not result in any significant change to the previous approvals on the site.

The proposed dwellings would be finished predominantly with red brick with render used to establish focal buildings through the site and to provide a different texture to corner buildings. Interconnecting concrete pan tiles would be used on the roofs of the buildings.

Bearing the above points in mind the proposal is deemed to comply with Policy DE1 (Design) of the Local Plan which, among other things, requires development to be

uncluttered and attractive, acknowledge local character and develop distinctive character in townscape and landscape terms, relate to the surrounding built environment in terms of scale, height and massing and have a clear urban structure and grain that integrates with the surrounding context.

It is noted that there is an objection to the scheme from the Paignton Neighbourhood Forum which states that Policy DE3 advises that a maximum of 30 dwellings per hectare is allowed, the explanatory text on p.198 of the Local Plan actually advises that 30 dwellings per hectare is the minimum expected on a greenfield site. There is also an outline consent on the site for up to 68 dwellings with a condition advising that the layout should be based on the Master Plan submitted with the application. The layout also accords with that approved under previous Reserved Matters applications P/2019/0291 & P/2018/0522. The comments from the Neighbourhood Forum do not relate to the changes to the previous permissions which are being applied for by this application.

The relevant Paignton Neighbourhood Plan policies for this application are Policy PNP1 (Area wide – provide housing growth appropriate to meet local needs and the strategic needs set out in the Torbay Local Plan 2012-2030, including affordable housing), PNP1(c) (Design Principles), PNP1(d) Residential Development and PNP20 (Great Parks). These requires development to be in keeping with the surroundings in terms of scale, density, height, design and landscaping and to comply with the Great Parks master plan. The proposal is deemed to comply with these Policies.

Policy SS11 (Housing) states that there is a requirement for 8,000-10,000 new homes to be built within the plan period as long as these can be delivered without harm to either the economy or the environment. Torbay does not currently have a 5 year housing land supply and the site has not been allocated in the Paignton Neighbourhood Plan. The proposed development provides the opportunity of a deliverable sustainable development in Paignton, which meets the needs and demands of local communities for new open market and affordable housing.

2. The impact on Amenity

Policy DE3 (Development Amenity) requires that all development should provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring or surrounding uses. The key issue in relation to this is the increase in height to the previously approved Reserved Matters applications P/2018/0522 & P/2019/0291.

When considering the impact on the surrounding properties and firstly concentrating on those to the north on Montesson Road, the distance between the rears of the proposed properties and the side elevation of 12 Montesson Road is approximately 15m which, in an urban environment, is considered to be an acceptable side to rear relationship. The layout of the proposed dwelling here has not altered from the previous Reserved Matters approval but they have increased in height due to a change to the level of the road on site. There is an increase in height of 0.75m to units 7 & 8 and 0.9m to units 9 & 10. Given the distance between the properties, the increase in height proposed is not deemed to have a significant impact on 12 Montesson Road through additional overbearing impact or loss of light.

The distance between the rear elevations of 1 & 3 Montesson Road and the rear elevations of the closest proposed properties is in excess of 20m, a distance which is deemed to be acceptable in terms of potential overlooking/loss of privacy. The maximum height increase to proposed units 5 & 6 from that previously approved is 0.5 metres which is considered to be acceptable.

The distance between the side elevations of the 4 storey apartment blocks to the north of the site and the rear elevations of the proposed units is acceptable and it is not deemed that this would result in an unacceptable level of overlooking/loss of privacy.

The separation distances between the properties on Kings Ash road and the proposed development is sufficient to prevent any unacceptable impacts with regards to loss of privacy/overlooking.

To the south of the site, the layout of unit 40 is retained as per the previous Reserved Matters application but the height of unit 40 is increased by 0.45m. The increase in height is considered to result in an acceptable residential environment between the properties to the south on Luscombe Road (no. 42 & The White House).

Proposed dwellings 40-63 include terraced rear gardens, there is potential for this to result in views back into the rear of neighbouring properties, however boundary treatments between dwellings would aid in reducing potential overlooking.

Given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of existing occupiers, and that it would provide an adequate standard of living accommodation for the enjoyment of the proposal's future occupiers. In these respects, the proposal is considered to be in accordance with Policy DE3 of the Torbay Local Plan.

3. Landscaping, Trees, and Ecology

The principle of the proposed development is established, however, the proposed landscaping is under consideration, and all of the reserved matters being considered can have potential knock-on effects in relation to ecology and trees.

A key issue raised by objectors was the damage/loss of parts of the hedge and bank on the western boundary of the site which was the subject of enforcement action as the applicant was in breach of conditions applied to the original outline permission. The developer has replaced parts of the bank and has submitted details with regards to its construction, planting specification and the ongoing management of the hedgerow. The Council's Senior Tree and Landscape officer has confirmed that these details are acceptable.

The Council's Senior Tree and Landscape Officer has confirmed that the submitted Tree Protection Plan and an Arboricultural Method Statement are acceptable and that a record of site supervision during construction should be submitted.

In terms of the ecological value of the site, an updated addendum to the previous Ecological Impact Assessment and Phase 1 Habitat Survey has been submitted. This identifies broad mitigation and enhancement proposals pre and post construction, and

seeks to ensure that the most important ecological features of the site are protected and indeed improved. This includes a paragraph covering the loss of some of the western boundary hedgerow and that the submitted technical note and Landscape and Ecology Management Plan (LEMP) provides a specification for the creation, establishment and maintenance of the hedgerow to ensure it is appropriately replaced.

In summary the mitigation for the site is:

- To protect woodland, hedgerows and retained trees in accordance with BS 5837:2012 'Trees in relation to design, demolition and construction'.
- For the western boundary hedge to be kept outside property ownerships and left with a maintenance strip for access. Maintained tall and bushy.
- Soft felling of trees with low bat roost potential in the presence of a suitably qualified bat ecologist, (this was undertaken between February and March 2019).
- Removal of invasive species prior to commencing earthworks. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- An Ecological Clerk of Works to be present during the removal of dense scrub to search for badger setts.
- Construction team to maintain site in tidy and efficient manner, with any excavations provided with a means of escape (e.g. ramped side or plank) and pipes over 200mm capped off at night. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- No lighting to hedgerows, trees or other boundary vegetation during construction. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- As a precautionary measure, an ecologist will be present when the ridge tiles of Building 3 (the bungalow) are removed.
- Translocation exercise to remove reptiles from site, including phased vegetation clearance and a fingertip search of rubble/ other suitable vegetation. This was undertaken between March and May 2019.

Compensation for habitat loss has been detailed within the Landscape and Ecology Management Plan (Green Ecology, Rev 2, March 2020), separately submitted as part of a discharge of condition application. This includes hedgerow, tree and species-rich grassland planting/creation. Bat and bird boxes are also to be integrated at a rate of 1 per dwelling.

The current proposal is a variation of previously approved scheme (P/2018/0522) which was subject to a detailed HRA. This HRA concluded that there would be no Likely Significant Effect on the South Hams Greater Horseshoe Bat Special Area of Conservation SAC providing that the proposed mitigation measures set out in the outline application (lighting scheme/CEMP/LEMP) were adhered to. The current scheme proposes the same layout, with the only differences being an increase in the height of some dwellings. The LEMP and CEMP submitted as part of a separate discharge of condition application have also been altered, but these changes have not arisen as a consequence of the changes proposed within this current application.

It is considered that the current application to vary the previously approved reserved matters scheme does not result in any changes which would be material to the previous conclusion, no additional material information has emerged or any

circumstances have changed so as to make the previous decision out of date and the analysis underpinning the reasoning, conclusion or assessment of the previous HRA is considered to be sufficiently rigorous and robust. Therefore, it is considered appropriate to adopt the assessment conclusions of the previous HRA.

It is considered that a condition requiring the implementation of the mitigation measures in the Ecological Impact Assessment and Phase 1 Habitat Survey Ecology Update Report should be requested by condition.

The Outline permission also required the submission of an external lighting strategy prior to the occupation of any of the units. This is to ensure the lighting from roads and footpaths has a minimal impact on bats in the area. A lighting plan which shows lighting levels would be below 0.5 lux to the hedgerow is also considered necessary and will be requested by condition.

The submitted boundary treatment plan does not provide details of a means of separation between the gardens of plots 10-19, 27,28 & 39 and the western boundary hedge. It is considered that this is necessary to ensure future residents do not interact with the hedge in a detrimental way or in a way which would be contrary to the separately submitted LEMP. It is also considered that biodiversity information packs for the aforementioned plots would be helpful in protecting the hedgerow in future.

Subject to the aforementioned conditions, the proposal is deemed to comply with Policies C4 and NC1 of the Torbay Local Plan.

4. Flooding and Drainage

A condition relating to the submission of drainage details prior to the commencement of development was added to the Outline permission P/2014/0938. The applicant has submitted drainage details to discharge this condition and these details have also been submitted as part of this application. The Council's Drainage Engineer has confirmed that the submitted surface water drainage drawing and the hydraulic design calculations are acceptable.

5. Highway Impact

These details were determined at the outline stage with conditions added to P/2014/0938 accordingly. The Council's Highways Department has confirmed that the road layout is acceptable and is of a standard which is adoptable. This accords with the requirements of the outline permission. The proposed layout includes parking spaces for 136 cars, or 2 per dwelling, which complies with the Council's parking standards, this proposal does not include any alterations to the previously approved applications P/2018/0522 & P/2019/0291.

The proposal is deemed to comply with Policies TA2 & TA3 of the Local Plan.

6. Community Infrastructure Levy

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm. An exemption applies for the affordable housing. An informative can be imposed, should consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

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.

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.

Proactive Working

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.

Conclusions

The proposed layout, scale, appearance, and landscaping are considered to be acceptable, subject to the use of conditions. As such, the proposal is considered to be in accordance with the Torbay Local Plan, and all other material considerations.

Officer Recommendations

That planning permission be granted subject to the conditions detailed at the end of this report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Change.

And the resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Change, including the addition of any necessary further planning conditions or obligations.

Condition(s)/Reason(s)

1. Prior to, details of the proposed retaining walls and hard landscaping materials shall be submitted to and approved in writing by the Local Planning Authority.

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

Reason: In the interest of visual amenity and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030

2. Prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. This shall include a means of separation between plots 10-19, 27,28 & 39 and the western boundary hedge.

Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1, DE3, NC1 & C4 of the Torbay Local Plan 2012-2030.

3. All planting, seeding or turfing comprised within the landscaping scheme hereby approved shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within 12 weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policies DE1 & C4 of the Torbay Local Plan 2012-2030.

4. The dwellings hereby approved shall not be occupied or brought into use until the associated parking spaces and manoeuvring areas detailed on the approved plans have been completed. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

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

5. Prior to the first occupation of each dwelling hereby permitted, provision shall be made for its refuse and bicycle storage according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policy DE1 of the Torbay Local Plan 2012-2030

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no

enlargements, improvements or other alterations shall take place to either the proposed or existing dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, with the exception of one ancillary structure each up to 10 cubic metres in volume, 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 interests of visual and local amenity and in accordance with Policies DE1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

7. The development shall proceed fully in accordance with the mitigation recommendations within Table 3 and Figure 1 (Ecological Constraints & Opportunities Plan) of the Ecology Update Report (ref: 0617-EcU-FM) and the additional covering letter (ref: 0617-LR-FM) . These measures shall be retained as such for the life of the development.

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

8. Prior to the construction of any landscaping retaining walls details of a professional geotechnical consultant's investigation and recommendations confirming that geotechnical and structural stability is maintained on the development site and neighbouring areas shall be submitted to the Local Authority for its approval in writing. The landscaping retaining wall shall be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure a safe and satisfactory development and in accordance with Policy ER4 of the Torbay Local Plan.

9. Prior to the occupation of dwellings 10-19, 27,28 & 39, a lighting plan which shows lighting levels would be below 0.5 lux to the western hedgerow shall be submitted to the Council for approval. The development shall be retained in accordance with the approved lighting plan for the lifetime of the development thereafter.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

10. Upon occupation of dwellings 10-19, 27,28 & 39, biodiversity information packs shall be provided to all new occupiers of the dwellings hereby approved, with the packs including as a minimum, clear and precise information on the importance of maintaining the dark corridor to the western boundary hedge where no additional external lighting and no removal of boundary hedges will be allowed in the interests of protected species.

The details of the information to be included within these information packs shall be approved in writing by the Local Planning Authority prior to the occupation of dwellings 10-19, 27,28 & 39.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

11. The development shall be undertaken in strict accordance with the approved drainage details and retained as such at all times thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and advice within the NPPF



Application Site Address	Land to the southeast of 39 Wall Park Road, Brixham.
Proposal	Outline application for 3 dwelling houses and associated improvements to the private access lane, with all matters reserved.
Application Number	P/2019/0594
Applicant	Mr & Mrs King
Agent	Ian Hobson Designs
Date Application Valid	02.08.2019
Decision Due date	27.09.2019
Extension of Time Date	
Recommendation	Approval: Subject to the planning conditions outlined within the report, with the final drafting of conditions and the negotiation/completion of a S106 Legal Agreement to secure identified obligations, as outlined within the report, and addressing any new material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director of Planning, Housing and Climate Change.
Reason for Referral to Planning Committee	An objection has been received from Brixham Town Council and therefore it is considered appropriate that the application be referred to the Planning Committee for determination.
Planning Case Officer	Craig Davies

Location Plan



Site Details

The application site comprises part of the rectangular field to the southeast of Nos. 31-39 Wall Park Road, as well as the private access lane leading from Wall Park Road to Brixham Football Club. The land to the northeast and southeast of the field forms part of the Brixham Urban Fringe & AONB (Berry Head and Sharkham) Future Growth Area in terms of the Torbay Local Plan and comprises suburban residential development (the Bloor Homes development), much of which is complete. The application site lies in the northwestern half of the field with open space between the northwestern boundary of the site and the rear boundaries of Nos. 31-39 Wall Park Road, and open space between the southeastern boundary of the site and the residential development to the southeast. The southwestern boundary of the site is defined by an established hedgerow, with the land further to the southwest comprising Brixham Football Club.

The site is located within the South Devon Area of Outstanding Natural Beauty, the Greater Horseshoe Bat Sustenance Zone, and the Minerals Safeguarding Area.

Description of Development

The application seeks outline planning permission for 3 dwellings with associated access and highway improvements, with all matters reserved.

The application is accompanied by an indicative site layout plan that shows the potential layout of 3 detached dwelling houses on the site accessed from Wall Park

Road via a private access lane. The site layout plan also shows a dark corridor along the southwestern boundary that would also provide a means of access to the southeastern half of the field (which is under separate ownership).

Pre-Application Enquiry

N/A.

Relevant Planning Policy Context

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

Development Plan:

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

Material Considerations:

- 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.

Relevant Planning History

Pre-Applications

DE/2016/0444: Construction of 26 dwellings.

The written response to the pre-application enquiry concluded that "the residential development of the site has the potential to be acceptable subject to the submission of further information including but not limited to landscape and visual impact assessments, ecological surveys, details of how waste will be collected and surface water drainage information".

Applications

P/2019/0139: Use of field as garden (certificate of lawfulness). Part allowed / part refused 15.04.2019.

P/2017/0227: Formation of 3 x 2 bedroom bungalows. Approved 19.07.2017.

P/2016/0395: Demolition of existing barn & erection of new dwelling. Approved 01.09.2016.

P/2011/0934: Incorporation of 1 acre of land behind house into boundary of house extending garden. Refused 22.11.2011.

Summary of Representations

2 letters of objection were received in which the following matters were raised:

- The proposed access is inadequate and too narrow.
- Surface water flood risks relating to the access lane.
- Traffic congestion, access problems, and highway safety issues pertaining to the access lane.
- The need for measures to protect residential amenity (safety, access, noise) during construction works.
- Previous application for the use of the site as a garden was refused.
- The site is a greenfield site and should be retained.
- Access issues for refuse collection vehicles.

1 neutral letter of representation was received in which the following matters were raised:

- Surface water flood risks relating to the access lane.
- The access lane is narrow and has no passing places.
- Access and highway safety concerns.

Summary of Consultation Responses

Brixham Town Council:

Brixham Town Council objected to the proposal for the following reasons:

“1. The proposed development is outside the settlement boundary and on a site rejected by the BPNP Housing Site Assessment.

“2. Although adjacent to the settlement boundary, the development does not satisfy the provisions set out in BPNP Policy BH9 – Exception Sites.

“3. The proposed development would be detrimental to the character and visual amenity of the AONB.

“4. The proposed options for mitigation of harm to important flora and fauna (specifically greater horseshoe bats and existing hedgerow) are not considered practicable, due to the Local Authority and other agencies lacking the resources to ensure that such mitigation is maintained in the long term.”

Devon County Council Ecologist:

Regarding Greater Horseshoe Bats, the consultee response stated:

“The site is within the Sustenance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats.

Ecology report indicates that the grassland to be lost to development does not provide suitable GHB foraging habitat. The grassland onsite offers negligible foraging opportunities for GHB s due to its amenity nature and species poor composition – this conclusion is considered valid.

Note that no bat surveys have been carried out, but we currently consider that impacts can be assessed without survey.

The only hedgerow onsite will be retained and clarification has been provided which confirms the existing vehicular access onto the site will remain.

This hedgerow is described as being 'considered suitable for foraging/commuting bats and therefore it must be ensured that it is not illuminated'.

Further information has been provided by the ecologist in August 2020, and this confirms that whilst the hedgerow does provide suitable bat commuting/foraging habitat, it is not considered that this hedgerow is used by GHBs associated with the South Hams SAC.

The hedgerow is not considered an important landscape feature for bats from the South Hams SAC due to the urban nature of the surrounding land use and poor connectivity to both the Berry Head SSSI roost site, and the wider landscape to the south of the scheme. The Bloor Homes development to the direct south of the scheme has meant this hedgerow has become isolated from linkages into the wider countryside likely to be of highest value to GHBs.

By following the flow chart provided in the *South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance* document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC.

There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.

No mitigation required with respect to GHBs as the further information provided by the ecologists confirms that the proposals will not have any impact upon GHBs using the South Hams SAC and the Berry Head roost site.”

Regarding recreational impacts on Berry Head, the consultee response stated: “Policy NC1 of the Torbay Local Plan states that “development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.

This site falls within the Brixham Peninsula (Policy SDB1) and in accordance with the Supplementary Planning Document on Recreational Impacts on Berry Head, Torbay Council will be seeking S106 contributions of £95 per dwelling.

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

In order to mitigate the potential recreational impacts on the protected site the applicant needs to make the agreed payment, as per the Supplementary Planning Document on Recreational Impacts on Berry Head.

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

Regarding priority habitats (hedges), the consultee response stated:

“The updated scheme proposals and ecology report provided in August 2020 states that existing vehicular entrance within the hedge the south-eastern boundary will not require widening. No direct impact to this hedgerow is now proposed.

Ecology reports indicates that the south east hedgerow will be kept unlit, so it provides a dark corridor for foraging/commuting bat species. The hedgerow will be protected from development due to the creation of a 5m buffer along the eastern edge.

Hedgerow will be protected throughout construction and this will be detailed in a CEMP, with the creation of this document being a condition of this outline permission.

The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development and a 6ft high closed board fence will be installed to prevent it the 5m buffer being illuminated.

Condition: A detailed Lighting Strategy will be conditioned for agreement with the LPA. The strategy will minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to 0.5lux.

Condition: A Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase, will be conditioned. This will need to be agreed with the LPA.

Condition: A Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management, will be conditioned. This will need to be agreed with the LPA.”

Regarding bat flight lines, the consultee response stated:

“Ecology report states that a hedgerow to the south-east of the site is suitable in supporting foraging/commuting bats and the updated ecology report states that this hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening.

No bat activity surveys undertaken to accompany planning application, and this is considered sufficient.

The hedgerow onsite will be retained via the proposals and kept at under 0.5 lux. A 5m buffer zone will be created between the hedgerow and any onsite development

and a 6ft high closed board fence will be installed to prevent the 5m buffer being illuminated above 0.5 lux.

Further Information Required: Further clarity is still required with regards to the future ownership/ management of both the hedge and the close bordered fence. As stated in my previous comments, specific details of management can be submitted at RM but certainty is required from the applicant at this stage that the hedgerow and fence will be maintained and managed to ensure the dark corridor remains functional for bats.

Condition: The details for reserved matters will include the submission of a Construction and Environmental Management Plan which will include details of environmental protection throughout the construction phase. This will need to be agreed with the LPA.

Condition: The details for reserved matters will include the submission of a detailed Lighting Strategy for agreement with the LPA. The strategy will minimise indirect impacts from lighting associated with the pre-construction, during construction and operational activities, and demonstrate how the best practice (BCT/ILP, 2018) guidance has been implemented. This will include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence. This is to ensure the habitat corridor to the west of the site is kept to under 0.5lux

Condition: The details for reserved matters will include the submission of a Landscape and Ecological Management Plan which will include details relating to habitat creation, species specification and management. This will need to be agreed with the LPA.

Regarding dormice, the consultee response stated:

“No dormice surveys were undertaken to accompany planning application and no detail provided as to the suitability of the south-eastern hedgerow for dormice. This south-eastern hedge will suffer no direct impacts, as the existing vehicular access into site will be utilised without the need for further widening – no impacts upon dormice.”

Regarding badgers, the consultee response stated:

“Signs of badgers checked when site walkover undertaken. No signs of badger present during site surveys.

Condition: Prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority.”

Regarding Cirl Buntings and nesting birds, the consultee response stated:

“Site is within a Cirl Bunting consultation zone. Site walkover indicates no suitable Cirl Bunting foraging habitat onsite or within the site’s locality. Hedgerow is suitable in supporting nesting birds and this habitat will be unimpacted.

No further surveys/mitigation required if the following condition is provided.

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

Natural England:

“No objection. Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites.”

The consultation response also set out general advice on other natural environment issues.

County Archaeologist:

“The proposal is sited in an area of archaeological potential. The fields in this area are recorded as ‘Wall’ or ‘Wall Park’ on the mid-19th century Tithe Map. A Roman coin has also been found in the vicinity. This may indicate the presence of buildings of the Roman period below the present ground surface.

As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

I recommend that this application should be supported by the submission of a Written Scheme of Investigation (WSI) setting out a programme of archaeological work to be undertaken in mitigation for the loss of heritage assets with archaeological interest. The WSI should be based on national standards and guidance and be approved by the Historic Environment Team.

If a Written Scheme of Investigation is not submitted prior to determination the Historic Environment Team would advise, for the above reasons and in accordance with paragraph 199 of the National Planning Policy Framework (2018) and Policy SS10 in the Torbay Local Plan 2012 - 2030, that any consent your Authority may be minded to issue should carry the condition as worded below, based on model Condition 55 as set out in Appendix A of Circular 11/95, whereby:

‘No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason:

'To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework (2018), that an appropriate record is made of archaeological evidence that may be affected by the development'

This pre-commencement condition is required to ensure that the archaeological works are agreed and implemented prior to any disturbance of archaeological deposits by the commencement of preparatory and/or construction works.

I would envisage a suitable programme of work taking the form of archaeological monitoring of consented groundworks and the recording of any features or finds that are observed. The results of the fieldwork and any post-excavation analysis undertaken would need to be presented in an appropriately detailed and illustrated report, and the finds and archive deposited in accordance with relevant national and local guidelines.”

Torbay Council’s Highways Development Engineer:

No objection.

South West Water:

No objection.

Torbay Council’s Waste Client Manager:

Response pending. A verbal update will be provided at the meeting of the Planning Committee.

Key Issues/Material Considerations

Planning Officer Assessment

1. Principle of Residential Development.
2. Design and Visual Impact.
3. Quality of Residential Environment
4. Impact on Neighbouring Amenity.
5. Impact on Highway Safety.
6. Ecology and Biodiversity.
7. Drainage and Flood Risk.
8. Low Carbon Development.

1. Principle of Residential Development

The proposal is for the development of three detached dwelling houses on unallocated greenfield land. The site is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, but is not designated as Countryside Area in terms of the Local Plan and is not designated as a Local Green Space in terms of the Neighbourhood Plan. In addition, it is noted that the site forms part of CIL Charging Zone 2 (“Outside 20 percent most deprived LSOAs and within the built up area”) in terms of the adopted CIL Charging Zone maps.

It should be noted that, along with other parcels of land in the area (‘Wall Park Extensions’ and ‘Berry Head Road’, collectively comprising 15ha of greenfield land),

the site was considered for allocation for housing as part of the making of the Brixham Peninsula Neighbourhood Plan. These parcels of land were assessed collectively and, as set out in the Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, were rejected for the following reasons:

“Development is likely to give rise to significant harm to the landscape character and visual amenity of this part of the AONB, within an area identified as being highly sensitive to change and subject to particular pressure, as well as likely to cause significant impacts to protected species. The sites are not deliverable because of the severe environmental constraints and are therefore not considered to be appropriate for allocation in the Neighbourhood Plan.”

It is considered that the application site differs in terms of its context and situation compared to some of the other parcels of land that were collectively rejected for allocation, and that the suitability of the application site for residential development should be considered on its individual merits¹. With due regard to the reasons set out in Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, specifically the concerns raised regarding the landscape character and visual amenity of the AONB, protected species and environmental constraints, it is considered that these concerns have been adequately addressed and/or mitigated as part of the application and that the site is deliverable for residential development subject to a number of planning conditions.

Policy E2 of the Neighbourhood Plan states that development outside settlement boundaries will need to meet the criteria in Policy C1 of the Local Plan. Similarly, Policy BH4 of the Neighbourhood Plan states that development that extends settlements onto adjoining greenfield sites will be considered in the context of Policy C1 of the Local Plan.

Policy C1 of the Local Plan states that, in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting.

It is important to note that the site is somewhat anomalous in that, while it is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, it is not designated as being within the Countryside Area in terms of the Local Plan. This reflects the site's unusual situation of being greenfield land that, following the

¹ In this regard it is worth noting that, whereas the assessment of the 'Wall Park Extensions' and 'Berry Head Road' sites in the Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document concludes by stating that, "following a suggestion that these sites be considered for protection by way of a Local Green Space designation by the Statutory Consultee Natural England, this Neighbourhood Plan has allocated these sites as Local Green Space within site E4-4", the application site itself was in fact not included in the said Local Green Space designation. This would support the view that this site is a somewhat anomalous site that differs from some of the other parcels of land with which it was grouped, and that the site warrants careful consideration and assessment on its individual merits, as this report seeks to provide.

construction of residential development (Bloor Homes) on the allocated site to the east, is now surrounded on three sides (northwest, northeast, and southeast) by residential development, with Brixham Football Club adjacent to its fourth side (the southwest). While the site previously had some level of attachment to the surrounding countryside prior to the adjacent Bloor Homes development, the site now comprises an enclave within adjacent development with a clear sense of separation and visual distinction from the surrounding countryside. It is therefore considered that the proposal does not amount to development in the open countryside, would not be away from existing settlements, would not result in the loss of open countryside, would not lead to the creation of urban sprawl, and would not encourage the merging of urban areas with surrounding settlements. (In this regard it is relevant that the site is not designated as being within a Settlement Gap as described in Policy E3 of the Neighbourhood Plan.) The proposal might more reasonably be considered as a form of infill development on land that, although being an open field, is privately owned and not a local green space, and is largely surrounded by residential development that forms the eastern edge of this part of Brixham. It is therefore considered that the proposal does not present any conflict with the considerations set out in Policy C1 of the Local Plan, and that the proposal is therefore in accordance with Policies E2 and BH4 of the Neighbourhood Plan.

It is noted that the consultation response from Brixham Town Council asserts that the proposal should be considered in terms of the criteria set out in Policy BH9 of the Neighbourhood Plan, and that the proposal fails to meet the criteria. This policy, along with Policy C1 of the Local Plan, sets out certain types of developments that may be considered for land outside settlement boundaries as 'exception sites'. The intention of these policies is that, when dealing with land outside settlement boundaries that would not otherwise be considered suitable for development, exceptions may be considered for certain specified uses (for example agricultural development, affordable housing, touring caravans and tents, and various others) due to, for example, the specific locational needs of the said use or due to the challenges associated with delivering certain worthwhile but less profitable uses. In this instance it is considered that the application site can be considered suitable for development as the development constraints that have previously been identified have been adequately addressed within the proposal and can be adequately mitigated through the proposed planning conditions. It is therefore not considered necessary for the 'exception sites' criteria set out in Policy BH9 of the Neighbourhood Plan and Policy C1 of the Local Plan to be met.

Policy H1 of the Local Plan states that proposals for new homes on unallocated sites will be assessed against a set of criteria, proportionate to the scale of the proposal. The assessment of the proposal in relation to each criterion in Policy H1 is set out below:

1. *The need to provide a range of homes, including family homes, affordable homes, and opportunities for self-build homes, to meet the full objectively assessed needs as far as is consistent with other policies in the NPPF, Local Plan, and Neighbourhood Plan:*

The proposed dwelling houses would be moderately sized and would be suitable for use as family homes. While the proposal is for market housing, the proposal also includes the payment of commuted sums for affordable housing in accordance with

Policy H2 of the Local Plan, as set out in more detail later in the report. The proposal would therefore make a positive contribution towards addressing local housing needs.

2. The maintenance of a rolling 5 year supply of deliverable sites:

It should be noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed. In this regard it is important to note, however, that the Council's position with respect to the maintenance of a 5-year or 3-year housing land supply is of less importance in this case as the 'tilted balance' in favour of sustainable development does not apply to sites that are located within the AONB, as is the case with this proposal.

3. The opportunity to create mixed, balanced and prosperous communities, including employment provision, with good access to social and environmental infrastructure:

The proposal would provide dwelling houses that would be large enough for use as family homes, would be in an acceptable location with respect to social infrastructure, and would be well located with respect to environmental infrastructure. While the proposal would not involve any new employment provision, the proposed dwellings would be in an acceptable location with respect to existing employment opportunities, noting that the eastern edge of Brixham Town Centre would be around 700m to the west. The site is within walking distance of local schools and bus routes are close by.

4. The creation of high quality living environments, including the protection of the amenity, recreational opportunities and access to facilities of all residents:

The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site in a layout that would provide an acceptable quality of living environment, including ample indoor dwelling space and outdoor amenity space, and without resulting in any unacceptable impacts on the amenities of neighbouring properties.

5. The capacity of physical, social and environmental infrastructure, including highways and sewerage, to accommodate development:

The proposed dwellings would be in an acceptable location with respect to existing social and environmental infrastructure. Regarding physical infrastructure capacities, it is reiterated that Torbay Council's Highways Engineer and South West Water have assessed the proposal and have raised no objections. It is noteworthy that the proposal also includes improvements to the private access lane which would be secured using a planning condition.

6. The objective to maximise the re-use of urban brownfield land and promote urban regeneration, whilst creating prosperous and liveable urban areas:

This criterion is not directly applicable to the proposal as the proposal relates to greenfield land rather than to brownfield land. It is nevertheless noted that, although the proposal is for a relatively low dwelling density of around 15 dwelling units per hectare, the proposal would not amount to an inefficient use of the site, noting that the remainder of the open field (the southeastern part) would still be able to take access from the cul-de-sac at Pilgrim Close to the east in the event that this land were to be considered for development in the future.

7. The landscape and biodiversity impacts of the proposal and the objective to achieve a net gain in biodiversity:

Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape and, on balance, the proposal's impact on the landscape character is considered acceptable.

The application has been accompanied by an ecology report, and the proposal's ecological impact is assessed in detail in the consultation response from the Devon County Council Ecologist and in the section on ecology later in this report. The proposal has been designed to accommodate the retention of the hedgerow along the southwestern boundary as a dark corridor, with the ongoing maintenance of the dark corridor to be the responsibility of a management company, secured as part of a Section 106 Legal Agreement. Subject to a number of planning conditions, it is considered that the ecological impacts of the proposal can be adequately mitigated.

8. The objective to reduce the need to travel by car, whilst making appropriate arrangements for vehicle ownership:

Although the site is located at the eastern edge of this part of Brixham, the proposed dwelling houses would be around 20 minutes' walk from Brixham Town Centre. In terms of access to public transport, the proposed dwelling houses would be a short walk from the nearest bus stop on Wall Park Road, and would be around 20 minutes' walk from the central bus station in the town centre. The indicative site layout plan indicates that it would be possible to accommodate three dwellings on the site with enough space to include sufficient on-site vehicular parking as well as cycle storage.

9. Consistency with other policies in the Local Plan and Neighbourhood Plan:

This is set out in detail in the remainder of this report.

The proposal is therefore considered to be in accordance with the criteria set out in Policy H1 of the Local Plan for residential development on unallocated sites.

Policy M3 of the Local Plan states that any proposal on or in the vicinity of an important mineral resource, including a Mineral Safeguarding Area, should demonstrate that it will not cause unnecessary sterilisation or prejudice the future extraction of important minerals or building stone on these sites. Given that the site is in proximity to neighbouring residential development, it is considered unlikely that the site would be considered suitable for activities relating to the extraction of minerals due to the potential impact on neighbouring amenity. It is also noteworthy that the application site comprises less than a third of the area of the open field to the rear of Nos. 31-39 Wall Park Road, and that a significant proportion of the open field would therefore remain undeveloped. The proposal is considered to be in accordance with Policy M3 of the Local Plan.

2. Design and Visual Impact

Whilst the application is in outline with all matters reserved, the submitted information does include an indicative site layout plan which provides sufficient basis for an assessment of whether the proposed three dwelling houses could be constructed on the site in a layout, design and character that would not result in undue visual impact.

Paragraph 124 of the National Planning Policy Framework (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'. In addition, paragraph 130 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 Neighbourhood Plan states that development should demonstrate good quality design and should respect the character and appearance of the surrounding area. Policy SS8 of the Local Plan states that, when assessing development proposals within the Area of Outstanding Natural Beauty (AONB), the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight, and that development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. Policy E1 of the Neighbourhood Plan states that development within the Area of Outstanding Natural Beauty (AONB) must demonstrate that great weight has been given to conserving and enhancing landscape and scenic beauty, and that development should not harm protected landscape characteristics including dark night skies and tranquillity.

Although the site comprises part of an open field within the AONB, adjacent urban development has rendered the site an enclave surrounded by residential development on three of its four sides (northwest, northeast and southeast), with a football club on its fourth side (the southwest). Whereas previously the site may have had more of a sense of connectedness with the surrounding rural landscape, there is now a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider AONB landscape, noting that the site is also partially screened from public views by the established hedgerow that would be retained as a dark corridor along the southwestern boundary. The proposal is for detached dwellings that would be laid out in a relatively spacious arrangement that would accord with the character and urban grain of the surrounding residential areas, and the proposed retention of a portion of the open field between the rear plot boundaries of Nos. 31-39 Wall Park Road and the proposed dwelling houses would also serve to retain some of the open and spacious characteristic that currently prevails. The proposal is for a fairly low-density form of development (around 15 dwelling units per hectare) that is considered appropriate given the site's location at Brixham's urban fringe. On balance, the proposal's impact on the landscape character and scenic beauty of the AONB is considered acceptable, noting that the proposal would offer some public benefit in the form of the delivery of three dwelling houses as well as the payment of commuted sums for affordable housing, as explained in more detail later in the report.

The proposal is considered to be in accordance with Policies DE1 and SS8 of the Local Plan, Policies BH5 and E1 of the Neighbourhood Plan, and the guidance contained in the NPPF.

3. Quality of Residential Environment

Policy DE3 of the Local Plan states that development should provide a good level of amenity for future residents.

It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to construct three detached dwelling houses on the site in a manner that would provide a good quality of residential environment for future residents, including sufficient access to natural light, internal dwelling space, outdoor amenity space, on-site vehicular parking, and on-site cycle storage, in accordance with the requirements of Policy DE3 of the Local Plan.

The proposal is considered to be in accordance with Policy DE3 of the Local Plan.

4. Impact on Neighbouring Amenity

Policy DE3 of the Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers.

Given the siting and scale of the proposed dwelling houses as indicated on the indicative site layout plan, it is considered that the proposal would not result in any unacceptable impacts on the amenities of neighbours in terms of their privacy, outlook, or access to natural light.

Given the somewhat constrained access to the site and the potential for a negative impact on the amenities of occupiers of neighbouring properties during construction works, a condition is proposed requiring a Construction Method Statement.

Subject to the said condition, the proposal is considered to be in accordance with Policy DE3 of the Local Plan.

5. Impact on Highway Safety

Policy TA2 of the Local Plan states that all development proposals should make appropriate provisions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy BH8 of the Neighbourhood Plan states that access to new developments should comply with the relevant adopted standards. Policy TA3 of the Local Plan states that dwelling houses should each be provided with at least 2 on-site parking spaces as well as adequate space for covered cycle storage and bin storage.

The proposed dwelling houses would take vehicular and pedestrian access from Wall Park Road via an existing private access lane, and the submission also indicates that improvements would be made to the access lane. According to the submitted indicative site layout plan, the access lane would have a width of at least 3m for the entirety of the length of the access lane. Given that the access would serve multiple dwellings and would only be wide enough for 1 vehicle with no passing places, the

proposal presents some conflict with the adopted Highways' Standing Advice which seeks to ensure that accesses serving more than one dwelling are wide enough to allow for vehicles to pass. It should be noted, however, that the Council's Highways Engineer has assessed the proposal and has raised no objections. Furthermore, Paragraph 109 of the NPPF states 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. Given that the proposal would also include improvements to the access lane, it is considered that the increase in vehicular movement arising from three additional dwelling houses would not result in an unacceptable impact on highway safety or a severe cumulative impact on the road network.

It is considered that the indicative site layout plan submitted with the application sufficiently demonstrates that it would be possible to provide each of the proposed dwelling houses with on-site parking for at least two vehicles, as well as cycle storage. There would also be sufficient space to ensure that vehicles are able to manoeuvre on site such that they are able to enter and exit the site in a forward gear.

The proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

6. Ecology & Biodiversity

Policy NC1 of the Torbay Local Plan and guidance within the NPPF seeks for development to duly consider biodiversity and to take opportunities for enhancement, proportionate to the context and development.

The application has been accompanied by a Preliminary Ecological Appraisal ('the ecology report') conducted by an ecologist. The ecology report has been assessed by the Devon County Council Ecologist (see the detailed consultation response above) who has indicated that, subject to a number of planning conditions and subject to a means of ensuring the ongoing maintenance of the hedgerow along the southwestern boundary of the site as a dark corridor, the application is acceptable on ecological grounds. In this regard it is noted that a Section 106 Legal Agreement would be used to secure the formation of a Management Company that will be responsible for, amongst other things, maintaining the hedgerow as a dark corridor. In accordance with the requirements of Policy NC1, the Section 106 Legal Agreement would also secure a payment towards mitigating the potential measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure.

The consultation response from the Devon County Council Ecologist confirms that a detailed Habitats Regulations Assessment is not required.

Subject to the said Section 106 legal agreement as well as planning conditions requiring a detailed lighting strategy, a Construction and Environment Management Plan (CEMP), a Landscape and Ecological Management Plan (LEMP), a repeat survey for the presence of badgers on the site, and a condition controlling the timing

of vegetation clearance, the proposal is considered to be in accordance with Policy NC1 of the Local Plan and the guidance contained in the NPPF.

7. 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 the application is accompanied by a Flood Risk Assessment which states that surface water drainage for the proposed dwellings would be achieved via soakaways, and that surface water drainage from the access lane would continue to discharge into the road gullies and highway drainage system within Wall Park Road (as per the existing) but with an upgraded surface and gully system. Given the nature of the proposal, and subject to a condition to secure the use of soakaways, the intended means of surface water drainage are considered acceptable having regard to the adopted Standing Advice, and the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

8. Low Carbon Development

Policy SS14 states that, commensurate with their scale and nature, development proposals will be required to minimise carbon emissions and the use of natural resources expected to arise during the lifetime of the development. The said policy also seeks to ensure that the projected effects of climate change are duly considered. Policy BH7 of the Neighbourhood Plan seeks to ensure the use of sustainable construction methods in development and states that developments should be designed so as to minimise energy use and maximise energy efficiency.

Given that the application is in outline with layout, scale, design and landscaping being reserved matters, a condition is proposed requiring that, at reserved matters stage, evidence be submitted to demonstrate how the scheme meets the abovementioned policy aims in this regard. The site is considered to be in a sustainable location with respect to bus routes and local facilities and amenities, and, as discussed above, surface water drainage would be achieved via soakaways.

Subject to the said condition, the proposal is considered to be in accordance with Policy SS14 of the Local Plan and Policy BH7 of the Neighbourhood Plan.

Sustainability

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

The Economic Role

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

Once the 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 considerable weight in this balance. The proposed development would also contribute towards affordable housing through the payment of commuted sums, with this being secured through a Section 106 Legal Agreement.

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, ecology and bio-diversity, and surface water drainage. These matters have been considered in detail above.

The proposal would result in the use of a field, which currently contributes a sense of openness and spaciousness to the immediate vicinity, for residential development. Given that the site is within the AONB, this has been carefully considered as part of the assessment of the application. The site is somewhat anomalous in that, although it falls outside of the settlement boundary in terms of the Brixham Peninsula Neighbourhood Plan, it is not designated as Countryside Area in terms of the Torbay Local Plan, and adjacent development has rendered the site an enclave surrounded by residential development on three of its four sides, with the fourth side (the southwestern boundary) being screened from view from the public realm by a hedgerow that is to be retained. Given that there is a clear physical separation and visually distinction between the site and the rural landscape and countryside of the AONB further to the southeast, the impact on the character of the landscape and AONB is considered acceptable. It is also noteworthy that the proposal is for a relatively low-density form of development (around 15 dwellings per hectare) that would retain some of the existing sense of openness and spaciousness.

Conditions are proposed that would secure mitigation with respect to ecological impacts, the detailing and incorporating of biodiversity enhancement and energy efficiency measures at reserved matters stage, and the use of soakaways for the drainage of surface water relating to the proposed dwelling houses.

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.

Local Finance Considerations

S106:

Prior to a planning consent being issued, a S106 legal agreement pertaining to the following matters should be completed. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. It is recommended that authority to progress and complete the legal agreement be delegated to officers.

Management Company

In order to ensure that the dark corridor along the southwestern boundary of the site as well as communal areas including internal access roads and open spaces are suitably maintained in perpetuity, the applicant has agreed to institute a Management Company. This would be secured in terms of a Section 106 Legal Agreement.

Affordable Housing

In accordance with the requirements of Policy H2 of the Local Plan, the applicant has agreed to the payment of a commuted sum in the region of £32,400 towards affordable housing, with this amount calculated in accordance with the Council's 'Planning Contributions and Affordable Housing' Supplementary Planning Document. This would be secured in terms of a Section 106 Legal Agreement.

Recreational Pressure on Berry Head

For non-CIL liable developments, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a Section 106 contribution of £95 per dwelling in order to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation. This is as per Policy NC1 of the Torbay Local Plan which states that "development contributions will be sought from development within the Brixham Peninsula (Policy SDB1) towards measures needed to manage increased recreational pressure on the South Hams SAC resulting from increased housing numbers or visitor pressure", as well as the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document. The applicant has agreed to the payment of this amount which will be secured in terms of a Section 106 Legal Agreement.

CIL:

Given that the site is within CIL Charging Zone 2 and that the proposal is for 3 dwelling houses, the CIL liability for this development is Nil.

EIA/HRA

EIA:

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

HRA:

The site is within the Sustenance Zone of the Berry Head SSSI, associated with the South Hams SAC with respect to Greater Horseshoe Bats. By following the flow chart provided in the *South Hams Special Area of Conservation (SAC) Greater Horseshoe Bats Habitats Regulations Assessment Guidance* document (October 2019), it is not believed that the proposals will lead to the loss, damage or disturbance to a potential commuting route or foraging habitat used by GHBs associated with the South Hams SAC. There is unlikely to be a likely significant effect on the South Hams SAC and a detailed HRA is not required.

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 positive impact overall and help with the supply of much needed housing. Subject to the planning conditions and obligations detailed below, and bearing in mind that a number of elements, including the layout, scale, appearance and landscaping for the development will need to be the subject of reserved matters applications, the proposal is considered to be in accordance with the Development Plan.

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.

Proactive Working

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.

Conclusion

The application is considered acceptable, having regard to the Local Plan, the Neighbourhood Plan, and all other material considerations.

Officer Recommendation

Approval: Subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency;
2. The completion of a S106 Legal Agreement to secure the heads of terms above, in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document and the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to Officers.

The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Conditions

Standard time condition:

That in the case of any reserved matter, an 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.

1. Reserved Matters condition

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) appearance; and
- (iv) 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).

2. Lighting Assessment

All reserved matters applications shall include a Lighting Assessment detailing measures to minimise indirect impacts from lighting associated with the pre-construction, during construction, and operational activities, and demonstrating how the best practice (Bat Conservation Trust / Institution of Lighting Professionals, 2018) guidance has been implemented. This shall include details such as artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with private residence, and shall ensure that the hedgerow along the southwestern boundary of the site is kept to under 0.5lux. Once agreed in writing by the Local Planning Authority, the development shall proceed in strict accordance with the approved details.

Reason: To secure a satisfactory form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030.

3. Construction Environmental Management Plan – Biodiversity

All reserved matters applications shall include a Construction Environmental Management Plan (*CEMP: Biodiversity*), which shall have been 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: To secure a satisfactory form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030.

4. Landscape and Ecological Management Plan (LEMP) or equivalent

All reserved matters applications shall include a Landscape and Ecological Management Plan (LEMP), prepared in accordance with the specifications in

BS42020; clause 11.1, which shall be submitted and shall include, but not be limited to, the following.

- a) Description and evaluation of features to be managed, which shall include all of the mitigation measures set out in the assessment documents.
- b) Ecological trends and constraints on site that might influence management.
- c) A habitat phasing plan to ensure habitat is established and functional in advance of impacts.
- d) Aims and objectives of management.
- e) Appropriate management options for achieving aims and objectives. Noting the comments from Natural England with regards to preferred hedgerow management options.
- f) Prescriptions for management actions.
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five year period).
- h) Details of the body or organisation responsible for implementation of the plan.
- i) 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: To secure a satisfactory form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030.

5. Flood risk

As part of any reserved matters application a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in-line with the design parameters outlined within the submitted and approved Flood Risk Assessment, shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development unless a phasing plan has been submitted to and approved by the Local Planning Authority, and shall be subsequently maintained thereafter.

Reason: To ensure that there are no increased flood risk, in accordance with Policies ER1 and ER2 of the Torbay Local Plan, the Paignton Neighbourhood Plan, and advice contained within the NPPF.

6. Biodiversity enhancement measures

As part of any reserved matters relating to layout, appearance and landscaping proposed measures to enhance biodiversity, including the assessment principals that have informed the proposals, shall be submitted to and approved in writing by the Local Planning Authority. The approved measures shall be implemented in full prior to the first occupation of the development, unless a phasing strategy has otherwise

been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved detail.

Reason: in the interests of biodiversity, in accordance with Policies SS8 and NC1 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

7. Construction method statement

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

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays.

Reason: In the interests of highway safety and local neighbour amenity, in accordance with Policy TA2 and DE3 of the Torbay Local Plan 2012-2030.

8. Access lane

Prior to the commencement of works on site, details of a scheme of improvements to the access lane serving the site, including (but not limited to) resurfacing, widening, and upgrading the surface water drainage system, where applicable, shall be submitted to and approved in writing by the Local Planning Authority. Once agreed, the scheme of improvements to the access lane shall be implemented in full prior to the occupation of the development hereby approved.

Reason: To ensure that the access is suitable, and in accordance with Policies TA2, ER1 and ER2 of the Torbay Local Plan 2012-2030 and Policy BH8 of the Brixham Peninsula Neighbourhood Plan.

9. Written Scheme of Investigation

No development shall take place until the developer has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation (WSI) which shall have been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out at all times in accordance with the approved scheme, or such other details as may be subsequently agreed in writing by the Local Planning Authority.

Reason: To ensure, in accordance with Policy SS10 of the Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development.

10. Energy Efficiency and Low Carbon Development

As part of any application for reserved matters relating to the proposal's layout, scale and appearance, details of energy efficiency measures shall be submitted for the approval in writing by the Local Planning Authority. The details shall include the provision of electric vehicle charging facilities to all dwellings.

The measures in relation to each residential unit shall be completed, in accordance with the approved details, prior to the first occupation of that unit.

Reason: In the interests of sustainable development and in accordance with Policy BH7 of the Brixham Peninsula Neighbourhood Plan, and Policies SS14 and TA3 (and Appendix F) of the Torbay Local Plan 2012-2030.

Development Plan Relevant Policies

Torbay Local Plan:

SS3 – Presumption in favour of sustainable development

NC1 – Biodiversity and geodiversity

SS8 – Natural environment

SS10 - Conservation and the historic environment

SS14 – Low carbon development and adaptation to climate change

C1 – Countryside and the rural economy

H1 – Applications for new homes

H2 – Affordable housing

M3 – Preserving and safeguarding of limestone resources and key local building stone

DE1 - Design

DE3 – Development amenity

TA2 – Development access

TA3 – Parking requirements

ER1 – Flood risk

ER2 – Water management

SDB1 – Brixham Peninsula

Brixham Peninsula Neighbourhood Plan:

E1 – Landscape beauty and protected areas

E2 – Settlement boundaries

E3 – Settlement gaps

E4 – Local green spaces

BH4 – Housing development

BH5 – Good design and the town and village design statements

BH7 – Sustainable construction

BH8 – Access to new dwellings

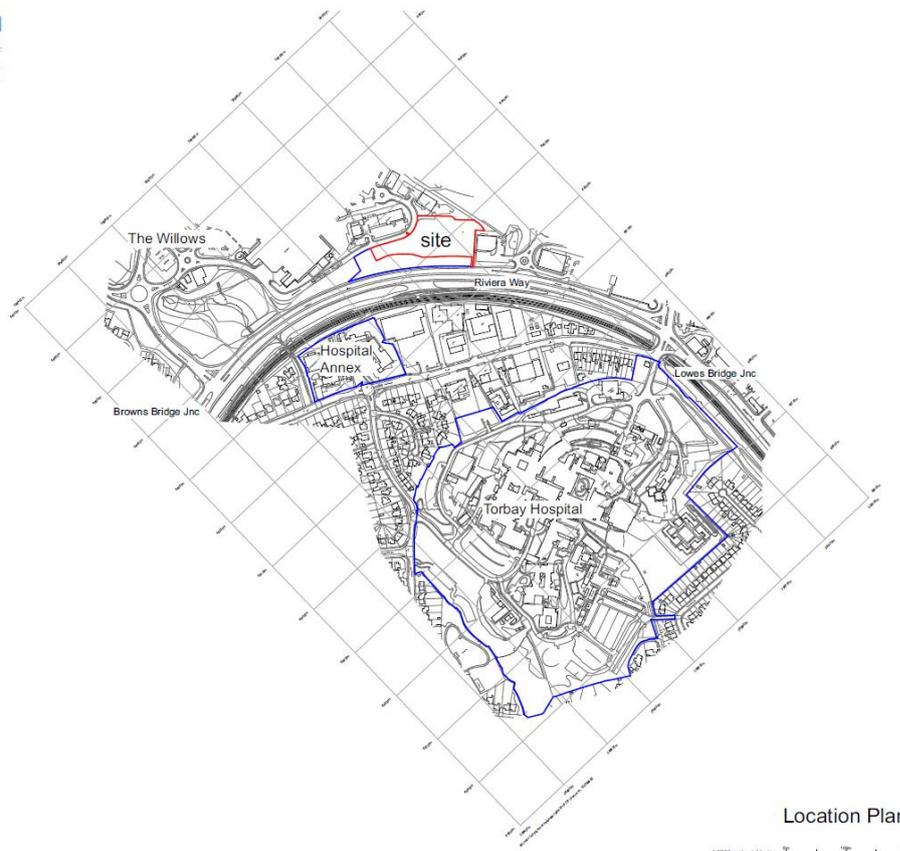
BH9 – Exception sites



Application Site Address	Land Adjacent To County Court Nicholson Road Torquay TQ2 7AZ
Proposal	Construction of car park.
Application Number	P/2020/0484
Applicant	Torbay And South Devon NHS Foundation Trust
Agent	Mr Philip Byers - Project SW Ltd
Date Application Valid	11/06/2020
Decision Due Date	10/09/2020
Extension of Time Date	16/09/2020
Recommendation	Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the 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 Officers considering it to be of a sensitive nature.
Planning Case Officer	Emily Elliott

Location Plan:


Torbay and South Devon
NHS Foundation Trust
'Park & Stride'



Site Details

The application site is accessed from Nicholson Road, adjacent to Torquay & Newton Abbot and Riviera Way (A3022). The application site is approximately 0.853 hectares in area. The highest part of the site is at its point of access from Nicholson Road and slopes towards the South where it bounds the main arterial highway route Riviera Way. The site is located within the Riviera Way Corridor Urban Landscape Protection Area and is designated as Local Green Space within the Torquay Neighbourhood Plan. The site includes an area of mature woodland which has the benefit of a Tree Protection Order (2016.006) and this lies along the southern boundary of the privately owned plot between the Riviera Way highway and the application site, the proposed pedestrian access would utilise a section of this designation. The site is also on contaminated land.

Description of Development

The proposal seeks the construction of a 250 space car park to serve as a 'Park and Stride' scheme for the Torbay and South Devon NHS Foundation Trust, which will include site security, onsite lighting, CCTV and direct pedestrian and cycle access onto Riviera Way. The proposed car park will be used by staff working daytime shifts. Use of the car park will be controlled by employing latest technology methods such as number plate recognition and access control. The supporting information states that the proposal will be let to and managed by Torbay and South Devon NHS Foundation Trust for an initial period of 15 years.

Pre-Application Enquiry

DE/2020/0012 – Pre-application enquiry meeting with Torbay Council, Torbay and South Devon NHS Foundation Trust and Project SW Ltd.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

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

Relevant Planning History

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

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

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

Summary of Representations

The application was publicised through a site notice and neighbour notification letters. 1 letter of support has been received.

Comments include:

- Assists with parking needs
- Provides electric vehicle charging points
- Impact on local area
- Trees and wildlife
- Assists with delivery of healthcare services
- Designations

Summary of Consultation Responses

Natural England:

No comments to make on this application.

Torbay Council's Senior Tree and Landscape Officer (Initial Response 03/07/2020):

Further to the landscape proposal for the above development the betterment of the periphery is welcomed as is the bolstering of the Riviera Way woodland edge to mitigate the previously removed trees. However, the car parking area is devoid of landscaping. We would like to see at least half a dozen trees within the car park area. These can be installed in engineered pits thus allowing for the requisite number of car parking spaces to be retained. Please could we also ask as to whether the loss of vegetation along the southern boundary to form the access path and gate way is mitigated for in the existing landscaping or will there be additional planting.

We would consider that the current landscape design fails to address the above concerns and therefore is not suitable for the proposed use.

Consideration could be given to the use of permeable surfacing to aid with the establishment and long term retention of the trees in the car parking area.

Torbay Council's Senior Tree and Landscape Officer (Follow-Up Response 15/07/2020):

We are satisfied with the landscape proposals for the above proposal. Going forward we would require a pre-commencement condition for the submission of a tree protection plan prior to commencement.

Police Designing Out Crime Officer:

From a designing out crime, fear of crime and antisocial behaviour (ASB) perspective it is pleasing to note that many important factors have already been considered and incorporated into the proposed scheme but to assist please find the following few additional recommendations:-

1. It is recommended that the practices and principles of the Park Mark™- Safer Parking Scheme are considered where possible. *The Park Mark's Safer Parking Scheme is managed by the British Parking Association (BPA) on behalf of Secured By Design (SBD). SBD is a free from charge Police owned crime prevention initiative which focuses on the design and security of new development including car parks which aims to create safe and secure places. Secured By Design.*
2. In conjunction with the CCTV the proposed new car park facility should be kept as open to view as possible as this can reduce crime and the fear of crime.
3. With regard to lighting please note that bollard lighting is best suited for wayfinding and would not be an appropriate choice from a safety and security point of view as this type of lighting, generally does not project sufficient light at the right height to aid facial recognition. Also their limited light coverage can be easily obstructed or hindered by parked vehicles for example.
4. The security and access control measures for the pedestrian gates are noted and supported but it is advised that the routes are designed so they are well defined and as open to view as possible. All routes should be provided with lighting and covered by CCTV.
5. Landscaping should be carefully considered so it does not create hiding places, hinder surveillance or lighting or reduce the effectiveness of CCTV. Future landscape growth and maintenance will need to be taken into account at the design stage. All shrubs and hedges shall generally have a maximum growth height of 1m, whilst all trees should be pruned up to a minimum height of 2.2m, thereby maintaining a clear field of vision.
6. Clear directional arrows or signage should be incorporated where possible to aid movement of vehicles and avoid confusion.
7. Any signage within the parking facility must be clearly visible and used to control, warn or instruct users and positioned so as to not impede surveillance opportunities.

Torbay Council's Senior Environmental Health Officer:

No objections.

Torquay Neighbourhood Forum:

No response received.

South West Water:

South West Water has no objection and would confirm that a discharge of surface water to the public surface water sewer network at 5l/s has been agreed.

Torbay Council's Strategy and Project Delivery Senior Planning Officer:

I refer to conversations about the application for construction of a car park, adjacent to the County Court on Nicholson Road, to serve Torquay Hospital. WSP have commented on the highway aspects of this proposal, including pedestrian access.

The site is a Local Green Space in the Torquay Neighbourhood Plan, and Policy TE2 of the Neighbourhood Plan "rules out" any development other than in very special circumstances. Policy TE2 goes on to outline very special circumstances; but the proposal would fall outside of these; although a new railway station at Edginswell is cited as a specific exception.

LGSs are not greenbelt, as they are much smaller non-extensive tracts of land. Nevertheless paragraph 101 of the NPPF indicates that policies for managing development in LGSs should be *consistent* with those for green belts. Paragraph 146 c) of the NPPF indicates that local transport infrastructure may be "not inappropriate" development in a greenbelt, if it can demonstrate a requirement for a greenbelt location, preserve the openness and does not conflict with the purpose of including land. These considerations appear to be relevant to the current application.

The Planning statement from Clarke Willmott argues that the site should not be a LGS and that the TNP has been too liberal in designating LGSs. This isn't really relevant: it is an LGS in the development plan. The Policy is up to date. They also argue that a Magistrates Court was approved on the site in 1992 (92/0834/R4) but I don't believe this has been implemented, and 1992 was a very long time ago, and predates the LGS designation.

The site is also an Urban Landscape Protection Area under Policy C5 of the adopted Local Plan. This is a lower order of protection than the LGS, but still requires that development does not undermine the value of the ULPA as an open or landscaped feature within the urban area, and makes a positive contribution to the urban environment and enhances the landscape character of the ULPA. It is noted that the Local Plan proposes a railway station at Edginswell as compatible development within the ULPA. The LGS policy carries more weight than the ULPA, although the thrust of the two policies is similar.

I appreciate that the application is for the NHS, and that they may well be able to demonstrate “very special circumstances” particularly during the current Pandemic. This is clearly a material consideration. However to do so they would need to show that alternative sites, including on-campus arrangements and the nearby Broomhill Way Transport Hub (Local Plan policy SS6.8) have been explored and are not suitable.

If these “very special circumstances” have not been demonstrated in accordance with the above, then the development plan points to protection of the site.

WSP (on behalf of Torbay Council’s Local Highway Authority) – Initial Response (17/07/2020):

Summary for the Planning Officer

The Highway Authority are not against the principle of the proposed ‘Park and Stride’ car park, however the proposals so far do not provide sufficient detail to be considered acceptable for full planning permission.

Key points have been summarised in the bullet points below, although it is requested the applicant address all issues outlined in the response.

- ✦ It is requested that a supplementary assessment is undertaken that predicts the utilisation of the proposed car park and demonstrates the impact to areas of the local highway network.
- ✦ Vehicle tracking at the entry point and access to the parking aisles is to be provided to demonstrate that the design vehicle can safely manoeuvre through the site.
- ✦ The applicant must demonstrate that adequate forward visibility is achieved around the bend on the proposed vehicle access from Nicholson Road.
- ✦ The proposed car park layout includes a number of dead-end aisles and no provision is made for turning in the event that an aisle is full, this could lead to long reversing lengths.
- ✦ A gradient of 1 in 9 (11%) is proposed across the carpark through sections B-B and C-C, and is 1 in 7.7 (13%) at its maximum across the carpark. These are greater than the permitted maximums and will lead to difficulty in parking and manoeuvring as well as difficulty for users on foot. Earthworks should also be indicated on the plans.
- ✦ There are concerns that the pedestrian crossing facilities at the Riviera Way / Newton Road junction are unsuitable and unsafe for a proposed frequent route used by hospital staff. There are no green-man crossing facilities at two sections of the Riviera Way northern arm and on the Newton Road arm. It is requested that these signals are upgraded to puffin crossings and will be agreed as part of a section 106 agreement.
- ✦ The pedestrian access path appears to run within the root protection zones of several trees within the TPO area. The path will need to be constructed using materials / methods that do not adversely impact the root protection zones of these trees. The

applicant should clarify if there has been a Tree Survey, otherwise it is requested that a survey is undertaken.

✦ The applicant has provided limited details on the operational management and maintenance of the car park. It is requested that the applicant provides a Car Park Management Plan document (either now or by way of condition) that defines the proposed operation.

1.0 Description of Proposal

1.1 A full planning application has been submitted on behalf of Torbay and South Devon NHS Foundation Trust and Belstone Fox Project Management Ltd in support of 'Park and Stride' car park at land adjacent County Court, Nicholson Road, Torquay.

1.2 It is understood the proposed Park & Stride car park will provide off-site car parking for the nearby Torbay Hospital. The Design and Access Statement notes that the Hospital experiences high pressure on its current car parking facilities.

1.3 The Design and Access Statement notes the following key details of the proposed Car Park:

- ✦ Will be used by staff working daytime shifts only;
- ✦ Staff working shift arrival and leaving times will be staggered to mitigate the number of car movements at any one time;
- ✦ Will be controlled by employing latest technology methods such as number plate recognition and access control;
- ✦ Will consist of a total of 250 car parking spaces, including 25 no. electric vehicle charging points (10% of spaces);
- ✦ No accessible parking provision proposed as this requirement will remain at the main Hospital site for accessibility reasons;
- ✦ Vehicular access will be via a shared Private Road with the County Court, via Nicholson Road (public highway).
- ✦ A pedestrian access will be located to the south of the site and link to the existing footways on Riviera Way. Employees will be expected to follow the footways via Riviera Way.

2.0 Site Description

2.1 The site is located off Nicholson Road, adjacent the County Court and The Willows retail park and commercial area. The site is currently undeveloped land.

2.2 Vehicular access to the site is via a shared Private Road with the County Court. This private road is accessed via a priority T-junction with Nicholson Road (public highway).

2.3 It is understood that Torbay Council have an allocated transport hub site adjacent to the proposed site, access off Broomhill Way. It is unclear if the transport hub site was considered for this development proposal.

3.0 History

- 3.1 The site has not been subject to any planning applications in the last 15 years. The Planning Statement states that the site was granted planning consent in 1992 for a Magistrates Court (app ref 92/0834/R4), however this was not built. In 2001, the site was granted planning consent for a temporary car park for three years (app ref 2001/0764/PA), which also was not built.
- 3.2 It is understood that Torbay Council have been held a pre-application meeting with the applicant, whereby the following points were raised:
- ✦ Nicholson Road is already heavily congested with parked cars. Will the demand for this car park exceed capacity or will it be used by a maximum number of permit holders or on a booking system? There is a concern that cars may be ‘turned away’ which then adds to the problem on Nicholson Road.
 - ✦ The hospital is understood to be entering a short lease – what happens to the car park thereafter, how will it be used and managed once the lease has finished, should the hospital decide not to retain the site.
 - ✦ The purpose of the car park should be clarified. Is it to resolve existing issues caused by the existing hospital, or is it to serve any future plans for redevelopment at the hospital?
 - ✦ Evidence of employees shift patterns should be used to demonstrate the predicted utilisation of the car park and impact at specific times to the junctions of Riviera Way, Browns Bridge Road, and Sainsbury’s.
 - ✦ The existing Travel Plan should be considered and areas to reduce car demand reviewed.

4.0 Traffic Impact

Existing Hospital Car Parking

- 4.1 The Planning Statement states that the existing car parking provision is inadequate to meet staff and visitors’ needs and has referenced a strategic review of the hospital car parking that was undertaken in 2015. This states that 200 additional public car parking spaces and 53 disabled spaces were required, some of which have now been delivered. The Torbay Economic Strategy Evidence Base is also referenced which highlighted the issue of on-site and off-site parking around the hospital. To support this, a summary of the car parking needs and plans for Torbay Hospital has been provided by the Director of Estates and Commercial Developments for the NHS.
- 4.2 On the basis of the information provided by the applicant, the local highway authority accepted that there is existing demand for more car parking spaces at the site.

Impact of Proposed Car Park

- 4.3 The applicant has not undertaken an assessment to demonstrate the impact of the proposed development to the operation of the local highway network.

- 4.4 The Design and Access Statement states that the site will not be a new trip generator and the vehicle trips are already on the network. It also states the proposed development will benefit the streets surrounding the hospital by reducing on-street parking and will have a positive impact on the signalised Lowes Bridge junction.
- 4.5 The applicant has stated that the proposed car park will be for staff only and the working shift arrival and leaving times will be staggered to mitigate the number of car movements at any one time. Evidence of the predicted utilisation of the car park has not been provided, nor has evidence of staff shift times (i.e. expected arrivals and departures at the proposed car park).
- 4.6 It is accepted that some of the vehicle trips to the existing hospital car park and surrounding street will re-distribute to the proposed car park, however, the Highway Authority still have the following concerns:
- ✦ That the new car parking provision will encourage single occupancy car trips.
 - ✦ That the redistributed trips from the on-site car park and on-street areas to the proposed development will intensify traffic on Nicholson Rd, and at the Browns Bridge Road / Nicholson Rd roundabout, and Riviera Way / Browns Bridge Road signal-controlled junction.
 - ✦ That the demand for parking at the proposed car park may exceed the capacity and cars may be 'turned away', adding to the on-street parking issues on Nicholson Road.
- 4.7 It is therefore requested that a supplementary assessment is undertaken that justifies the need of the proposed car park, predicts the utilisation, and demonstrates the impact to areas of the local highway network.

Mitigation of proposed Car Park

- 4.8 The Design and Access Statement states the car park will be controlled by employing latest technology methods such as number plate recognition and access control, however, the actual payment method (if any) has not been defined. If the car park is free of charge, then this would be an incentive for staff to travel by car. If staff are required to pay, then vehicles may instead park on-street on Nicholson Road and intensify the existing parking issues. It is also requested the applicant explores the option of using TRO to manage parking arrangements in Nicholson Road to control any access or safety issues with parked vehicles as a result of the development and to enable the highway authority to manage parking provision on the remainder of the road.
- 4.9 The applicant should provide more detail of the operation and management of the proposed car park, such as the use of a booking system etc. This request has been further detailed in a section below.

Highway Safety

- 4.10 A review of Personal Injury Collisions (PICs) on the local highway network has not been undertaken by the applicant. A review undertaken by the Highway

Authority for the most recent five-year period has shown no patterns or trends that are of a concern.

5.0 Car Park Design

Highway Layout

- 5.1 Based on information provided in the Planning Statement and Design and Access Statement, it is understood that the application will not result in any changes to the public highway and that vehicular access to the car park will be via the shared Private Road with the County Court.
- 5.2 It appears that no vehicle tracking has been undertaken. It is requested that vehicle tracking at the entry point and access to the parking aisles is to be provided to demonstrate that the design vehicle can safely manoeuvre though the site.
- 5.3 The plans should demonstrate that adequate forward visibility is achieved around the bend on the proposed vehicle access from Nicholson Road.
- 5.4 The layout includes a number of dead-end aisles and no provision is made for turning in the event that an aisle is full, this could lead to long reversing lengths.
- 5.5 A gradient of 1 in 9 (11%) is proposed across the carpark through sections B-B and C-C, and is 1 in 7.7 (13%) at it maximum across the carpark, these are greater than the permitted maximums and will lead to difficulty in parking and manoeuvring as well as difficulty for users on foot. Earthworks should also be indicated on the plans.

Pedestrian Access

- 5.6 The pedestrian access to the car park is proposed via a footpath that links the south of the site to the existing footway on Riviera Way. Employees will then be expected to follow the footways to the hospital via Riviera Way.
- 5.7 A review of the proposed pedestrian route to the hospital via the footways on Riviera Way has shown the footway provision is adequate, however is not considered an attractive route. There are concerns that the pedestrian crossing facilities at the Riviera Way / Newton Road junction are unsuitable and unsafe for a proposed frequent route used by hospital staff. There are no green-man crossing facilities at two sections of the Riviera Way northern arm and on the Newton Road arm. It is requested that these signals are upgraded to puffin crossings and will be agreed as part of a section 106 agreement.
- 5.8 It is also requested that the route from the car park to the hospital is clearly signed and must be demonstrated on a drawing.
- 5.9 A review of the proposed car park layout (Drawing No 19.10_P06) has shown that a footway of north-south alignment is provided on the eastern side of the car park, however, no other pedestrian provisions have been provided. It is requested that footways (in the provision of demarcated line and colouring) are located to the front or rear of the spaces in order to provide a safe route.

- 5.10 There is no footway provision on the access from Nicholson Road, the applicant should demonstrate that safe access can be maintained for maintenance of this roadway including for access to proposed gates and barriers.
- 5.11 The pedestrian access path appears to run within the root protection zones of several trees within the TPO area. The path will require to be constructed using materials / methods that do not adversely impact the root protection zones of these trees. The applicant should clarify if there has been a Tree Survey, otherwise it is requested that a survey is undertaken.

Car Parking Provision

- 5.12 The proposed car park layout (Drawing No 19.10_P06) has shown a total of 250 car parking spaces a proposed, of which 33 are labelled as EV charging. It is noted that the Design and Access Statement states that 25 spaces (10%) will be EV charging. This disparity must be clarified.
- 5.13 It is noted that the car parking spaces will be 2.4m x 4.8m and aisles will be 6m width. This provision is considered suitable.

6.0 Operational Management

- 6.1 The applicant has provided limited details on the operational management and maintenance of the car park. It is requested that the applicant provides a Car Park Management Plan document (either now or by way of condition) that defines the proposed operation. It is noted that the Design and Access Statement states that the car park will be controlled by the latest technology such as ANPR cameras and access control, and that the car park will be closed during the evening.
- 6.2 The management plan should define these details and consider issues such as staff enquired to work extra time/late and unable to move their car before the car park is closed.
- 6.3 The Highway Authority are concerned that the future use of the car park may be uncertain, as it is understood that the hospital is entering into a short-term lease (15 years). The Car Park Management Plan should specify what will happen to the car park thereafter, and how it will be used and managed.

7.0 Travel Plan

- 7.1 The required need for the car park should be incorporated into an updated Travel Plan for the hospital. The updated Travel Plan should identify the existing modal choice of travel to the hospital and compare this to the existing modal choice targets. The Travel Plan should identify areas where it has failed and consequently should provide measures and incentives to reduce single occupancy car trips.
- 7.2 In addition to the provision of the proposed new park and stride car park, it is requested that the cycle parking provision at the hospital is reviewed and suitable improvements should be implemented.

8.0 Other

- 8.1 The applicant has not provided details for the management of construction traffic. Due to the location of the car park adjacent to the County Court, a Construction Traffic Management Plan (CTMP) is requested to be produced at this stage of planning, or a later stage by way of condition. The CTMP will to ensure the construction doesn't affect the access to the surrounding businesses and sets out the routes to the site.

9.0 Conclusion

- 9.1 Overall, the Highway Authority are not against the principle of the proposed 'Park and Stride' car park, however the proposals so far do not provide sufficient detail to be considered acceptable for full planning permission.
- 9.2 Further information, as set out above, should be provided that demonstrates the predicted impact on the local highway network, and the operation/management of the facility to ensure it is used appropriately. Issues with the design of the car park should be reviewed, and areas to mitigate the impact should be considered alongside the requested improvements to the pedestrian route in order to make it safe and suitable for an increased use.
- 9.3 Once the requested information has been provided and is considered satisfactory, then a set of planning conditions will be provided.

WSP (on behalf of Torbay Council's Local Highway Authority) – Follow-up Response (25/08/2020):

1.0 Background

- 1.1 A full planning application has been submitted on behalf of Torbay and South Devon NHS Foundation Trust and Belstone Fox Project Management Ltd in support of 'Park and Stride' car park at land adjacent County Court, Nicholson Road, Torquay. It is understood the proposed Park & Stride car park will provide off-site car parking for the nearby Torbay Hospital.
- 1.2 A previous Highway Authority response was issued by Torbay Council on the 27th July. This response emphasizes that the Highway Authority are not against the principle of the proposed 'Park and Stride' car park, however the proposals so far do not provide sufficient detail to be considered acceptable for full planning permission.
- 1.3 The applicant has since submitted an email (dated 11th August 2020) to the Planning Officer which has attempted to provide evidence that elements of additional work outlined in the original Highway Authority response is unnecessary. The comments by the applicant have been addressed in items 1-7 below.

Item 1

Original Highway Authority comment

It is requested that a supplementary assessment is undertaken that predicts the utilisation of the proposed car park and demonstrates the impact to areas of the local highway network.

Applicant's comment

The Car park is for the use of Hospital staff. As the car park contains 250 spaces, a maximum of 250 vehicles will be able to use the car park. The Council (in its capacity as Highway Authority) has acknowledged that these vehicles are already on the highway network.

The car park is not a trip generator in itself. People are not driving for the purposes of visiting the car park. They were driving to access the hospital and would have parked somewhere on the local highway network. Therefore, the proposal provides the opportunity to appropriately manage a currently unmet car parking need for hospital staff.

New Highway Authority comment

The car park is considered a trip generator because vehicles that currently park on the local roads will redistribute/re-route to the proposed car park. The increase of up to 250 vehicles arriving/departing per shift will have an impact to the operation of Nicholson Road, Browns Bridge Road and their associated junctions. The applicant needs to demonstrate that this impact will not be severe in terms of the NPPF (paragraph 102(a)).

The car park is likely to encourage single occupancy car use and may persuade staff from using active travel and public transport. This would be against the principles of the sustainable transport hierarchy set out in the Torbay Local Plan Policy TA2.

Item 2

Original Highway Authority comment

Vehicle tracking at the entry point and access to the parking aisles is to be provided to demonstrate that the design vehicle can safely manoeuvre through the site.

Applicant's comment

This is a private car park for normal domestic type cars, it will not be used for larger commercial vehicle parking. The current layout complies with Highway Authority Standing Advice in terms of layout access and turning requirements and complies with Health & Safety requirements.

The car park will be used by hospital staff only pursuant to a permit arrangement. The car park will be controlled by a management regime thereby avoiding the random and unplanned movement which can be experienced in a public car park.

In light of the above, and given that the internal car movements will have no impact on the highway network, there is no need to provide the requested vehicle tracking information.

New Highway Authority comment

It is acknowledged that the bay sizes and aisle widths are consistent with the standing advice and these elements are acceptable. The applicant needs to demonstrate for example that a large car can enter the carpark and access the first aisle on the left-hand side without impacting the adjacent parking bays.

Demonstrating the manoeuvrability of vehicles within the carpark is part of ensuring that the overall layout is safe and suitable.

Item 3

Original Highway Authority comment

The applicant must demonstrate that adequate forward visibility is achieved around the bend on the proposed vehicle access from Nicholson Road.

Applicant's comment

The access to the car park is an existing access. The access was found to be acceptable in planning terms when planning permission was granted for the development of a Court on this site. Further, the access was also found to be safe and suitable when temporary permission was granted for a car park.

The access is not being changed. Therefore, no further information should be required.

New Highway Authority comment

The proposed development will significantly intensify the use of the junction. In order to demonstrate that the use is safe and suitable, visibility splays must be demonstrated.

The NPPF section 'Considering Development Proposals' notes the need for safe and suitable access to the site can be achieved for all users. At the moment, this has not been demonstrated.

Item 4

Original Highway Authority comment

The proposed car park layout includes a number of dead-end aisles and no provision is made for turning in the event that an aisle is full, this could lead to long reversing lengths.

Applicant's comment

As noted above, this is a private car park. Any reversing which may take place within the car park will have no impact on the local highway network. Therefore, there is no planning or highways related reason to require this information.

New Highway Authority comment

Despite the proposed private use of the car park, safe use must still be achievable and demonstrated to the Local Highway Authority.

Item 5

Original Highway Authority comment

A gradient of 1 in 9 (11%) is proposed across the carpark through sections B-B and C-C, and is 1 in 7.7 (13%) at its maximum across the carpark. These are greater than the permitted maximums and will lead to difficulty in parking and manoeuvring as well as difficulty for users on foot. Earthworks should also be indicated on the plans.

Applicant's comment

We note the above comments. However, it is essential that the site is used as efficiently as possible to ensure that the unmet parking requirements of the hospital can be met. The general configuration of the car park and its topography have been agreed with Torbay NHS Trust and are acceptable to them.

Further, this is a private car park. Therefore, the gradients will not affect the local highway network.

New Highway Authority comment

Again, despite the car park being for private use, if users feel it is unsafe then they may resort to using local streets which will have an impact to the operation of the local highway network.

Item 6

Original Highway Authority comment

There are concerns that the pedestrian crossing facilities at the Riviera Way / Newton Road junction are unsuitable and unsafe for a proposed frequent route used by hospital staff. There are no green-man crossing facilities at two sections of the Riviera Way northern arm and on the Newton Road arm. It is requested that these signals are upgraded to puffin crossings and will be agreed as part of a section 106 agreement.

Applicant's comment

This matter was briefly discussed with the Highway and other Officers at the pre-app meeting and it was our view that any upgrade was unnecessary as this car park would have no detrimental impact on the existing safe controlled crossing arrangement.

There is an existing safe pedestrian route including a timed pedestrian crossing on Hele Road. This route is the same length as the route identified by the above comment. There is no reason why car park users would seek out the just-as-long unsafe route when a safe alternative is available. Further, we propose the erection of signage to ensure that car park users are signed to the safe route. The signage can be secured by condition.

For information, the two routes are shown below. The safe route is shown with yellow arrows whereas the route identified by WSP is shown in red.

New Highway Authority comment

The applicant's yellow route does not fall on the pedestrian desire line for movements between the hospital and the proposed park and stride. The yellow route shows a total of 5 separate signal crossings, whereas the proposed improved route would involve 4 crossings and in reality, 3 crossings as the final crossing at the hospital access shown on the applicants sketch above is unlikely to be needed.

To encourage the use of the proposed Park and Ride Site, convenient and safe pedestrian crossing facilities are required, otherwise cars will return to the streets surrounding the hospital and the objective of the Park and Stride will not be met.

Item 7

Original Highway Authority comment

The applicant has provided limited details on the operational management and maintenance of the car park. It is requested that the applicant provides a Car Park Management Plan document (either now or by way of condition) that defines the proposed operation.

Applicant's comment

We propose a condition in the following terms:

"The car park hereby permitted shall not be brought into use unless and until a Car Park Management Scheme has been submitted to and approved by the Local Planning Authority. The car park shall thereafter be managed in accordance with the approved Car Park Management Scheme together with any revisions thereto that may be agreed in writing with the Local Planning Authority"

The Car Park Management Scheme will secure management of the car park in accordance with the hospital's existing TP regime together with the other management measures set out above.

New Highway Authority comment

The inclusion of a CPMP by way of condition is considered acceptable, however demonstrating that there is a workable safe solution must be prioritised.

Torbay Council's Drainage Engineer:

1. The proposed discharge rate from the development to the surface water sewer system in Nicholson Road is now 2.3l/sec which complies with the requirement of the Torbay Critical Drainage Area.
2. Details of the preliminary surface water drainage strategy are shown on drawing number 205512_PDL_01. The cover level for the attenuation tank is identified as 52.8m and the invert level is identified as 55.0m on this drawing. Clearly this is incorrect and does not agree with the cover level and invert level included within the hydraulic modelling. Please amend the drawing accordingly.
3. The preliminary surface water drainage strategy drawing identifies that the majority of the car park will be drained using surface channel drains. These channel drains are in some cases nearly 100m in length and draining large surface areas, however no details of these channel drains and their hydraulic capacities have been supplied. The developer must demonstrate that the channel drainage has been designed to cater for the critical 1 in 100 year storm event plus 40% for climate change.
4. There are no details within the preliminary surface water drainage strategy of how the surface channel drains will discharge into the underground drainage system. The developer must supply these details together with hydraulic calculations to demonstrate that these connections have been designed to allow the flows from the critical 1 in 100 year storm event plus 40% for climate change to enter the underground drainage system.
5. The submitted hydraulic modelling, although including the total impermeable area for the development, has only been carried out for the small underground surface water drainage system, totally ignoring the surface channel drainage. The developer has assumed that the impermeable areas discharging to the channel drainage will actually discharge directly to the underground surface water drainage system which is incorrect. The developer must include all of the surface water drainage within his hydraulic model in order to demonstrate that the proposed surface water drainage has been designed in order that there is no increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change.

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

Key Issues/Material Considerations

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

Planning Officer Assessment

1. Principle of Development

The proposal is for the construction of a 250 space car park, to provide a 'Park and Stride' facility for the Torbay and South Devon NHS Foundation Trust. The proposed car park will provide a "Park and Stride" facility for employees of Torbay Hospital. The Hospital has historically struggled with parking capacity issues. The Trust has secured capital funding from the Government under the HIP 2 initiative, which may result in substantial reconfiguration of the Hospital site as there is consideration to rebuild the hospital. The current COVID-19 pandemic is also stated to be further justification for this proposal.

The site is a designated Local Green Space (LGS) under Policy TE2 of the Neighbourhood Plan. Policy TE2 states that development is ruled out other than in very special circumstances. The Policy goes on to outline very special circumstances, however it is considered that the proposal would fall outside of those specified. It should be noted that the Torquay Neighbourhood Forum have not responded to the consultation request for this planning application. Paragraph 101 of the NPPF states that "policies for managing development within a Local Green Space should be consistent with those for Green Belts". Paragraph 146 c) of the NPPF indicates that local transport infrastructure may be "not inappropriate" development in a greenbelt, if it can demonstrate a requirement for a greenbelt location, preserve the openness and do not conflict with the purpose of including land as an LGS. It is considered that these considerations appear to be relevant to this proposal.

The supporting Planning Statement provided by Clarke Willmott argues that the site should not be a LGS and that the Neighbourhood Plan has been too liberal in designating LGSs, however this is not considered relevant to the proposed development, as it is designated as a LGS in the Neighbourhood Plan. Policy TE2 of the Neighbourhood Plan is up-to-date. The letter of support also motions that the site should not have such designations.

The Planning Statement states that planning reference P/1992/0834 for the erection of New Magistrates Courts Buildings was never built out, but "implemented through the construction of the existing access on the application site" and as such the land

could still lawfully be developed. Officers are of the view that the scheme has not been implemented. The onus is on the applicant to demonstrate that this permission was implemented, a certificate of lawfulness for existing use has not been submitted to demonstrate such, and therefore little weight is given to this assertion. It should also be noted that the 1992 permission predates the LGS designation. The site is also designated as an Urban Landscape Protection Area (ULPA) under Policy C5 of the Local Plan. This designation is a lower order of protection than the LGS, but still requires significant consideration, this will be assessed within the next section of the committee report. Policy TE2 of the Neighbourhood Plan carries more weight than Policy C5 of the Local Plan, although the thrust of the two policies is similar.

This application is submitted on behalf of the Torbay and South Devon NHS Foundation Trust, given the current COVID-19 pandemic, it is considered that the applicant might have been able to demonstrate “very special circumstances” in this instance, given that the pandemic is a material consideration. The letter of support also states that the proposal would assist with the delivery of healthcare services. However, in demonstrating such matters, the applicant would need to explore alternative sites, including on campus arrangements and the nearby Broomhill Way Transport Hub (as defined by Policy SS6.8 of the Local Plan), and provide an explanation as to why such sites are not suitable. Therefore, it is considered that the “very special circumstances” have not been demonstrated, and therefore the Development Plan points to the protection of the site.

Therefore, the principle of development for this proposal is considered to be contrary to Policy TE2 of the Neighbourhood Plan, Policy C5 of the Local Plan and paragraph 146 c) of the NPPF.

2. Impact on the Character of the Area

Paragraph 124 of the National Planning Policy Framework (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. In addition, paragraph 130 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 TH8 of the Torquay Neighbourhood Plan requires development to be of good quality design and to respect the local character in terms of height, scale and bulk and reflect the identity of its surroundings.

The site is located north of Riviera Way and site vegetation clearance works have been undertaken, including the unauthorised felling of a number of protected trees which have opened up views into the site. The letter of support received states that the proposed development would assist with enhancing the site's appearance. The proposed development would show a typical impermeable bitumen macadam surface with parking spaces delineated by permanent thermoplastic white lines. There is also

the inclusion of a perimeter security fence, which will stand at approximately 2.4 metres high, which will be plastic powder coated galvanised steel mesh with posts, fittings and gates to match. The proposed development seeks operation for daytime shifts only, therefore there will also be a myriad of colour within the car park due to the parked vehicles. From site observations, it is evident that the site will be visible from breaks in the vegetation and existing tree line. Due to the nature of the proposal and the topography of the site, it will have varying degrees of visibility depending on which public vantage points it is viewed from.

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

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

In terms of landscape impact it is relevant to consider the visibility of the site from Riviera Way and other public vantage points. The applicant was asked to provide a Landscape and Visual Impact Assessment at the validation stage of the application, but contested such matters stating that this had already been provided. A review of the details submitted find them not fit for purpose and as such unsatisfactory. It is considered that it has not been demonstrated 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 and that it is likely that the development would undermine the value of the ULPA as an open or landscaped feature within the urban area and unlikely that it would make a positive contribution to the urban environment and enhance the landscape character of the ULPA. As such it has not been demonstrated that the application would accord with Policy C5 of the Local Plan nor paragraphs 127(c) and 130 of the NPPF.

Given the proposal's siting, scale, and design, it is considered that the proposed development would result in unacceptable harm to the character or visual amenities of the locality.

It is considered that the proposed development in terms of visual amenity and impact on the LGS and ULPA is unacceptable and therefore fails to accord with Policies DE1 and C5 of the Local Plan, Policies TH8 and TE2 of the Neighbourhood Plan and paragraphs 127(c) and 130 of the NPPF.

3. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity. The Neighbourhood Plan is largely silent on

the matter of amenity. The NPPF guides (paragraph 127) that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.

The site is located in close proximity to a commercial area. Torbay Council's Senior Environmental Health Officer raises no objections to the proposal. Given its siting, scale, and design of the proposals, it is considered that the proposals would not result in any unacceptable harm to the amenities of neighbours.

The site is located on contaminated land and the application is supported by a Geotechnical and Geo-environmental assessment. The report states that having undertaken an assessment of early maps, the site has been "essential undeveloped". The report states that the main source of contamination is the landfill present immediately east of the site from the 1970s to the 1980s, along with the fill wedge present in the south west corner. Gasses including methane and carbon dioxide are considered a risk to the site from the landfill, as well as general brownfield contaminants including hydrocarbons, heavy metals and asbestos from made ground. The survey found no elevated concentrations of any contaminants were recorded on site and so the site is considered suitable for the proposed use and no further work is required in this regard. The adjacent landfill is a known source of gasses, however the gasses are not considered a risk to the proposed development. The report concludes with a number of measures that should be observed by an earthworks contractor. Should planning permission be granted, a planning condition should be employed to secure such measures.

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

4. Impact on Highway Safety

Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. The Neighbourhood Plan falls silent on parking matters for commercial use.

Paragraph 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. Paragraph 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.

The site is located off Nicholson Road, adjacent to Torquay and Newton Abbot County Court and The Willows Retail Park. The vehicular access to the site is via a shared private road with the Court. This private road is accessed via a priority T-junction with Nicholson Road (public highway). The proposed development is for a "Park and Stride" 250 space car park for Torbay Hospital. The submitted Design and Access Statement states that the proposal will be used by staff working daytime shifts only; of the 250 spaces, 25 will have electric vehicle charging points; the car park will be controlled by number plate recognition and access control; there will be no accessible parking provision on site as this requirement will remain at the main hospital for accessibility reasons; a pedestrian access will be located to the south of the site and link to the existing footways on Riviera Way; and staff working shifts will have arrival and leaving times staggered to mitigate the number of car movements at any one time.

The previous planning history relating to the site (planning references P/1992/0834 and P/2001/0764) were never built out. It is known and can be observed that Nicholson Road is heavily congested with parked vehicles. The Local Plan under Policy SS6 supports the development of transport hubs in sustainable locations with good links to existing and planned residential areas, town centres and other retail centres, healthcare facilities and radial or orbital routes to increase accessibility and names Broomhill Way, Torquay as one of those. The proposed transport hub is denoted on the Local Plan Interactive Map as being sited north-west of Royal Mail, within 100 metres of the site. Given the designations on site, the applicant is required to show alternative sites, including on-campus arrangements and the nearby Broomhill Way Transport Hub have been explored and are not suitable. It is unclear whether the designated transport hub was considered for the proposed development.

The submitted information states that the existing car parking provision is inadequate to meet staff and visitor needs on-site at Torbay Hospital. A strategic review of the hospital parking was undertaken in 2015, stating the need for an additional 200 car parking spaces and 53 disabled car parking spaces, of which some have now been delivered. The Torbay Economic Strategy Evidence Base highlights the issue of on-site and off-site parking around the hospital. The Local Highway Authority accepts that there is an existing demand for more car parking spaces at the site.

WSP has been appointed on behalf of the Local Authority to provide highway comments with regards to the proposed development. WSP have stated that the applicant has not undertaken an assessment to demonstrate the impact of the proposed development to the operation of the local highway network. The applicant has stated that they consider the proposal not a trip generator in itself. WSP have disagreed stating that the proposed car park is considered a trip generator as vehicles

that may currently park on the local highway network will be redistributed/rerouted to the proposed development. The increase of up to 250 vehicles would have an impact to the operation of Nicholson Road, Browns Bridge Road and their associated junctions. Paragraph 102 of the NPPF states that transport issues should be considered from the earliest stages of plan-making and development proposals, so that the potential impacts of the development on transport networks can be addressed. WSP go on to state that the proposal is likely to encourage single occupancy car use and may persuade staff from using active travel and public transport. This would be against the principles of the sustainable transport hierarchy as set out in Policy TA2 of the Local Plan.

WSP have assessed the proposed site layout and have requested that a vehicle tracking plan is submitted to support the proposal, to demonstrate that at the entry point and access to the parking aisles a vehicle can safely manoeuvre through the site. WSP consider that the bay sizes and aisle widths are consistent with the standing advice and are therefore acceptable. The applicant has failed to provide a vehicle tracking plan. Therefore, insufficient information has been provided to demonstrate that a large car can enter the carpark and access the first aisle on the left-hand side without impacting on the adjacent parking bays. Moreover, demonstrating the manoeuvrability of vehicles within the car park is part of ensuring that the overall layout is safe and suitable. WSP have also requested that visibility is demonstrated to seek whether adequate forward visibility is achieved around the bend on the proposed vehicular access from Nicholson Road. The applicant has also failed to provide this information. Therefore, insufficient information has been provided to demonstrate that a safe and suitable access to the site can be achieved for all users, as the proposed development will significantly intensify the use of the junction.

WSP have also noted that the proposed site layout includes a number of dead-end aisles and no provision is given for turning in the event that an aisle is full, which could result in long reversing lengths. The applicant has stated that as the car park is private, it is not a planning or highways matter. WSP have stated that a safe use must be achievable and demonstrated to the Local Highway Authority. The gradient of the proposed car park is 1 in 9 (11%) and 1 in 7.7 (13%) at its maximum. It is considered that the gradients will result in difficulty in parking and manoeuvring as well as for the users on foot. The applicant considers this to be a private matter for the Trust. It is considered that regardless of public or private use, if users feel unsafe then they may resort to using local streets which would also have an impact on the operation of the local highway network.

The pedestrian crossing facilities at Riviera Way/Newton Road are considered to be unsuitable and unsafe for the proposed frequent route to be used by the staff of Torbay Hospital. There are no green-man crossing facilities at the two sections of the Riviera Way northern arm and on the Newton Road arm. WSP have requested that these signals are upgraded to puffin crossings and can be agreed as part of a S106

agreement. The applicant considers that the existing pedestrian routes are sufficient, however it is considered that the pedestrian desire line for movements between the hospital and the proposed development would differ. It is imperative to have convenient and safe pedestrian crossing facilities, otherwise it may lead to parking on the local highway network on surrounding streets close to the hospital. WSP have also requested a Car Park Management Plan, to secure details on the operational management and maintenance of the car park, however should planning permission be granted, a planning condition can be employed prior to first use to secure such details.

Overall, the Local Highway Authority are not against the principle of the proposed development, however insufficient information has been provided to consider the proposal acceptable. Given the insufficient information, it is not possible for the Local Authority to assess the impact of the proposed development to the operation of the local highway network; whether the proposed development would achieve appropriate on-site manoeuvrability; and whether the proposed development would achieve adequate forward visibility to provide a safe and suitable access to the site can be achieved for all users. The proposed development is considered to provide a harsh gradient for both vehicles and users and does not seek to upgrade crossings to enable users to follow the pedestrian desire line, which could result in users parking on the nearby local highway unit instead of using the proposed car park. Therefore, the proposal is contrary to Policies TA1 and TA2 of the Local Plan, and Paragraph 108 of the NPPF.

5. Impact on Ecology and Trees

Policy NC1 of the Local Plan seeks to conserve and enhance Torbay's biodiversity and geodiversity, through the protection and improvement of the terrestrial and marine environments and fauna and flora, commensurate to their importance. Policy TE5 of The Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Guidance within the NPPF (paragraph 170) provides similar guidance to the above in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity.

The proposal is supported by a Preliminary Ecological Appraisal which is dated December 2019. The report details the survey results of protected species. It states that there are several bat records within 1km of the site and the site is approximately 950 metres east from the Greater Horseshoe Bat Strategic Flyway. The site contains suitable commuting and foraging habitat for bats in the form of the woodland strips and the hedgerows surrounding the site. The report recommends that a bat activity survey be undertaken to assess the value of the site and potential impacts on bats. It is also suggested that for sites with moderate suitability for bats that one survey visit

per month (April-October) be undertaken in combination with a static bat activity survey. In terms of mitigation, the report suggests that a sensitive lighting plan be developed. As for ecological enhancement, the report recommends that five Woodcrete (or similar durable material) bat boxes be provided in the retained trees around the site boundaries, to provide roosting opportunities for bats.

Furthermore, prior to the clearance of the site, the site may have provided suitable habitat for dormice and it is likely that the retained scrub and woodland surrounding the site could still support dormice. The report recommends that 10 dormouse nest boxes are to be installed in the retaining woodland at the south of the site. The retained woodland, hedgerows and scrub are likely to support nesting birds. The report recommends that should any scrub or trees be removed, a check should be made for any nesting birds prior to any tree or scrub removal (if undertaken between April and September). If nesting birds are present, works must wait until the birds have fledged. In terms of ecological enhancement, the report recommends that 10 bird boxes suitable for hole-nesting birds be provided in the retained woodland.

There is also several records of slow worms within 1km of the site, given the extent of the vegetation clearance and ground disturbance, the Ecologist was unable to determine how favourable the site was for reptiles, but states that the present form is unsuitable for reptiles. The report states that should the site not be developed within 12 months of the initial survey, an updated walkover survey should be undertaken to ascertain whether the site has become suitable for reptiles. The site is within a Devon County Council Great Crested Newt Consultation Zone. There is a pond approximately 50 metres east of the site which may support great crested newts and there is suitable terrestrial habitat for the species on site. The woodland and hedgerow understory could enable the newts to commute across the site and forage and shelter within them, if present. The report states that Devon County Council's guidance states that any ponds within 500 metres with habitat connectivity should be surveyed. Initially, a habitat suitability assessment (HAS) should be undertaken of the pond to generate a habitat suitability index score (HSI). If the HSI score was over 0.6, further survey, such as an environmental DNA (eDNA) survey, torch survey or bottle trapping would be required. If the HSI score is below 0.6, no further GCN survey would be required. The HSA can be undertaken at any time. However, further surveys are seasonally constrained and can only be undertaken between mid-March and mid-June. These further surveys have not been undertaken.

The report is caveated that should development be delayed beyond 12 months, habitats are likely to regenerate. The application is also supported by a Landscape and Ecology Management Plan (LEMP) dated January 2020 and a Lighting Design Statement dated June 2020. Given the insufficient survey work having not been undertaken, it is not possible for the Local Authority to assess the impact and/or appropriate mitigation of protected species. Therefore, the proposal is contrary to

Policy NC1 of the Local Plan, Policy TE5 of the Neighbourhood Plan and the guidance contained within the NPPF.

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

The existing site has been recently been extensively cleared, including the unauthorised felling of a number of protected trees which have opened up views into the site. An area of mature woodland has the benefit of a Tree Protection Order (2016.006) and this lies along the southern boundary of the privately owned plot between the Riviera Way highway and the application site. The proposal seeks to provide a landscaping scheme to complement the proposed development, this includes tree, woodland, hedge planting, along with proposed grass areas and tussock wet grass areas. Torbay Council's Senior Tree and Landscape Officer has been consulted on the proposal and has stated that the betterment of the periphery is welcomed as is the bolstering of the Riviera Way woodland edge to mitigate the previously removed trees. The car park also includes a number of trees within the car parking layout. The proposed loss of vegetation along the southern boundary to form the access path and gate way is mitigated through the proposed landscaping scheme. The Officer is satisfied with the proposed landscaping, subject to a pre-commencement condition to ascertain details of a tree protection plan.

The proposal is considered to accord with Policy C4 of the Local Plan, and the guidance contained within the NPPF.

6. Impact on Flood Risk and Drainage

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

The site sits in an area with a low risk (Flood Zone 1) of flooding, however it does sit within a Critical Drainage Area as designated by the Environment Agency. A Flood Risk Assessment has been submitted to accompany the application and states that the scheme proposes to discharge the surface water runoff into the surface water sewer system on Nicholson Road. Torbay Council's Drainage Engineer has been consulted on the scheme. The Engineer has stated that the proposed discharge rate from the development to the surface water sewer system in Nicholson Road is 2.3l/sec, which complies with the requirement of the Torbay Critical Drainage Area.

As this proposal is of a minor nature, the adopted drainage standing advice would apply and should planning permission be granted, a planning condition can be employed to secure details of the surface water drainage strategy.

7. Designing Out Crime

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

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

Sustainability

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. The proposed development is considered not to be in a sustainable location as it cause unacceptable harm to the Local Green Space and Urban Landscape Protection Area, insomuch that granting planning permission would have a significant and demonstrable adverse impact that is not outweighed by the benefits, when assessed against the policies in the NPPF taken as a whole.

Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the Human Rights Act, and in particular Article 1 of the First Protocol and Article 8 of the Act itself. This Act gives further effect to the rights included in the European Convention on Human Rights. In arriving at this recommendation, due regard has been given to the applicant's reasonable development rights and expectations which have been balanced and weighed against the wider community interests, as expressed through third party interests / the Development Plan and Central Government Guidance.

Equalities Act - In arriving at this recommendation, due regard has been given to the provisions of the Equalities Act 2010, particularly the Public Sector Equality Duty and Section 149. The Equality Act 2010 requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Protected

characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Local Financial Contributions

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

EIA/HRA

EIA:

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

HRA:

There is no requirement for a HRA in this instance.

Planning Balance

The proposal is considered to represent an inappropriate form of development which would cause unacceptable harm to the Local Green Space, Urban Landscape Protection Area, protected species and highway network. These issues are addressed in the main body of the report and are considered to be so significant as to warrant a refusal of planning permission. Exceptional circumstances to outweigh the harm that would arise from this development have not been demonstrated.

Conclusions and Reasons for Decision

The proposal is considered to be unacceptable in principle and fails to provide sufficient information to demonstrate to the Local Planning Authority that the proposal would not have adverse impacts on the designated Urban Landscape Protection Area, the Local Green Space, biodiversity and the local highway network. The proposed development is considered unacceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

Officer Recommendation

That planning permission is refused, as per the reasons stated below. The final drafting of these reasons, 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(s) for Refusal

1. It has not been demonstrated 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 character and function of the Local Green Space and it has not been demonstrated that there are exceptional circumstances to justify the

development of this space. As such the proposed development is contrary to Policy TE2 of the Adopted Torquay Neighbourhood Plan 2012-2030 and the National Planning Policy Framework, in particular paragraph 146 c).

2. It has not been demonstrated 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 Urban Landscape Protection Area, contrary to Policies DE1 and C5 of the Adopted Torbay Local Plan 2012-2030, Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030 and the National Planning Policy Framework, in particular paragraph 170.
3. The application has failed to provide sufficient detail to allow the Local Authority to assess the impact of the proposed development on the operation of the local highway network; whether the proposed development would achieve appropriate on-site manoeuvrability; and whether the proposed development would achieve adequate forward visibility to provide a safe and suitable access from the site onto Nicholson Road. It is considered that the proposed development would result in an inappropriate, inconvenient development given the proposed gradient and inadequate pedestrian crossings, therefore exacerbating existing parking issues in the area resulting in a poor and inadequate form of development, with a resulting harmful effect on highway safety. The proposed development is contrary to Policies TA1 and TA2 of the Local Plan, and the NPPF, in particular paragraph 170.
4. It has not been demonstrated that it is possible to develop the site for the type of development as set out in the proposal, due to the supporting ecological evidence indicating that there is a potential presence of protected species bat and great crested newts. Insufficient survey work has been undertaken to clearly identify the presence of such species and as such it is not possible to assess the impact and/or appropriate mitigation. No exceptional circumstances have been justified to provide an understanding as to why these further surveys have not been undertaken. The proposed development is contrary to Policy NC1 of the Adopted Torbay Local Plan 2012-2030, Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030 and the National Planning Policy Framework, in particular paragraph 170.

Informative(s)

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

Relevant Development Plan Policies

Torbay Local Plan Policies

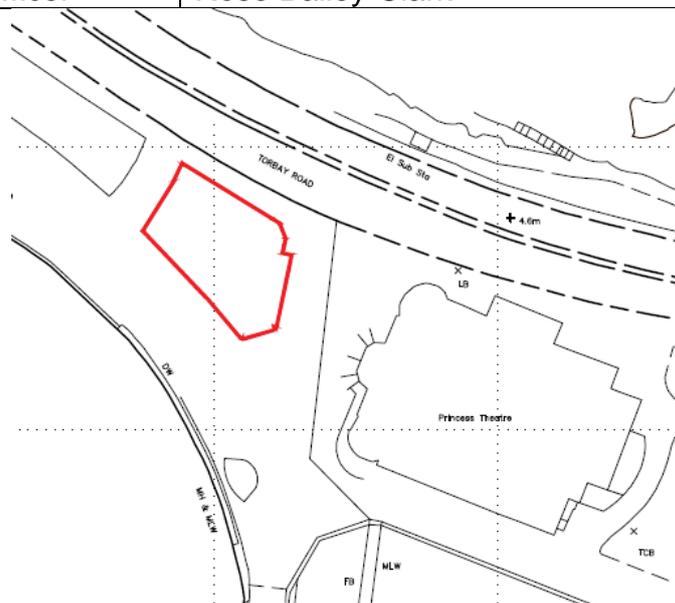
C4 – Trees, Hedgerows and Natural Landscape Features
C5 – Urban Landscape Protection Areas
DE1 – Design
DE3 – Development Amenity
ER1 – Flood Risk
NC1 – Biodiversity and Geodiversity
SS3 – Presumption in Favour of Sustainable Development
SS6 – Strategic Transport Improvements
SS11 – Sustainable Communities
TA1 – Transport and Accessibility
TA2 – Development Access
TA3 – Parking Requirements

Torquay Neighbourhood Plan Policies

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

TORBAY COUNCIL

Application Site Address	Pier Point Cafe Torbay Road Torquay TQ2 5HA
Proposal	Alterations and extensions to existing restaurant including change of use of part of site from retail (A1) to restaurant (A3). (revised plans received 27/08/2020)
Application Number	P/2020/0383
Applicant	Pier Point Torquay Ltd
Agent	Narracotts Architects
Date Application Valid	04.05.2020
Decision Due date	29.06.2020
Extension of Time Date	24.09.2020
Recommendation	Approval: Subject to; The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Change; The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Assistant Director of Planning, Housing and Climate Change, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	The proposed development is on land that is registered as a Torbay Council asset and an objection has been received, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Rose Bailey-Clark



Site Details

The application site, Pier Point Cafe, Torbay Road, Torquay, is a restaurant and bar, situated in a prominent location close to the pier, the seafront and the Princess Theatre.

The existing site comprises a single storey building, which is currently in use as a restaurant and takeaway with an adjoining souvenir and gift shop 'Promenade Gifts' which occupies a North East section of the building. The site is located adjacent to the Princess Theatre and sits within a pedestrian promenade with Rock Walk to the North of the site. Princess Pier, which is not listed, is immediately to the south. It is located close to Torbay Road (A379) and is prominent in the street scene and from the elevated Rock Walk footpath to the north.

A London Plane Tree is located immediately adjacent to the building. The freehold of the site is Torbay Council-owned and the building benefits from permission for a first floor extension granted in 2018 (P/2017/0638).

The site is located on land adjacent to Grade II Listed Princess and Royal Terrace Historic Gardens and part of the site also lies within the boundary of these listed gardens. The site is also located within:

- The Belgravia Conservation Area (BCA).
- The Promenade; Princess Gardens & the Sunken Gardens Local Green Space (TLGST2) as designated within the Torquay Neighbourhood Plan Policy TE2.
- The Harbour side, Waterfront and Belgrave Road Core Tourism Investment Area as defined within Policy TQ1 of the Local Plan.
- Flood Zones 2 and 3.
- Torquay Town Centre Community Investment Area (Policy SS11)
- Coastal Change Management Area (Policy C3)

Description of Development

The proposal seeks to redevelop the existing restaurant by extending the existing footprint at ground floor level and providing a new first floor level. The ground floor would be extended to the northwest by approximately 8m and the new first floor would sit fairly centrally above the existing ground floor footprint being set in slightly from the ground floor level. A cantilevered terrace would be created at first floor and this would curve around the southern and western elevations, offering views out into the bay. The new restaurant would be largely glazed with white render and aluminium detailing. The first floor extension would be flat roofed, with large quantities of glazing.

The proposal also seeks to change the use of the retail element of the building into restaurant use.

Pre-Application Enquiry

None.

Relevant Planning Policy Context

Development Plan

- The Adopted Torbay Local Plan 2012-2030 ("The Local Plan")
- The Adopted Torquay Neighbourhood Plan 2012-2030 (TNP)

Material Considerations

- 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 Planning (Listed Buildings and Conservation Areas) Act 1990 requires that in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. With regard to Conservation areas the Act requires that in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area

Relevant Planning History

P/2019/1341 Alteration to existing opening to form counter for hot food takeaway. Addition of A5 Class to existing A3 Class. Approved 25.03.2020

P/2017/0638 First floor extension, terrace and alterations to restaurant & bar, solar PV and associated works.(Revised Plans received). Approved 12.02.2018

P/2013/1121 New door opening formed within existing glazed panel and sill to provide additional fire exit and means of escape. Approved 11/12/13

P/2007/0913 Change Of Use To Provide Tables And Chairs To Front Of Venue. Approved 23/07/07

Summary of Representations

Approximately 17 letters representations have been received, 15 objecting to the scheme, 1 in support of the scheme and 1 neutral (15 of these were received from a single party).

The main concerns are summarised as follows:-

- Impact on the listed garden and its setting
- Impact on the conservation area
- Scale of development

- Not in-keeping with local area
- Impact on the adjacent trees
- Waste
- Inadequate cycle storage
- Access and parking

The comments in support of the scheme are summarised as follows:-

- Improves tourist facilities
- Impact on local area

Summary of Consultation Responses

Historic England:

Historic England Advice

The significance of the heritage asset(s)

The Princess Gardens and Royal Terrace Gardens lie adjacent to the application site. They are a Registered Park and Garden (RPG) grade II, and date to 1892-94 when they were built as public leisure gardens by the municipal authority. The gardens were extended to create the sunken gardens and promenade 1928-30, and the nearby theatre was constructed in c.1961. The RPG and its surroundings represent a very attractive open space for the use of the public, with wide reaching views both along the promenade but also across the water.

The RPG is on Historic England's 'Heritage at Risk' register, albeit with an improving trend. Princess Gardens is also the subject of a Master Plan, commissioned and adopted by your authority in 2017. Proposals for the improvement of the sunken gardens which lie immediately to the west of the application site, are considered in section 5.2 (page 48) of that document and are a useful reference to your authority's aspirations for improvements.

The impact of the proposals on the heritage asset(s)

The application is for alterations and extensions to the existing restaurant including change of use of part of site from retail (A1) to restaurant (A3). A previous application for a similar scale of scheme was submitted in 2017, and approved.

The existing café building dates to the 1950s/1960s and is stylistically very strongly reminiscent of design of that period. It is an interesting building but one that has been altered and degraded over time by less sympathetic alterations, especially to the theatre facing east elevation. The visual relationship with the theatre and to those moving west from it along the promenade is unwelcoming and rather bleak.

Historic England finds that the current proposal is an improvement upon the previously approved scheme, which was of the same two storey height. The design proposed is reminiscent of the canopied and over-sailing roof lines of the existing building and also generally of seaside architecture. It creates good levels of interaction between the building and pedestrians using the promenade, through fully opening screens and large amounts of glazing. We consider that the development is likely to encourage

users to move westward into the sunken gardens and better appreciate the further reaches of the RPG, and promenade.

The Royal Terrace Gardens to the north of the application site (also a part of the RPG) will look straight down onto, and over the top of the roof of the development. We therefore recommend that your authority very carefully consider the visual impact of the installation of servicing units, solar panels and other associated paraphernalia, to ensure that these elements do not cause harm to important views from within the RPG. Equally, signage and advertising can enhance developments, or seriously erode their quality - we therefore recommend that such details are assessed and controlled with the settings of the RPG and conservation areas in mind, so that their special interest is protected.

We note the aspirations of the adopted Master Plan for the RPG which, whilst not inclusive of this site, has a close physical and visual relationship to it. The Master Plan (and the adopted Conservation Area Appraisal and Management Plan for Torquay Harbour) identifies opportunities for improved interpretation of the gardens, better signage and street furniture, and improvements to surfacing materials. We recommend that your authority consider if this development could provide a financial contribution towards those aims, through a CIL, section 106 agreement, or a legal undertaking. The benefits of the development could be further enhanced by improvements to the RPG in this way.

Recommendation

Historic England has no objection to the application on heritage grounds. However, we refer you to your own authority's adopted Conservation Area Appraisal and Management Plans and the adopted Princess Gardens Master Plan, and encourage your authority to seek financial contributions from this development for the aspirations for improved streetscape, street furniture, signage and interpretation within the neighbouring grade II Registered Park and Garden.

In determining this application you should bear in mind the statutory duty of section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas.

Further comment from Historic England:

We have obviously made a minor error by stating that the application site lies adjacent to the RPG, when in fact it lies adjacent to it and in part, within it. However, our advice remains the same and we do not feel (in this instance) that the inclusion of a very small part of the RPG within the development site would cause harm to the RPG. The small area is already used as an external seating area with hard landscaping, and makes minimal contribution to the character and appreciation of the RPG. That is not to say that incremental erosion of 'green' space is something that we could always support, but in the current case we do not have concerns. If the current development proposal goes ahead we would likely alter the RPG boundary to take this change into account. We presume that this part of the plot may once have been owned by Torbay Council

and perhaps was leased to the café for use as an external space, or has changed ownership because of this function.

Many thanks for checking about this with us. We do not feel the need to provide a formal amended letter to confirm our position, unless you feel otherwise.

Devon and Cornwall Police: *Thank you for the opportunity to comment on the above. Having reviewed the application I would like to advise that the police raise no objections to the proposal at this stage but ask that from a designing out crime, fear of crime and disorder perspective the following advice and recommendations are considered and implemented where possible:-*

1. *To deter and assist in the prevention and detection of crime, fear of crime and antisocial or unacceptable behaviour a monitored CCTV system with a clear passport to compliance and carefully coordinated and compatible lighting must be factored in to the proposed scheme. The cameras should cover all external areas of the premises, including external doors and windows.*

2. *From a public safety point of view it is recommended that anti-ram bollards are installed to protect the roadside building elevations from malicious or accidental vehicle impact. The bollards should have been successfully tested to meet PAS 68 standard. Bollards are noted from the plans but it is not clear what these entail.*

3. *The external 'fire escape' flight of steps has the potential to attract 'out of hours' criminal activity or the antisocial to gather if left with open access, as such it is recommended that it is designed so it can be secured when the premises are not in use, without undermining fire regulations, or it is integrated internally.*

If it is accepted that the external flight of steps should be secured when the premises are not in use then the take away counter and ice cream counter canopies should be of a design to prevent climbing or they are capable of being lowered and secured.

4. *It is recommended that suitable storage facilities for outside furniture is factored in at this early design stage. Alternatively the furniture should be capable of being stacked and securely stored in a designated place and covered by CCTV. By implementing this will provide a practical solution should tables and chairs that are left out attract 'out of hours' gatherings, as this could have a negative impact on quality of life issues as a result of late night noise and nuisance and the potential for this to increase the fear of crime. Also if the items are left out and accessible they could be vulnerable to theft or used as climbing aids or to cause damage.*

5. *All new external doors, roller shutters/louvered doors and easily accessible windows should be sourced as tested and certificated products to ensure a consistent level of security for the building. I would be happy to assist with regard to this if required.*

6. *External doors should be fitted flush to the building line as possible to prevent creating recessed or concealed areas which could impede surveillance opportunities and provide cover for criminal activity or ASB.*

7. *All easily reachable aspects of the building elevations should be treated with an anti-graffiti finish.*

8. *A management plan should be agreed prior to approval to ensure that the use of the external areas are well managed and regularly supervised by staff.*

To assist please find attached a copy of the Secured by Design Commercial Guidance which amongst other things provides details of the police preferred standards and specifications for physical security features such as external doors and easily accessible windows, which are set at a minimum standard of security as such anything less would not be desirable.

I hope the above proves useful but please do not hesitate to contact me if I can assist further as I would be happy to oblige.

Torquay Neighbourhood Forum: *No comment received.*

Torbay Council Waste: *Pier Point use 3 x general waste bins. I have concerns as there will only be 1 access point, there will need to be a rotation system to enable the customer to use the bins supplied and knowing how busy they are I would suggest the bags would be thrown in loose onto the floor. Please see picture attached of a solution used in a separate location.*

We only had issues due to the fact there was a mixture of recycling, glass and general bins and the crews found it difficult to access the bins there needed to collect.

1 x 1100ltr width 1.36 metres. 1 x 1100ltr depth 1.03 metres.

Torbay Council Drainage Engineer:

18/05/2020:

Further to your letter dated 11th May 2020 regarding the above planning application I would like to make the following comments:

1.The proposed development lies within Flood Zone 3 and the developer has submitted a site specific flood risk assessment.

2.Within the site specific flood risk assessment the developer has identified the sources of flooding together with proposed flood mitigation measures. However there is no details relating to safe access and egress during a flood event or details about what to do in an emergency including safe refuges. In addition the flood risk assessment should identify that the owner/manager of the building will be signed up to the Environment Agency's coastal flood warning system.

Before planning permission is granted the developer must include the additional details within the site specific flood risk assessment.

Before planning permission is granted the developer must include the additional details within the site specific flood risk assessment.

Should you have any questions regarding the above please do not hesitate to contact me.

26/05/2020:

Further to your email dated 18th May 2020 attaching the revised flood risk assessment for the above planning application, I can confirm that providing the proposed flood mitigation measures included within the revised flood risk assessment are complied with, I have no objections on drainage grounds to planning permission being granted.

Torbay Council Tree and Landscape Officer:

05/06/2020: *I have no objection to the proposal. The submitted tree information is accurate and makes allowance for the construction of the proposal. My only concern is the potential for ongoing maintenance of the tree to ensure that a satisfactory relationship between the tree and restaurant is maintained – are we able to require funding from the owner of the site to carry out these ongoing maintenance works on the tree. Also a compliance condition that the tree works are carried out as per report 05435a AIA Pier Point.*

21/08/2020: *The proposed foot print extends into an area where no trees are located hence the submitted information stating that the footprint will be the same is incorrect but there will not be any further arboricultural implications.*

21/08/2020: *The submitted Tree Protection Plan is acceptable.*

Torbay Council Environmental Health: *Having reviewed this application from an environmental protection perspective I would confirm that I have no objections. Should you have any further queries please let me know.*

Devon Gardens Trust: *Thank you for consulting The Gardens Trust on the above application which affects Princess Gardens and Royal Terrace Gardens. We do not wish to comment on the proposals.*

South West Water: *No comment received.*

Natural England: *Natural England has no comments to make on this application.*

Key Issues/Material Considerations

1. Principle of development
2. Impact on visual amenity
3. Impact on heritage assets
4. Impact on residential amenity

5. Impact on highways
6. Trees and ecology
7. Flooding and drainage
8. Waste
9. Low Carbon Development
10. Sustainability

Planning Officer Assessment

1. Principle of development.

Policy TO1 (Tourism) of the Local Plan supports in principle the improvement of existing and provision of new tourist accommodation and attractions, particularly proposals that make positive use of Torbay's marine environment, culture, heritage, biodiversity and Geopark. The application site is also located within Core Tourism Investment Area (CTIA) as designated in Policy TO1. As such, given the site's location within a CTIA, and as the proposed extension will result in an improvement to the existing building and allow for increased capacity which will support the local business and provide enhanced facilities, the proposal would comply with Policy TO1.

Policy SS4 (The Economy and Employment) of the Local Plan supports the regeneration of Torbay and improvement in its economic performance, with the aim of achieving a step-change in economic prosperity as set out in Torbay's Economic Strategy. The Local Plan supports existing businesses, it encourages new businesses and investment in order to create new jobs, and it enables expansion and diversification of the economy of the Bay. The Plan seeks to promote growth in sectors that are particularly important in Torbay, namely tourism, hotel and catering. The addition of the extension would create 16 new full time and 6 new part time employees in line with this policy.

The application is for the extension of an A3 use, meaning that a sequential test should be applied in accordance with paragraph 86 of the NPPF, however, this test should be balanced against other benefits of the proposal. The site, which is well located within walking distance of Torquay Town Centre, is already in use as a café and the proposal involves the enlargement of the restaurant. The proposal would help contribute to the area and would add vitality to Torquay Seafront.

Policy TO1 (Tourism) of the Torbay Local Plan states that Torbay's tourism offer will be developed in a sustainable and competitive manner, to enhance its role as a premier tourism destination. Policy TO1 details further that Torbay Council wishes to see the quality of accommodation improved with a wider range of new and refurbished facilities and services. This will be achieved through the following measures:

- Supporting in principle the improvement of existing and provision of new tourist accommodation and attractions.

- The retention, improvement and creation of new, high quality tourism and leisure attractions, facilities and accommodation in sustainable, accessible locations with particular focus on Core Tourism Investment Areas (CTIAs)

Given that the application site is located within a CTIA as designated in Policy TO1, and the proposed extension would improve the provision of tourist attractions, it is considered that the principle of the proposed development is acceptable and a sequential test is not required.

A small part of the site lies within the Promenade; Princess Gardens & the Sunken Gardens which is designated as a Local Green Space (LGS) within Torquay Neighbourhood Plan Policy TE2. The vast majority of the proposed development is on the existing footprint, however part of the proposal would extend into a small part of the LGS which is a hard landscaped area already in use as an enclosed external seating area for Pier Point Café. Policy TE2 states that development in these areas is ruled out, other than in very special circumstances. This Policy considers that a new railway station at Edginswell or tourist facilities at Hollicombe are examples where very special circumstances apply. Paragraph 101 of the NPPF indicates policies for managing development in LGSs should be consistent with green belts. Paragraph 145 of the NPPF indicates that certain types of development may be acceptable in green belts including recreation, provided that the openness of the green belt is preserved and development does not conflict with the purpose of designation. As the proposal improves and enhances the current use, does not conflict with the reasons for designating the LGS and provides economic/tourism benefits, any conflict with the LGS policy is outweighed.

Neighbourhood plan Policy TS4 (Support for Brownfield and Greenfield Development) supports development proposals for brownfield sites providing there are no significant adverse impacts. The proposal is considered to make effective use of what is brownfield land, in accordance with Policy TS4.

The site is within the coastal change management area, as defined by Local Plan Policy C3. The proposal is for the extension a cafe which is already in place within this area, and proposed alterations are not considered to adversely affect the natural or historic environment of the area. The proposal is considered an appropriate addition within this location which would contribute to local economy, in accordance with Policy C3.

Policy SS11 of the Local Plan explains that proposals that regenerate or lead to the improvement of social, economic or environmental conditions in Torbay will be supported in principle. Policy TC5 (Evening and night time economy) of the Local Plan states that the Council supports, in principle, development that helps create a vibrant, diverse evening and night-time economy within the town centres, seafront and harbour areas of the Bay. There are likely to be wider economic benefits through additional visitors being attracted to the area as a result of the extended capacity. Additionally it would add to the existing tourism offer in the seafront area attracting people of all ages, accordingly the proposal complies with Policy TC5.

Overall, the proposal is considered to be consistent with the objectives of the above policies.

2. Impact on Visual Amenity

The National Planning Policy Framework (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'. In addition, it 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 Design of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Torquay Neighbourhood Plan states that development must be of good quality design, respect the local character and reflect the identity of its surroundings.

Policy DE4 (Building Heights) states that the height of new buildings should be appropriate to the location, historic character and the setting of the development.

Policy SS11 of the Torbay Local Plan states that development must help to create cohesive communities within a high-quality built and natural environment where people want to live and work and that development proposals will be assessed according to whether they achieve certain criteria as far as they are relevant and proportionate to the development.

This building is an important feature on Torquay sea front in a prominent public realm location which is viewed from all sides, therefore it is important that it should positively address the street from every elevation. The submitted plans were amended to overcome officer concerns over the relationship of the proposed building with the main "showfront" western entrance of the adjacent Princess Theatre. The fascia of the main entrance to the eastern elevation has been raised to allow this to read as a prominent entrance point to the building, and the fascia has been continued to wrap around the external stairway to improve the appearance of this elevation.

A square angular element to the elevation facing Torbay Road was amended to include a curved design, which is considered to bring this element into context with the rest of the building.

The proposed contemporary design is reminiscent of the canopied and over-sailing roof lines of the existing building and creates good levels of interaction between the building and pedestrians using the promenade, through fully opening screens and large amounts of glazing.

The proposal is considered to be in keeping, in terms of its height, scale and architectural style with other buildings located along the sea front, including the nearby Princess Theatre and Abbey Sands development, all of which are located off Torbay Road. The proposed building would be approximately 3m higher than the existing structure, and would remain lower in height than the adjacent Princess Theatre.

Policy SS11 of the Local Plan states that part of the criteria development proposals will be assessed against includes whether the proposal helps to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion. Consultation from police officer has raised a number of points regarding designing the scheme to prevent opportunities for crime and anti-social behaviour. These recommendations have been taken into account where possible and a planning condition should be employed to secure a scheme of crime prevention measures. The proposal is considered to accord with Policy SS11 of the Local Plan, and TH2 of the Neighbourhood Plan.

It is considered that the form and layout of the scheme would make effective use of what is brownfield land. The proposal is considered to result in a significant enhancement of what is a visually prominent site within the CTIA, replacing a dated structure. Given the proposal's siting, layout, scale, and overall design, it is considered that it would not result in any unacceptable harm to the character of the area. Subject to the use of conditions to secure the use of high quality materials, it is considered that the proposal is in accordance with Policies DE1, SS11 and DE4 of the Local Plan, Policies TH2 and TH8 of the Torquay Neighbourhood Plan, and the guidance contained in the NPPF.

3. Impact on Heritage Assets

Policy SS10 states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires LPAs in reaching determinations on applications to have 'special regard' to the desirability of preserving the character of conservation areas. Paragraph 193 of the NPPF explains that great weight should be given to the conservation of 'heritage assets' such as Conservation Areas and Listed Historic Park and Garden.

The site lies within the Belgravia Conservation Area (BCA). Part of the site lies within the adjacent Princess Gardens and Royal Terrace Gardens. They are a Registered Park and Garden (RPG) grade II, and date to 1892-94. The gardens were extended to create the sunken gardens and promenade 1928-30. The Promenade; Princess Gardens & the Sunken Gardens is also designated as a Local Green Space within the Torquay Neighbourhood Plan Policy TE2. This policy states that development in these areas is rules out, other than in very special circumstances.

The Gardens Trust have confirmed they have no comment on the scheme and Historic England have commented confirming that they have no objection to the application on heritage grounds.

Although part of the proposal would extend into small part of land designated as falling within the RPG and Local Green Space, this has raised no concerns given that the small, hard landscaped area is already in use as an external seating area for Pier Point Café.

The proposed design creates good levels of interaction between the building and pedestrians using the promenade and is likely to encourage users to move westward into the sunken gardens and better appreciate the further reaches of the RPG, and promenade.

The Royal Terrace Gardens to the north will look straight down onto, and over the top of the roof of the development. Therefore, details of the servicing units will be secured through the use of a planning condition to ensure that these elements do not cause harm to important views from within the RPG and surrounding Conservation Area.

The proposed new building is considered to be appropriate to the seafront location and the modernist architecture preserves the character and quality of the Conservation Area and listed park and garden. Subject to the imposition of conditions, the proposal is considered to have an acceptable impact on the heritage assets. As such the proposal is considered to be acceptable with regard to Policy SS10 of the Local Plan and the guidance contained within the NPPF.

4. Impact on amenity

Consultation from the Council's Senior Environmental Health Officer has noted that there is no objection to the proposal. Details of the proposed extraction and cooling equipment, including noise levels and odour abatement, shall be secured through the use of a planning condition. This will ensure that the extension of the business does not result in any negative impacts on the surrounding users and residential properties.

A construction method statement (CMS) to ensure public areas on the footway and promenade are not unduly obstructed and the works are carried out in an appropriate manner shall be secured through the use of a planning condition.

Given the distance of the proposal to the nearest residential properties which are above Rock Walk, which at its closest point is approximately 93.5m in distance, it is considered unlikely that there will be a material loss of amenity to the occupiers of these properties.

Subject to the imposition of conditions, the proposal is considered to retain suitable levels of amenity for adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

5. Impact on Highways.

Policies TA2 and TA3 of the Local Plan establish criteria for the assessment of development proposals in relation to access arrangements and vehicle parking. Policy TH9 of the Torquay Neighbourhood Plan states that all new housing development must meet the guideline parking requirements contained within 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 DE3 of the Local Plan states that all development should include satisfactory provision for off-road motor vehicle parking and bicycles. Policy THW5 of the Torquay Neighbourhood Plan supports new development proposals where they are located on or near to public transport routes wherever possible and appropriate.

In this case the site is considered to be in a commercial area which is already well served by public car parks and therefore would not create significant addition demand. The existing restaurant does not include any parking provision, furthermore the constraints of the site means that it would be unsuitable to accommodate off street car parking.

A small bike storage area is included within the building to serve some employees, and planning condition will also be used to seek to secure details of the provision of cycle storage in accordance with Policy DE3 of the Local Plan and policy THW5 of the TNP, if it is possible to do so. The application site has very limited potential for the provision of cycle parking and provision may require the cooperation of third party landowners; for this reason the planning condition requires that the applicant should make best endeavours to provide cycle parking but it is recognised that there is a possibility that this may not be achievable.

The applicant would need to apply for a pavement licence for the seating on the highway.

Subject to the conditions being met, the proposal is considered to be acceptable with regard to Policies DE3, TA2 and TA3 of the Local Plan and Policies TH9 and THW5 of the TNP.

6. Trees and Ecology.

Policy NC1 of the Local Plan confirms the Local Plan seeks that development in all areas should conserve or enhance Torbay's biodiversity and geodiversity. Policy TE5 (Protected species habitats and biodiversity) states that the development of new homes, or a new commercial property or business premises of any class, on an unallocated site that could have an impact on a protected species or habitat must provide, as appropriate, an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Policy C4 of the Local Plan does not permit development when it would seriously harm, either directly or indirectly, protected or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value.

The application has been accompanied by a written wildlife assessment by a licenced Ecologist (NE licence number 2015-11658-CLS-CLS, CL29/00179) carried out on 20.04.2020. This report confirmed that no evidence of bats were found and the proposal will not impact on nesting birds.

A London plane tree is located immediately adjacent to the buildings north eastern elevation. An arboricultural impact assessment and tree protection plan have been submitted to accompany the application and the Council's Senior Tree and Landscape Officer is satisfied that the proposed development is acceptable in terms of its impact upon the trees adjacent to the site.

The site is adjacent to the Lyme Bay and Torbay Special Area of Conservation (SAC) and Marine Conservation Zone (MCZ). Natural England been consulted and have advised that they have no comment, which implies that they consider that there would be no 'likely significant effect' of the proposed development on any European protected sites.

Separate legislation relating to appropriate pollution control measures (for both water and air) would apply, in accordance with Defra guidelines, which would prevent harmful substances entering the air, ground or water.

The proposed development is considered acceptable with regard to Policies NC1 and C4 of the Local Plan and Policy TE5 and of the TNP.

7. 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.

As the site is located within Flood Zones 2 and 3, the application is required to be accompanied by a site specific flood risk assessment.

The Drainage Engineer has no objections providing the development is carried out in accordance with the details of the submitted site specific flood risk assessment. A planning condition will be employed to secure this.

Subject to the conditions being met, the proposal is considered to be acceptable with regards to Policies ER1 and ER2 of the Local Plan.

8. Waste

Policy W1 of the Local Plan states that all development proposals should provide a scheme of sustainable waste management proportionate to the scale of the proposal. Policy W2 requires that Development proposals which are likely to generate significant volumes of waste must include a Waste Audit and Five Year Waste Management Plan

setting out how waste generation will be reduced during the construction and operation of the development. This will include provision of appropriate on-site facilities for re-use, recycling (composting where appropriate) and collection of waste. Schemes should include measures to:

1. Prevent and minimise, re-use and recycle waste (including composting where appropriate);
2. Minimise the use of raw materials;
3. Minimise the pollution potential of unavoidable waste;
4. Seek alternative modes of transport (to the use of roads) to move waste;
5. Make provision for the storage and collection of waste. Planning contributions for off-site waste management facilities may also be required; and
6. Dispose of unavoidable waste in an environmentally acceptable manner;

The proposal includes a bin storage area which would allow three commercial waste bins to be stored. The storage area has been amended to allow easier access to the refuse and recycling bins. The proposal includes two takeaway counters, therefore planning condition will be used to require the submission of a Waste Management Plan to ensure that the use plastic containers are minimized, local litter bins are not subject to undue pressure and seagulls are managed. Following the use of this condition, the proposal is considered to comply with Local Plan Policies W1 and W2.

9. Low Carbon Development

Policy SS14, Low carbon development and adaptation to climate change, requires that development should minimise carbon emissions and the use of natural resources expected to arise during the lifetime of development.

The submitted design and access statement indicates that the development proposes to use less energy through passive design such as high insulation levels to improve U-values; high efficiency glazing and reduced air permeability. Additionally, energy efficient plant and equipment such as LED lighting; high efficiency heating and cooling, heat recovery ventilation and efficient fan motors would be utilised.

The proposal is therefore considered to be in accordance with Local Plan Policy SS14.

10. Sustainability of Location

Policy SS3 of the Local Plan establishes the presumption in favour of sustainable development. Policy TS1 of the TNP 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.

The proposal is considered to make sustainable use of land by re-using an existing structure. This reduces the pressure to develop greenfield sites, and promotes urban

regeneration. The site's central location in itself promotes sustainable forms of transport as locally available services are within easy walking distance, removing the need for additional car journeys. 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; 2.2.1 CIL is liable on out-of-town centre food and drink development of more than 300 sq m, at £120 per sq m. This means that all new floorspace over the first 300sqm will be charged at a rate of £120/sqm.

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

EIA/HRA

EIA:

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

HRA:

There is no requirement for a HRA in this instance.

Planning Balance

The proposal is considered to represent an appropriate and beneficial use which will enhance the Conservation Area and benefit the local economy. The design and heritage impact are considered to be acceptable. Subject to the planning conditions detailed below, no unacceptable material planning harm has been identified and the proposal is in accordance with Development Plan policies.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, heritage assets, or local amenity; and provide acceptable arrangements in relation to access flood risk, and ecological constraints. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, and all other material considerations.

Officer Recommendation

Delegate authority to the Assistant Director of Planning, Housing and Climate Change to grant Planning Permission, subject to the conditions detailed below. The final drafting of conditions and addressing any further material considerations that may come to light to be delegated to the Assistant Director of Planning, Housing and Climate Change.

Conditions

Cycle storage

Prior to any new development continuing above damp proof course level, details of a scheme to demonstrate that best endeavours have been made to provide cycle parking within the vicinity of the site shall be submitted to and approved in writing by Local Planning Authority. This scheme shall be implemented prior to the occupation of the development and retained for the lifetime of development.

Reason: To provide for and encourage sustainable forms of travel to and from the site, in accordance with Policies TA1 and TA3 of the Torbay Local Plan 2012-2030.

Waste Management

The development hereby permitted shall not be brought into use until a detailed Waste Audit and Waste Management Plan, has been submitted to and approved in writing by the Local Planning Authority. Once provided, the agreed scheme shall be adhered to for the lifetime of the development.

The scheme shall include full details of the following:

- 1) How waste will be minimized as far as possible.
- 2) The storage of refuse and recycling awaiting collection.

- 3) Where customer bins will be provided on site.
- 4) How the development will prevent and minimise, re-use and recycle waste and promote the use of recyclable containers.
- 5) How the development will dispose of unavoidable waste in an environmentally acceptable manner.
- 6) How the development will address additional pressure on nearby public litter bins.

Reason: In interests of managing waste in an appropriate manner and in accordance with Policies W1 and W2 of the Torbay Local Plan 2012-2030.

Tree Protection Measures

The development hereby approved shall be carried out in strict accordance with the Arboricultural Impact Assessment (Tree Protection Measures) (Plan reference: 05435a TPP, received: 27.08.2020).

Reason: To ensure that the construction works are carried out in an appropriate manner to prevent any impact on trees in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

Arboricultural Impact Assessment

The development hereby approved shall be carried out in strict accordance with the Arboricultural Impact Assessment (Plan reference: 05435a pier Point AIA, received: 21.04.2020).

Reason: To ensure that the construction works are carried out in an appropriate manner to prevent any impact on trees in accordance with Policy C4 of the Torbay Local Plan 2012-2030.

Materials

Prior to the instillation of any external building materials, including cladding, render, windows and doors, the proposed materials (including samples) shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030.

Details of rainwater goods

Prior to the instillation of any rainwater goods, details of the proposed rainwater goods shall be submitted to and approved in writing by the Local Planning Authority. The

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

Reason: To ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE1 and SS10 of the Torbay Local Plan 2012-2030.

Hours of opening

The development hereby approved shall not be open to customers outside of the following times: 0800 to 2330 Monday to Sunday.

Reason: In the interests of the amenity of the area, in accordance with Policy DE3 of the Torbay Local Plan 2012-2030.

Construction Methods Statement

No development (including demolition and ground works) shall take place until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction. The CMS 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.
- d) Measures to limit dirt / materials on the highway
- e) Measures to control dust and dirt during construction.
- f) Measures to minimise noise nuisance to neighbours from plant and machinery as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used.
- g) 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.
- h) Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- i) Procedures for maintaining good neighbour relations including complaint management.
- j) Measures to ensure that noise and nuisance to the neighbouring Princess Theatre is minimised during their matinee performances.
- k) Measures to ensure that there is no damage to the roots of the plane trees adjoining the site

The approved CMS shall be adhered to throughout the construction phase.

Reason: To ensure that the construction works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses, in the interests of the convenience of highway users and in the interest of nearby trees, in accordance with Policies C4 and DE3 of the Torbay Local Plan. These details are required pre-commencement to ensure appropriate mitigation at all stages of development.

Flood Risk Assessment

The development hereby approved shall be undertaken in full accordance with the mitigation measures contained in the flood risk assessment (plan reference: 2386 FRA Rev A, received: 21.04.2020) and shall be retained as such thereafter.

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

Details of Extract/Ventilation System

Prior to any new development continuing above damp proof course level, details of the means of ventilation for the extraction and dispersal of cooking smells/fumes, including the method of construction, odour control measures as appropriate, and noise levels, have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be fully installed before the use hereby permitted commences and thereafter shall be permanently maintained and retained.

Notwithstanding the details shown on the approved plans no external plant or equipment shall be installed or provided unless it has previously been agreed in writing by the Local Planning Authority.

Reason: These details need careful consideration and formal approval to safeguard the amenity of adjoining properties, to protect the general environment and in order to protect the visual amenity of the area. In the interests of residential and visual amenity, and to ensure an acceptable form of development in the interests of the character and appearance of the Belgravia Conservation Area in accordance with Policies DE3, DE1 and SS10 of the Torbay Local Plan 2012-2030.

Crime Prevention Measures

Prior to the first use of the development hereby approved, details of a scheme of crime prevention measures shall be submitted to and approved in writing by the Local Planning Authority.

Reason: In the interests of providing a safe, crime free environment and in accordance with Policy SS11 of the Torbay Local Plan, and Policy TH2 of the Neighbourhood Plan.

Informatives

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. Notwithstanding submitted plans, any signage would be subject to a separate application for signage consent.
03. The applicant is reminded of their obligations in relation to pollution prevention and control, which is covered by separate legislation. Appropriate pollution control measures (for both water and air) should be applied in accordance with

04. 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.

05. 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.

06. 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>

Relevant Policies

TO1 – Tourism, Events and Culture
SS4 – The Economy and Employment
SS11 – Sustainable Communities
TC5 – Evening and Night time Economy
DE1 – Design
DE3 – Development Amenity
DE4 – Building Heights
TA2 – Development Access
TA3 – Parking Requirements
ER1 – Flood Risk
ER2 – Water Management
NC1 – Biodiversity and Geodiversity
HE1 – Listed Buildings
SS10 – Conservation and the Historic Environment

SS3 – Presumption in favour of Sustainable Development
C4 – Trees, hedgerows and natural landscape features
C3 – Coastal change management
W1 – Waste Hierarchy
W2 – Waste Audit for major and significant waste generating developments
SS14 – Low carbon development and adaptation to climate change

TH8 – Established Architecture.
TH9 – Parking Facilities.
THW5 – Access to sustainable Transport.
TE5 – Protected species habitats and biodiversity.
TS1 – Sustainable Development.
TS4 – Support for Brownfield and Greenfield development.
TE2 - Local Green Spaces
TE5 - Protected species habitats and biodiversity
TH2 – Designing out crime