

Friday, 30 July 2021

PLANNING COMMITTEE

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

Monday, 9 August 2021

commencing at **4.00 pm**

The meeting will be held in the The Forum, Riviera Conference Centre, Chestnut Avenue, Torquay, TQ2 5LZ

Members of the Committee

Councillor Pentney (Chairman)

Councillor Brown

Councillor Kennedy

Councillor Dart

Councillor Barbara Lewis

Councillor Dudley

Councillor Mills

Councillor Hill

Councillor Jacqueline Thomas

Together Torbay will thrive

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, 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. **Minutes**

To confirm as a correct record the Minutes of the meeting of this Committee held on

(Pages 4 - 8)

3. **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.)

4. **Urgent Items**

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

5. **Beacon Cove, Parkhill Road, Torquay TQ1 2EP P/2019/1023**

Formation of five tourist accommodation beach huts & kiosk. (As revised by plans received 15 June 2021 showing revised foul drainage strategy)

(Pages 9 - 42)

Brief adjournment for the Committee to consider the remaining Agenda items

6. **Torre Abbey Sands, Beach Promenade, Torquay P/2021/0300**

Installation of 2 x 20ft converted shipping containers to house mobile catering concession and water sports rental. (Retrospective) (Revised plans received 03.06.21)

(Pages 43 - 61)

7. **Land Off Orchard Way, Edginswell Torquay P/2021/0123** (Pages 62 - 82)
Enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping
8. **Land At Quinta Playing Fields, Quinta Road, Torquay TQ1 3RN P/2021/0560** (Pages 83 - 89)
Installation of 10m high, emergency landing illumination beacon for Air Ambulance
9. **Land At White Rock Playing Field, Davies Avenue, Paignton TQ4 7AW P/2021/0564** (Pages 90 - 97)
Installation of 10m high, emergency landing illumination beacon for Air Ambulance
10. **Land At Barton Cricket Club Playing Field, Barton Road, Torquay TQ2 7NY P/2021/0561** (Pages 98 - 104)
Installation of 10m high, emergency landing illumination beacon for Air Ambulance.
11. **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.
12. **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, 4th August 2021. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Meeting Attendance

Whilst national Covid-19 restrictions were lifted on 19 July 2021, Torbay Council has taken the decision to continue operating in a Covid-19 secure manner in order to protect staff and visitors entering Council buildings and to help reduce the spread of Covid-19 in Torbay. This includes social distancing and other protective measures (e.g. wearing a face covering (unless exempt), signing in and using hand sanitiser). Our public meetings will continue to operate with social distancing measures in place and as such there are limited numbers that can access our meeting rooms. Also, to help prevent the spread of the virus, anyone attending meetings is asked to take Covid lateral flow test the evening before - if you have a positive test result please follow the Government's guidelines and do not attend the meeting.

If you wish to attend a public meeting please contact us to confirm arrangements for your attendance.

Minutes of the Planning Committee

19 July 2021

-: Present :-

Councillor Pentney (Chairman)

Councillors Dart, Dudley, Hill, Kennedy, Jacqueline Thomas, Ellery, Loxton and Foster

48. Cherry Trees, 142 Newton Road, Torquay, TQ2 7AD, P/2020/0866

The Committee considered an application for alterations and extensions to existing dwelling to form five residential flats. Alterations include the formation of a two storey side extension over existing garage, the enlargement of a rear dormer (revised plans received on 14.04.2021).

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were available on the Council's Website. At the meeting Dr Horder on behalf of the Neighbourhood Forum addressed the Committee.

Resolved:

Approved in accordance with the submitted report, subject to condition 6 being amended as follows:

1. Prior to the first occupation of the development hereby permitted six car parking spaces shall be marked out and provided on the site in accordance with the plans hereby approved and shall thereafter be retained. The car parking spaces shall be allocated to the flats as shown on the Drawing No 5961/209/A and made available for the free use of residents of the development for their intended use for the lifetime of the development. Notwithstanding the approved plans the surface of the parking area shall be fixed/bonded to prevent spillage onto the highway.

Reason: To ensure highway safety and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Adopted Torquay Neighbourhood Plan 2012-2030.

49. Mayfield School, Moor Lane, Torquay, TQ2 8NH (P/2021/0357)

The Committee considered an application for the formation of a new staff and teaching block.

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were available on the Council's Website. At the meeting Dr Horder addressed the Committee on behalf of the Neighbourhood Forum.

Resolved:

Approved subject to the conditions set out in the submitted report with the final drafting of conditions being delegated to the Assistant Director for Planning, Housing and Climate Emergency.

50. Land Off Orchard Way, Edginswell Torquay (P/2021/0123)

The Committee considered an application for enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping.

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Dr Horder on behalf of the Neighbourhood Forum addressed the Committee

Resolved:

Approved subject to:

- (i) the receipt of amended plans showing a landscaped buffer of no less than 10 meters deep;
- (ii) details of the landscaping of the buffer zone to be delegated to the Assistant Director of Planning, Housing and Climate Emergency, in consultation with Ward members and the Chairman of the Planning Committee; and
- (iii) the conditions set out in the submitted report.

51. Land to the southeast of 39 Wall Park Road, Brixham (P/2019/0594)

The Committee resolved to defer this item to the Planning Committee on 19 July 2021 at 5.30pm.

Chairman

Minutes of the Planning Committee

19 July 2021

-: Present :-

Councillor Pentney (Chairman)

Councillors Dart, Dudley, Hill, Kennedy, Jacqueline Thomas, Ellery, Loxton and Foster

52. Apologies

It was reported the membership of the Committee had been amended to include Councillors Ellery, Foster and Loxton instead of Councillors Brown, B Lewis and Mills.

53. Urgent Items

In accordance with the adjourned meeting, the item in Minute 53 was considered at this meeting.

54. Land to the South East of 39 Wall Park Road, Brixham

The Committee reconsidered an outline application for 3 dwelling houses and associated improvements to the private access lane serving the site, with all matters reserved.

Members noted that a resolution to approval the proposals had been made in September 2020 but that officers now advised that, due to land ownership issues and amended advice from the Council's ecological consultants, the terms of the proposed planning obligation needed to be amended.

Prior to the meeting, Members of the Planning Committee undertook a virtual site visit and written representations were available on the Council's Website.

At the meeting Sally King addressed the Committee in support of the application.

Resolved:

Approved subject to:

- (i) the conditions set out in the submitted report (update July 2021) subject to the removal of the following paragraph from condition 14

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.

- (ii) the completion of a S106 Legal Agreement to secure off-site Affordable Housing contributions in accordance with the adopted 'Planning Contributions and Affordable Housing' Supplementary Planning Document, and contributions to mitigate the recreational impacts of the development on Berry Head, in accordance with the adopted 'Recreational Pressure on Berry Head' Supplementary Planning Document, on terms acceptable to officers;
- (iii) the final drafting of conditions being delegated to the Assistant Director of Planning, Housing and Climate Emergency; and
- (iv) 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.

55. 35 Langdon Fields, Brixham TQ5 0PJ P/2021/0398

The Committee considered an application for the formation of an integral single garage to front.

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were on the Council's Website.

Resolved:

Approved with the conditions set out in the submitted report.

56. Land Adjacent To Roselands County Primary School, Lynmouth Avenue, Paignton TQ4 7RQ P/2021/0208

The Committee was advised that this application had been deferred.

57. 50 Victoria Street, Paignton, TQ4 5EQ P/2021/0410

The Committee considered an application for the installation of free standing advertising unit (FSU), containing back to back digital displays.

Prior to the meeting, Members of the Planning Committee undertook a site visit and written representations were available on the Council's Website. At the meeting Catherine Fritz on behalf of the Neighbourhood Forum addressed the Committee.

Resolved:

That the application be deferred for the following information:

- (i) further information in respect of visual images which more clearly show the siting and proposed size of the structure in its proposed location,
- (ii) a consultation response from the Police in respect of public safety; and

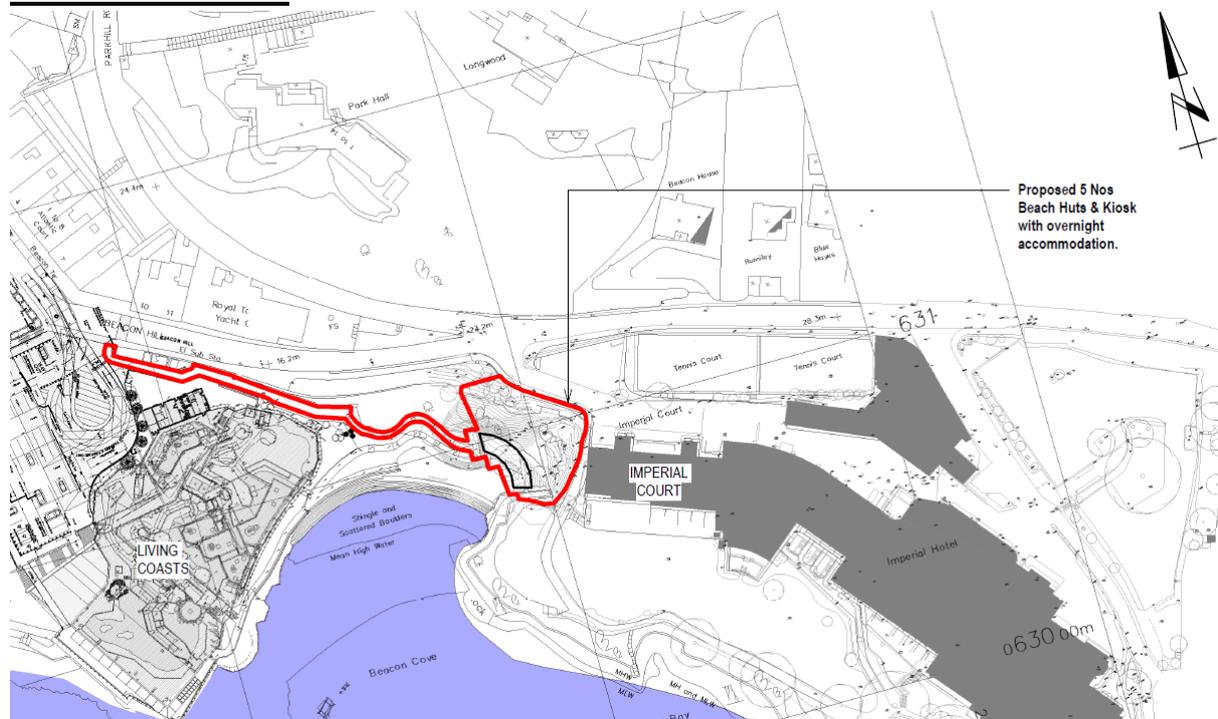
- (iii) further consultation with the Councils' Highway department.

Chairman

TORBAY COUNCIL

Application Site Address	Beacon Cove Parkhill Road Torquay TQ1 2EP
Proposal	Formation of five tourist accommodation beach huts & kiosk. (As revised by plans received 15 June 2021 showing revised foul drainage strategy).
Application Number	P/2019/1023
Applicant	Hemel Hempstead Property Co (Apsley) Ltd
Agent	Kay Elliott Architects
Date Application Valid	28.11.2019
Decision Due date	23.01.2020
Extension of Time Date	
Recommendation	<p>Approval: Subject to;</p> <ol style="list-style-type: none"> 1. Written confirmation from Natural England that they accept the conclusions of the Habitats Regulations Assessment and the Marine Conservation Zone Assessment, and; 2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency, and; 3. The completion of a S106 Legal Agreement to secure heads of terms as outlined below, delegated to the Assistant Director of Planning, Housing and Climate Emergency, and that; <p>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.</p>
Reason for Referral to Planning Committee	Due to the number of objections received, and in accordance with the Council's constitution which requires that, for applications relating to land owned by Torbay Council and against which objections have been received, the application be referred to the Planning Committee for decision making.
Planning Case Officer	Craig Davies

Site Location Plan



Site Details

The site comprises part of the hillside on the southern side of the public highway at Beacon Hill, to the west of Imperial Court (a seven storey block of flats) and its associated driveway, and to the east of the beach at Beacon Cove and the Living Coasts Marine Aviary.

The site slopes steeply downhill from northeast to southwest, is overgrown with vegetation, and has a disused pedestrian footpath that leads up to the northeastern boundary of the plot. The site boundary includes the access ramp that leads from the car park at Beacon Quay, along the northern boundary of Living Coasts, and down to Beacon Cove. A shipping container that has temporary permission for the storage of surfing equipment (see application P/2019/0309) is sited close to the site boundary.

Beacon Cove was a busy beach in the past and was previously developed with a number of buildings to meet the needs of visitors. These have since been removed although remnants remain. The cove is now less well used and there have been incidences of anti-social behaviour as it lacks surveillance.

In terms of the designations contained in the Development Plan, the site is located within Torquay Town Centre, the 'Torquay Town Centre and Harbour' Strategic Delivery Area, the Torquay Harbour Conservation Area, the Core Tourism Investment Area, and a Community Investment Area. The southern boundary of the site abuts the Coastal Change Management Area, and the South West Coast Path runs along Beacon Hill to the north of the site. Further to the north, on the far side of Beacon Hill and Parkhill Road, is the 'St Johns Wood' Urban Landscape Protection Area.

The site is adjacent to the Torbay Marine Conservation Zone (MCZ) and the Lyme Bay and Torbay Special Area of Conservation (SAC), and it is within 500m of the Daddyhole Site of Special Scientific Interest (SSSI) and 900m of the Meadfoot Sea Road SSSI.

The site is also in the vicinity of Grade II listed buildings and structures including the Royal Torbay Yacht Club, 9-11 Beacon Terrace, Haldon Pier and South Pier, and Grade II* listed buildings and structures including 1-8 Beacon Terrace and the Beacon Quay Slipway.

Date of officer site visits: 11.12.2019, 22.12.2020 and 22.07.2021.

Description of Development

The proposal is for the construction of a crescent-shaped, terraced building comprising five holiday apartments and a small retail kiosk. The building would be sited at the base of the hillside facing towards the sea on a natural stone retaining wall/sea wall.

The holiday apartments would each comprise of a living area with kitchenette and WC on the ground floor, and sleeping accommodation on a mezzanine level. They would be constructed in thermally insulated block work with timber cladding to the front elevation and zinc standing seam cladding to the side elevations and roof. The proposal is for a contemporary design, including folding timber shutters to the ground floor with double glazed windows, and with timber 'brise soleil' louvres to the mezzanine level sleeping accommodation. The ground floor living areas would open out onto a shared terrace with a balustrade comprising of stainless steel posts, glazed panels, and a timber handrail.

The retail kiosk would be at the western side of the building with a shuttered hatch on the western side elevation for serving customers. The proposal includes a new retaining wall to the rear of the proposed building, with a levelled access path along the rear of the building leading to a proposed bin storage facility on the eastern side.

The primary means of access would be from the existing footpath to Beacon Quay car park to the west, and the proposal also includes reinstating and extending the disused footpath steps to the rear of the building as a secondary pedestrian access leading up to Beacon Hill.

While the proposal that was advertised to the public included a proposed wastewater treatment unit located in the void beneath the terrace with treated foul water to be discharged into the sea, the proposal has since been revised. The wastewater treatment unit that was initially proposed has been omitted, and the revised foul drainage strategy is for foul drainage to be pumped (using a pump located in the void beneath the terrace) up to the public sewer on Beacon Hill road through pipes located within the reinstated footpath to the rear of the proposed building.

It is important to note that a very similar proposal (identical aside from the foul drainage strategy) was approved for this site by the Planning Committee in 2016. The approved scheme was not implemented and the approval has since lapsed. Prior to that, a very similar proposal was also approved in 2013 but was not implemented.

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 Torquay Neighbourhood Plan ("The 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

Relevant planning decisions relating to proposals for beach huts and a kiosk at this location:

- P/2016/0159: Provision of five residential beach huts and kiosk; access steps; alterations to retaining wall. Approved 01.09.2016.
- P/2012/1265: Construction of five 'overnight' beach huts and kiosk: Approved 03.05.2013.
- P/2011/0298: Extend time limit - construction of 8 beach huts, kiosk, shower room and terrace - application P/2008/1226/PA: Approved 13.06.2011.
- P/2008/1226: Construction of 8 beach huts, kiosk, shower room and terrace: Approved 21.11.2008.

Other relevant planning decisions:

- P/2019/0309: Siting of shipping container (subject to three-year lease) on hard standing, for storage of surfing equipment. Approved 23.07.2019.
- P/2015/0394: Retention of platform containing 3 car parking spaces: Refused 09.07.2015.
- P/2010/1334: Creation of 3 car parking spaces. Refused 19.01.2011. Appeal dismissed 18.05.2011.
- P/2010/0701: Creation of 3 car parking spaces. Refused 04.10.2010.

Summary of Representations

In addition to the objection from the Torquay Neighbourhood Plan Forum which is described in the section below on consultation responses, approximately 88 objections were received in which the following matters were raised:

- Potential privatisation of a public beach / loss of public open space.
- Sets a precedent encouraging more development in the area.
- Lack of need for the proposed kiosk and holiday accommodation due to the presence of existing facilities in the area.
 - o (It is relevant to note that protection from trade competition is not a material planning consideration.)
- Adverse impact on landscape character and the sense of openness.
- Adverse impact on the character of the Torquay Harbour Conservation Area.
- Other brownfield sites in Torbay should rather be prioritised for tourism development.
- Contrary to policies within the Torquay Neighbourhood Plan.
 - o Greenfield development on an unallocated site.
- Adverse impact on the Marine Conservation Zone and seagrass beds due to:
 - o Run-off of dust and pollution during construction works.
 - o Increase in boats anchoring at Beacon Cove.
 - o Litter from increased visitors to the site.
 - o Noise pollution.
- The importance of sea grass in:
 - o Providing a habitat and/or breeding ground for protected and endangered species (including seahorses) and commercial fish species.
 - o Absorbing carbon.
 - o Stabilising sediments on the sea floor.
 - o Reducing coastal flood risk.
- Torbay Council has declared a climate emergency.
- The proposal to discharge treated wastewater into the sea would have an adverse ecological impact.
 - o (It is important to note that the wastewater treatment unit that was originally proposed has been omitted and the applicant has submitted a revised

- proposal for foul drainage to be pumped to the mains sewer at Beacon Hill road.)
- Lack of detailed plans regarding the revised proposal to pump foul drainage up to the mains sewer.
 - o (It should be noted that since this objection, the applicant has submitted a detailed foul drainage strategy to which South West Water has indicated no objection.)
 - The proposal should be subject to more detailed ecological assessment.
 - o (It should be noted that since this objection, the application has been subject to further consultation with Natural England with the applicant having submitted a shadow Habitats Regulations Assessment and Marine Conservation Zone Assessment, as described in more detail later in this report.)
 - Consultation with relevant stakeholders (Natural England, MMO, Torquay Neighbourhood Plan Forum) has been inadequate.
 - o (It should be noted that since this objection, further consultation has been carried out with Natural England and the Environment Agency, as described in more detail in the section below on consultation responses.)
 - Adverse impact on birds nesting in the surrounding cliffs.
 - Inadequate consideration of policies in the South Marine Plan.
 - Contrary to Paragraphs 170 and 175 of the NPPF which relate to harm to biodiversity. (Paragraphs 174 and 180 in the July 2021 version of the NPPF.)
 - Adverse impact on the stability of the cliffside.
 - Adverse impact on a site that is widely used for diving, swimming, and watersports.
 - Adverse impact on the GeoPark.
 - The proposal development would be at risk from climate change, wave action and coastal erosion.
 - Poor development amenity / lack of access to sunlight due to overshadowing from cliffs and trees.
 - Potential impact on the approved shipping container which is used for the storage of water sports equipment.
 - Disturbance for residents of Imperial Court due to noises and smells rising up the hillside.
 - Proposals for waste collection are inadequate.
 - Parking and access arrangements are inadequate.
 - Potential for congestion/obstruction at the vehicular access to Imperial Court.
 - Adverse impact on highway safety.
 - Removal of vegetation and felling of trees.
 - The proposal to reinstate the footpath up to Beacon Hill is impractical.
 - Problems with anti-social behaviour at the site, and the proposal's compatibility with existing security measures.
 - Previous planning approvals for the site were granted:
 - o Prior to the adoption of the Torquay Neighbourhood Plan.

- Without adequate consideration of ecological impact.
- At a time when understanding of the importance of ecology and biodiversity was less widespread.

Summary of Consultation Responses

Torquay Neighbourhood Plan Forum:

The Torquay Neighbourhood Plan Forum submitted an objection which stated the following:

- The lack of consultation with the Community Partnership is contrary to the Neighbourhood Plan policy on community led planning.
- The proposal is contrary to the Neighbourhood Plan policy on designing out crime. Beacon Cove has been subject to improvements by the Community partnership to address anti-social behaviour.
- The proposal would constitute overdevelopment of a site that currently has no permanent structures, contrary to the Neighbourhood Plan policy on established architecture.
- The proposal would have a significant impact on the openness of the area.
- The proposal is for tourism accommodation on a greenfield site, contrary to the Neighbourhood Plan policy on tourism accommodation on brownfield sites.
- The application does not appear to have met the Neighbourhood Plan policy requirements relating to the assessment and mitigation of impacts on protected species, habitats, and biodiversity.
- The application does not appear to have met the requirements in terms of the Neighbourhood Plan policy on marine management planning.

Natural England:

Natural England provided an initial consultation response indicating that they had no comments to make with respect to the application. The initial consultation response also brought attention to Natural England's Standing Advice relating to protected species and recommended that the proposal's potential impacts on the South West Coastal Path National Trail should be considered including any appropriate mitigation measures.

After further discussions between the Local Planning Authority and Natural England, Natural England rescinded their previous consultation response and issued a further consultation response which confirmed that the proposal necessitated a Marine Conservation Zone (MCZ) Assessment to assess the proposal's impact on the Torbay Marine Conservation Zone, and a Habitats Regulations Assessment to assess the proposal's impact on the Lyme Bay and Torbay Special Area of Conservation.

The reasons given for why a MCZ Assessment was required included:

- Increased recreational use of the intertidal zone including pedestrian use, rockpooling and recreational fishing, with potential impacts on listed features within the MCZ.
- Increased recreational use by users of watercraft (eg paddleboards, small vessels, PWC and kayaks) with potential impacts on subtidal features (including seagrass beds and subtidal coarse sediment) due to anchoring, embarkation and disembarkation.
- Increased likelihood of polluting activities and littering due to more people using Beacon Cove.
- Potential impacts on sea grass beds and Long snouted seahorse.

The reason given for why an HRA was required was also that of potential impacts from increased recreational use, including increased use of watercraft and anchoring which could adversely impact features of the Lyme Bay and Torbay Special Area of Conservation including circalittoral rock, infralittoral rock, and subtidal stony reef.

Natural England recommended management responses including providing educational signage, marking off the most sensitive habitat areas, and restricting anchoring.

The consultation response also advised that the Environment Agency be consulted with respect to the wastewater treatment unit that was initially proposed due to concerns about impact on water quality, however this element of the proposal has since been omitted and replaced with a revised proposal for a foul drainage connection to the mains sewer.

Following the applicant's submission of a shadow HRA and MCZ Assessment as requested, a meeting was held between the Local Planning Authority, Natural England, and the applicant's agent in which Natural England provided verbal confirmation that they agree with the mitigation measures proposed within the shadow HRA and MCZ Assessment (which include the provision of educational signage at Beacon Cove and extending the voluntary no-anchoring zone to cover the entirety of Beacon Cove with no-anchor marker buoys between May and September), subject to educational material also being provided through online media such as websites and/or social media channels belonging to the operators of the proposed development.

Natural England's final written response to the HRA and MCZ Assessment is pending and a verbal update will be provided at Planning Committee.

Environment Agency:

The Environment Agency provided an initial consultation response (dated 23 July 2020) stating that "The site falls outside any constraints. I can confirm that we do not have any comment regarding this proposal." The consultation response also brought attention to the Environment Agency's Flood Risk Standing Advice.

In subsequent correspondence with the Local Planning Authority (dated 24 February 2021), the Environment Agency stated that they are “a statutory consultee for major proposals (i.e. developments of 10 or more dwellings) which propose the use of non-mains foul drainage systems. This application is for holiday lets so falls outside of our remit to comment.” The Environment Agency also provided a guidance document for proposals for non-mains drainage. While this guidance document was applicable to the wastewater treatment unit that was initially proposed, this element of the proposal has since been omitted and replaced with a revised proposal for a foul drainage connection to the mains sewer.

Marine Management Organisation:

The consultation response did not raise any specific comments in relation to the proposal itself, but drew attention to the following general matters:

- Works/activities taking place below the mean high water mark may require a marine licence in accordance with the Marine and Coastal Access Act (MCAA) 2009.
 - o (In this regard it is noted that the proposed works are sited above the high water mark).
- A wildlife licence is required for activities that would affect a UK or European protected marine species.
- Public authorities must make decisions in accordance with Marine Plan policies. A Marine Plan applies up to the mean high water springs mark.

Drainage:

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

“2. The Environment Agency long term flood maps identifies a surface water flood risk passing through the development site. The developer has identified this surface water flood risk within his site specific flood risk assessment and he has proposed mitigation measures to reduce this flood risk.

“3. Surface water run-off from the proposed development will discharge at an uncontrolled rate to coastal waters. This complies with the requirements of the Torbay Critical Drainage Area.

“Providing the development is constructed in accordance with the site specific flood risk assessment and all identified mitigation measures are included within the development I have no objections on drainage grounds to planning permission being granted.”

South West Water: “No objection subject to the foul water being managed in accordance with the submitted foul drainage strategy.”

Highways: “Highways have no technical issues with this application.”

Strategic Transportation:

The consultation response raised the following matters:

- The need for safe and suitable access that does not rely on third party land.
- Cycle storage details for guests and staff should be provided.
- S106 planning contributions should be sought to support sustainable modes of travel including the provision of an electric vehicle charging facility for Beacon Hill Car Park.
- The need for a condition requiring a Car Parking Management Plan (for staff, guests, and any relevant waste collection vehicles) prior to commencement.
- Provisions for the collection of waste (recycling, solid waste, and any waste from the proposed waste water treatment plan) are required. A Waste Management Plan should be secured by condition.

Community Safety:

The Council’s Senior Environmental Health Officer indicated no objection to the proposal. While the consultation response did raise some concerns with respect to the original proposal for a wastewater treatment unit with treated discharge into the sea (with potential for adverse impact on water quality for bathers), this element of the proposal has since been omitted and replaced with a foul drainage connection to the mains sewer.

Arboriculture:

“I have reviewed the documents pertaining to the above application also the previous applications relating to the site. I have this morning made a site visit to determine if there were any significant changes to the site and tree/vegetation stock. I can confirm that there does not need to be any further arboricultural input. The majority of the removals will be the clearance of scrub. My comments are consistent with the previous tree officers.”

Food & Safety:

The consultation response raised the following matters:

- The need to comply with legislation for Food Hygiene (if the kiosk is to be used for food), Healthy & Safety at Work, and Health (with regard to any smoking areas).
- The need for a mains source of potable water and a dedicated hand wash basin if the kiosk is to be used for food and drink.
- The need for suitable refuse areas inside and outside the premises.
- A commercial waste contract for collection of trade refuse is required.
- The need for a condition to secure ventilation/extraction equipment relating to any cooking operations on the premises.

- The need for a café pavement licence if there would be any tables and chairs on the public highway.
- The need for a licence if the kiosk would serve hot food or drink between the hours of 11pm and 5am.

Waste:

The consultation response raised the following matters:

- The need for a waste management plan.
- Given the steepness of the site and the narrow width of access paths, consideration needs to be given to the size and weight of the waste containers to ensure that the people responsible are physically able to move them to the collection point, and without causing obstruction to other users of the access paths.
- The bin store does not appear to be adequately sized for the number of units.
- Proposals for business use need to be serviced by private waste collection contractors. Unable to comment on whether private contractors would collect directly from the bin store or via a collection point adjacent to the public highway.
- The need for management of litter generated at the site, including to ensure that litter is not released into the marine environment.

Devon & Cornwall Police:

The consultation response indicated that the police have no comment to make, but also went on to indicate their availability to comment on police preferred standards and specifications for physical security elements of the proposal.

Royal Society for the Protection of Birds: No response received.

English Riviera UNESCO Global Geopark:

The consultation response noted that while Beacon Cove does not fall within a designated Site of Special Scientific Interest or a Regionally Important Geological Site, the cove hosts a distinct type of Marine Devonian coral fossil which is not found elsewhere within the Geopark area. The consultation response stated that there has been no recent or historical detailed geological survey of Beacon Cove and recommended that a survey be commissioned to assess the full geological value of the cove.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact
3. Impact on Amenity
4. Impact on Highways
5. Impact on Flood Risk and Drainage

6. Impact on Ecology
7. Impact on Arboriculture
8. Low Carbon Development

1. Principle of Development

The principle of the development of holiday accommodation on this site has been established through the approval of a nearly identical (aside from the foul drainage proposals) scheme by the Planning Committee in 2016 (P/2016/0159), as well as by the approval of another similar scheme in 2013 (P/2012/1265). Furthermore, an earlier scheme for 8 'beach huts' on the site was approved in 2008, although the said scheme did not provide for overnight accommodation. These previous approvals were not implemented and are no longer extant. It is important to note that the Torquay Neighbourhood Plan was made in the years since the 2016 approval and so the previously approved schemes would not have been assessed in terms of the policies in the Torquay Neighbourhood Plan.

The Torquay Neighbourhood Plan Forum has objected to the principle of the proposed development on the application site, contending that the proposal conflicts with policies within the Neighbourhood Plan. Central to their objection is an interpretation that the proposal amounts to the development of an unallocated greenfield site, which they contend to be contrary to Neighbourhood Plan policies on brownfield/greenfield development and on new tourism development. In this regard, relevant Neighbourhood Plan policies include Policy TS4 (Support for Brownfield and Greenfield development) which broadly supports brownfield development and indicates that greenfield development will be supported where the site is allocated or where the development is required so as to meet strategic economic policies within the Local Plan, and Policy TE1 (Tourism accommodation on brownfield sites) which indicates support for new tourism development on brownfield sites.

It is important to note, however, that the site is not designated as Undeveloped Coast or as Countryside Area in terms of the Local Plan, nor is it designated as a Local Green Space in terms of the Neighbourhood Plan. Moreover, the site is designated as part of Torquay Town Centre, part of the Torquay Town Centre and Harbour Strategic Delivery Area, and part of the Core Tourism Investment Area. The applicant's submission includes details of the history of Beacon Cove from which it is evident that Beacon Cove has accommodated various forms of development in the past, including buildings with a broadly similar siting as the current proposal. Given the previous approvals at this site, the site's designations in the Local Plan and Neighbourhood Plan, and historical development at Beacon Cove, it is considered that the proposal does not present significant conflict with Policies TS4 or TE1 of the Neighbourhood Plan.

Furthermore, insofar as the site may be considered a greenfield site, it is worth noting that the proposal does make a contribution towards meeting the objectives of strategic

economic policies within the Local Plan including Policies SS4, SS5, SDT2 and TO1 of the Local Plan. Policy SS4 indicates support for proposals that deliver employment space, while Policy SS5 indicates particular support for the provision of new employment space in (amongst other identified priority areas) town centres, including relating to tourism which the policy identifies (amongst other sectors) as being an important employment generator in Torbay. Policy SDT2 of the Local Plan seeks to promote Torquay Town Centre and Harbour as the largest retail and leisure centre of Torbay, including promoting the regeneration of key sites that will help strengthen its role as a commercial and social centre for residents and visitors. Policy TO1 of the Local Plan supports, amongst other things, the provision of new tourist facilities and accommodation with a particular emphasis on Core Tourism Investment Areas. Specifically, Policy TO1 supports, amongst other things, proposals that attract new overnight visitors, that make positive use of Torbay's marine environment, and that contribute to the regeneration of harbourside and waterfront areas. While the magnitude of the proposal's contribution in this regard would be limited due to the relatively small size of the proposed development, it is noteworthy that the proposal would contribute to the regeneration of a site in the Core Tourism Investment Area surrounding Torquay's harbourside through the provision of overnight holiday accommodation and a kiosk in an attractive maritime setting, positively impacting on tourism and employment in accordance with the intentions of Policies SS4, SS5, SDT2 and TO1 of the Local Plan.

The Torquay Neighbourhood Plan Forum also contend that the lack of direct prior engagement with the Torquay Town Centre Community Partnership is contrary to the Neighbourhood Plan policy on community led planning. Policy TS3 (Community Led Planning) of the Neighbourhood Plan states that early engagement with the relevant Community Partnership in respect of all proposals for major development, new housing or business proposals on non-allocated, greenfield land, will be supported. While it would certainly have been beneficial for the applicant to have engaged directly with the Community Partnership as is supported by the said policy, the wording of this policy is such that this is not an outright requirement, and so it is considered that the lack of direct engagement with the Community Partnership would not amount to a reason for refusal of the application. During public consultation the Torquay Town Centre Community Partnership submitted an objection to the proposal, and the matters raised in their objection are duly considered in the detailed assessment below.

Given the site's coastal location adjacent to the edge of the Coastal Change Management Area, the proposal has been considered in terms of Policy C3 of the Local Plan and Policy TE7 (Marine Management Planning) of the Neighbourhood Plan. Policy C3 of the Local Plan states that development within the Coastal Change Management Area, or reliant upon services within it, will be considered in terms of the South Devon and Dorset Shoreline Management Plan. The Shoreline Management Plan indicates this area as a site of 'No Active Intervention'. It is noteworthy that the proposed development would be sited outside of the Coastal Change Management

Area and at a level that would be a considerable height above the peak high tide level, with the proposed building being sited above a large retaining wall. A prior to commencement condition is proposed that would require the submission of a geotechnical survey conducted by a registered professional and setting out any necessary mitigation measures to be carried out by the developer. Policy TE7 (Marine Management Planning) of the Neighbourhood Plan states that development proposals on land adjacent to the coastline will be supported where they do not have an adverse effect on a marine policy or management plan. The proposal has been assessed in terms of the South Marine Plan which applies to the area of coast and sea between Folkestone in Kent to the River Dart from the mean high water spring tide to 12 nautical miles out to sea, and from 12 nautical miles out to the maritime borders with France and the Channel Islands. Given that the proposed development would be sited above the mean high water spring tide, the proposal would not have any direct impact on the South Marine Plan area. The Marine Management Organisation has been consulted as part of the assessment of the application; the consultation response does not raise any specific comments with respect to the application and confirms that Marine Plans apply up to the mean high water springs mark. It is considered that the principle of development in this location does not present any conflict with the South Marine Plan. Subject to the said condition requiring a geotechnical survey, the proposal is considered to be in accordance with Policy C3 of the Local Plan and Policy TE7 of the Neighbourhood Plan.

Given the small size of the proposed units, they would not provide an adequate standard of living environment in order for them to be used as permanent residential dwellings with due regard to Policy DE3 of the Local Plan. Therefore, it is necessary to impose a condition to ensure that the proposed holiday apartments would be used for short-term holiday accommodation only and not as residential dwellings, and a S106 legal agreement would be used to secure a financial contribution for monitoring purposes in this regard in accordance with the Council's adopted Planning Contributions and Affordable Housing SPD.

It is therefore considered that there are no policies in the Development Plan that would indicate that the proposal is not acceptable in principle.

2. Design and Visual Impact

Paragraph 126 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'. Paragraph 134 of the NPPF states that 'development that is not well designed should be refused' and conversely that 'significant weight should be given to development which reflects local design policies and government guidance on design'. Paragraph 197 of the NPPF states that, in determining applications, local planning authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets, the positive contribution that the conservation of heritage assets can make to

communities, and the desirability of new development making a positive contribution to local character and distinctiveness.

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 Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings. Policy SS10 of the Local Plan states that proposals that may affect heritage assets will be assessed on the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas and listed buildings, whilst allowing sympathetic development. Policy HE1 of the Local Plan states that development proposal should have special regard to the desirability of preserving any listed building and its setting.

The design of the proposal is unchanged compared to that which was previously approved by the Planning Committee in terms of the application P/2016/0159. It is considered that the proposal succeeds in balancing contemporary design with the traditional design of English seaside beach huts. It is a high quality design that would fit in with the landscape setting and enhance the character of the Conservation Area.

With regard to the objectors' concerns relating to the proposal's impact on the open character and natural setting of Beacon Cove, it is important to note that the proposed building would be sited towards the eastern edge of Beacon Cove on the hillside, with much of the cove remaining undeveloped and open. Given the siting, scale and design of the proposed building, and with due regard to the presence of urban development (including Imperial Court and Living Coasts) within the wider backdrop and setting of Beacon Cove, it is considered that the proposal would not result in any unacceptable impact on the character of Beacon Cove.

Policy TH2 (Designing Out Crime) 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. Similarly, Policy DE1 of the Local Plan also promotes measures for designing out crime as part of development proposals. There have previously been instances of anti-social behaviour at Beacon Cove, and objectors (including the Torquay Neighbourhood Plan Forum and the Torquay Town Centre Community Partnership) have raised this matter as a concern. It is considered that the proposal, which would provide a more consistent human presence at Beacon Cove at all hours and would therefore provide for passive surveillance, would help reduce the potential for problems associated with anti-social behaviour. The Torquay Town Centre Community Partnership have implemented measures to improve security at Beacon Cove (including the provision of a lockable gate at the entrance to the footpath that leads from the Beacon Quay car park to Beacon Cove), and the proposal's compatibility with these security measures is a matter that warrants consideration.

Through the use of a condition requiring the submission of a Crime Prevention Plan, it is considered that appropriate physical security measures (including, for example, secure boundary treatment with gates, contextually appropriate security lighting, and CCTV) can be secured in a manner that would be compatible with the measures that have already been put in place by the Torquay Town Centre Community Partnership. Finally, it is reiterated that the application has been circulated to Devon and Cornwall Police who indicated that they have no comments with respect to the proposal, but that they are available to give input on physical security measures. The proposed Crime Prevention Plan condition would allow for Devon and Cornwall Police to be consulted as part of the discharge of conditions process. It is considered that the proposal would make a positive contribution towards combating crime and anti-social behaviour at Beacon Cove.

The proposal is considered to be in accordance with Policies DE1, SS10 and HE1 of the Local Plan, Policies TH2 and TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

3. Impact on Amenity

Policy DE3 of the Local Plan states that development should provide a good level of amenity for future occupiers and should not unduly impact upon the amenity of neighbouring properties and surrounding uses.

Given its siting, scale, and design, it is considered that the proposal would not result in any unacceptable harm to the amenities of the occupants of neighbouring buildings in terms of their privacy, outlook, or access to natural light. The proposed building would be an adequate distance away from the nearest residential dwellings at Imperial Court, and would also be set at a lower level.

Subject to a condition to ensure that they are used for holiday use only (given that they would be too small to be appropriate for permanent residential use), it is considered that the proposed units would provide an acceptable level of amenity for future occupiers. Each unit would have a large amount of glazing on the front elevation and, with this glazing having a southwesterly aspect, it is considered that the units would have an acceptable level of access to natural light. The proposed units would also be served by an external terrace and a dedicated bin storage facility.

Subject to the said condition, the proposal is considered to be in accordance with Policy DE3 of the Local Plan and the guidance contained within the NPPF.

4. Impact on Highways

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 TA3 of the Local Plan states that all development proposals should make appropriate provisions for car,

commercial vehicle, and cycle parking spaces, as well as bin storage. Policy THW5 of the Neighbourhood Plan states that, in the interests of encouraging the use of sustainable forms of transport, new development proposals will be supported where they are located on or near to public transport routes wherever possible and appropriate.

The primary means of accessing the proposed development would be via the Beacon Quay public car park (which is around 110m to the west of the proposed building) and via the footpath and access ramp that leads from the car park, along the northern boundary of the Living Coasts site, and into Beacon Cove. Given that a security gate has recently been erected across this footpath, a prior to commencement condition is proposed requiring that the developer demonstrate that future occupiers of the proposed holiday units would have continuous, unfettered access along the path from Beacon Quay car park.

The proposal also includes reinstating a disused and overgrown footpath that leads up the hillside to the rear of the proposed building and extending the footpath to connect to the public highway outside the access gate serving Imperial Court. A prior to commencement condition is proposed requiring the submission of full details of this footpath for approval.

The Beacon Quay public car park is considered to have sufficient capacity to adequately accommodate the parking demand associated with the proposed development. The applicant's agent has agreed to a S106 contribution towards sustainable transport, including the provision of an electric vehicle charging facility in the harbour area.

In addition, it is noted that the application site is well located with respect to public transport routes and local tourist attractions, thereby increasing the potential for future occupiers of the proposed development to make use of sustainable modes of transport including walking and cycling for some journeys.

In light of the objectors' concerns with respect to potential impacts relating to parking and access, a condition is proposed requiring the submission of a Parking and Access Management Plan.

Subject to the said conditions, the proposal is considered to be in accordance with Policies TA2 and TA3 of the Local Plan and Policy THW5 of the Neighbourhood Plan.

5. Impact on Flood Risk and Drainage

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

The site is located within the Critical Drainage Area and is accompanied by a Flood Risk Assessment (FRA) which states that surface water run-off from the proposed development would be discharged at an uncontrolled rate to coastal waters. This complies with the requirements of the Torbay Critical Drainage Area.

The FRA identifies that the southern part of the site is within an area of low and medium risk from surface water flooding according to the Environment Agency's Flood Risk Map. The FRA recommends that the risk from surface water flooding be mitigated by the structures being sealed up to 900mm from ground level.

Regarding risk from tidal impact, the FRA states that due to the site's southerly/southwesterly aspect towards the southern section of Torbay (rather than towards the Channel), there is limited fetch and therefore limited production of waves in this area. The FRA states that there would be substantial freeboard of 5.32m between the peak still water level and the proposed finished floor level (and 4.72m between the peak high tide level and the proposed finished floor level), and concludes that the proposed development would be at low risk from wave action.

The Council's drainage engineer assessed the proposal and indicated that he has no objection provided that the development is constructed in accordance with the site specific flood risk assessment and all identified mitigation measures are included within the development. The application was also circulated to the Environment Agency who indicated that they have no comment with respect to the proposal.

Whereas the initial foul drainage strategy was for a wastewater treatment unit with treated discharge into the sea, the applicant has since omitted this element of the original proposal and has submitted a revised foul drainage strategy comprising wastewater being pumped up to the mains sewer at Beacon Hill road to the north. The detailed foul drainage strategy provided by the applicant indicates that the pump would be provided in the void area beneath the terrace on the southwestern side of the proposed building, with a pipe being routed within the proposed reinstated footpath to the rear of the proposed building up to a new mains sewer connection. South West Water have indicated no objection to the revised foul drainage strategy.

Subject to conditions to secure the foul and surface water drainage strategies and flood mitigation measures, the proposal is considered to be in accordance with Policy ER1 of the Local Plan.

6. Impact on Ecology

Policy NC1 of the Local Plan, which seeks to conserve and enhance Torbay's biodiversity and geodiversity, states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. The National Planning Policy Framework (NPPF) 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 (Paragraph 174).

Policy TE5 (Protected Species, Habitats and Biodiversity) of the Neighbourhood Plan states, amongst other things, that proposals for business premises of any class on an unallocated site that could have an impact on a protected species or habitat must provide an assessment of impacts and any necessary mitigation in order to protect and enhance those species and habitats.

Relevant ecology related policies within the South Inshore and South Offshore Marine Plan, 2018 are as follows:

- S-BIO-4: Proposals must demonstrate that they will avoid reducing the distribution and net extent of priority habitats.
- S-MPA-1: Proposals that support the objectives of marine protected areas and the ecological coherence of the marine protected area network will be supported. Proposals that may have adverse impacts on the objectives of marine protected areas and the ecological coherence of the marine protected area network must demonstrate that they will, in order of preference: a) avoid b) minimise c) mitigate adverse impacts, with due regard given to statutory advice on ecologically coherent network.
- S-CC-4: Proposals that may have a significant adverse impact on habitats that provide a flood defence or carbon sequestration ecosystem service must demonstrate that they will, in order or preference: a) avoid b) minimise c) mitigate significant adverse impacts.
- S-WQ-1: Proposals that may have significant adverse impacts upon water environment, including upon habitats and species that can be of benefit to water quality must demonstrate that they will, in order or preference: a) avoid b) minimise c) mitigate significant adverse impacts.

The original submission was accompanied by an Ecological Assessment Report ('the ecology report') and a Construction Environmental Management Plan ('the CEMP') provided by the applicant's ecological consultant. In response to the consultation response provided by Natural England, the applicant has since also submitted a Shadow Habitats Regulations Assessment and Marine Conservation Zone Assessment (the 'shadow HRA/MCZ Assessment') provided by the applicant's ecological consultant.

The site is located close to the Lyme Bay and Torbay Special Area of Conservation and the Torbay Marine Conservation Zone which are to the south.

The ecology report and CEMP submitted by the applicant's ecologist recommended the following mitigation measures:

- Measures to prevent run-off of dust and pollution during the construction phase and the operational phase to avoid impact on the MCZ (as described in detail in the submitted Construction Environmental Management Plan).
- The cliff face to the southeast must not be affected by artificial lighting, with any external lighting being directed away from the cliff.
- A pre-clearance check for hedgehogs carried out by hand by a competent ecologist. Where hedgehogs are found they should be placed by the ecologist into a secure box and removed from the site to a nearby safe location.
- Scrub clearance should be carried out outside of the bird nesting season, unless a competent ecologist has undertaken a careful, detailed check for active birds' nests immediately beforehand and provided written confirmation that no birds will be harmed. Any birds nesting must be left to complete breeding.
- The tall ruderal vegetation should be cut back in stages and then should be kept short until the construction phase has been completed so as to discourage habitation by any reptiles.
- Any features that could potentially harbour sheltering slow worms should be carefully dismantled and removed under the supervision of an ecologist. If any slow worms are found these should be placed within a secure box and subsequently released into nearby suitable habitat away from the construction site.
- Biodiversity enhancement including the planting of shrubs (preferably native species) with a high nectar/fruitlet value, and the provision of four bird boxes to the rear of the chalets or on suitable trees.

The Shadow HRA/MCZ Assessment submitted by the applicant's ecologist recommended the following mitigation measures:

- The provision of information boards on site with visual and written descriptions of the value of Beacon Cove for wildlife and the activities which can cause damage including littering and pollution, climbing over rock habitat, and the use of specific types of watercraft.
- Extending the voluntary no-anchoring zone associated with the seagrass bed to include the entirety of Beacon Cove, with the use of no-anchor marker buoys between May and September to protect marine habitats and to allow for the potential future growth of seagrass.

In a meeting between the Local Planning Authority, Natural England, and the applicant's agent, Natural England provided verbal confirmation that they agree with the mitigation measures proposed within the shadow HRA and MCZ Assessment, but requested that in addition to physical signage on site, educational material also be provided through online media such as websites and/or social media channels belonging to the operators of the proposed development.

In order to secure the provision of a suitable information board on site as part of the development, a condition is included requiring that prior to occupation of the development, an information board with suitable educational material regarding the

ecological context of the site and activities which can cause damage must be provided in accordance with details (relating to the size, siting, written and visual content, and appearance of the information board) which shall have been agreed in writing by the Local Planning Authority. While it is noted that the Shadow HRA/MCZ Assessment proposes that two information boards be provided (one at the top of the proposed reinstated footpath to the rear and one adjacent to the beach), it is considered that a single information board provided close to the hatch opening of the proposed kiosk would be more suitable. The reason for this is that the access ramp that leads from the Beacon Quay car park to the west already hosts signage with educational material regarding the ecological context.

In order to ensure the provision of suitable educational material regarding the ecological context through online media as requested by Natural England, a condition is included requiring that online advertising material pertaining to the operation of the proposed development must include information regarding the ecological context of the site in accordance with details which shall have been agreed in writing by the Local Planning Authority. In order to ensure that this condition is complied with, a s106 monitoring contribution is proposed.

In order to secure the extension of the voluntary no-anchoring zone to cover the entirety of Beacon Cove, a s106 contribution is proposed to fund the placing of up to two additional no-anchor marker buoys in the sea. Given that the placing of additional no-anchoring marker buoys in the sea is expected to require a marine license from the Marine Management Organisation, a condition is included stating that no development may occur until written agreement has been provided from all necessary third parties (including the Tor Bay Harbour Authority and the Marine Management Organisation) regarding the number, position, means of fixing to the sea bed, and the detailed specification of additional marker buoys to be placed in the sea.

A condition is included requiring that the development proceed fully in accordance with the recommendations set out in the submitted ecology report and CEMP, with particular regard to measures for the control of dust and pollution during construction works and to the recommended biodiversity enhancement features.

It is noted that the consultation response from the English Riviera UNESCO Global Geopark draws attention to the presence of coral fossils at a particular point on the beach at Beacon Cove and recommends that a detailed geological survey of the entirety of Beacon Cove be required by condition. Given the notable distance between the position of the coral fossils and the footprint of the proposed building, and with due regard to the fact that Beacon Cove is already a publicly accessible area, it is considered that a condition requiring a geological survey of the entirety of Beacon Cove would be disproportionate and would fail to meet the requirements set out in Paragraph 56 of the NPPF which states that planning conditions should only be imposed 'where they are necessary, relevant to planning and to the development to

be permitted, enforceable, precise and reasonable in all other respects'. That being said, it is considered proportionate to impose a condition requiring a geological survey of the land within the application site (excluding the existing access ramp that leads from Beacon Quay car park to the west) for the presence of fossils prior to commencement.

Subject to the said conditions and s106 contributions, and subject to final written from Natural England that they accept the conclusions of the HRA and MCZ Assessment, the application is considered to be in accordance with Policy NC1 of the Local Plan, Policy TE5 of the Neighbourhood Plan, the South Marine Plan and the guidance contained in the NPPF.

7. Impact on Arboriculture

Policy C4 of the Local Plan states that development will not be permitted where it would seriously harm (amongst other things) protected trees or other natural features of significant landscape, historic or nature conservation value, and that, where the loss of trees or landscape features is considered acceptable as part of development, that replacement or other mitigation measures will be required through planning condition or legal agreement.

The Council's Senior Tree and Landscape Officer has assessed the proposal and has indicated no objection, noting that the majority of the removals will be the clearance of scrub.

Subject to a condition requiring a landscaping plan detailing planting to offset the loss of shrubs as a result of the proposed development, the proposal is considered to be in accordance with Policy C4 of the Local Plan.

8. Low Carbon Development

Policy SS14 of the Local Plan seeks to promote a low carbon form of development with adaptations to climate change so as to minimise carbon emissions and the use of natural resources.

The proposal incorporates insulated blockwork walls with timber/zinc external cladding, double-glazing for the windows, and would have windows with a southwesterly aspect with no windows on the north-facing side, all of which would improve the energy efficiency of the proposed building.

The proposed development would be sited in a central location adjacent to Torquay's town centre and harbour and close to nearby tourist attractions, thereby increasing the potential for occupiers of the proposed holiday units and visitors to the kiosk making use of sustainable modes of transport.

The applicant has also agreed to Section 106 contributions to fund sustainable transport in the Torquay harbour area including an electric vehicle charging facility.

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

Sustainability

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

The Economic Role

The proposal would result in economic benefits in the form of overnight tourist accommodation that would attract additional visitor spend within Torbay's tourism sector. The proposal would also have the potential to contribute towards employment opportunities relating to servicing the holiday units and operating the kiosk. The proposal is considered to be positive with respect to the economic role.

The Social Role

The proposal would provide for passive surveillance of a cove that has been the subject of anti-social behaviour problems, with a condition of approval requiring a Crime Prevention Plan that would secure further measures to improve security. In addition, the proposed kiosk providing a facility for serving food and drinks to members of the public visiting Beacon Cove. Subject to conditions that would mitigate the potential for any unacceptable impacts on neighbouring amenities, the proposal is considered to be positive with respect to the social role.

The Environmental Role

The application is accompanied by detailed ecological assessment documentation setting out recommended measures to mitigate the potential impacts of the proposal on species, habitats and biodiversity which have been secured using planning conditions and s106 contributions. The design of the proposed building incorporates measures to improve energy efficiency. The site is well located with respect to the town centre, the harbour, and local tourist attractions (thereby increasing the feasibility of sustainable modes of transport), and the applicant has agreed to s106 contributions towards sustainable transport including the provision of an electric vehicle charging facility in the harbour area. Subject to conditions to secure the mitigation measures recommended by the applicant's consulting ecologist and to secure a landscaping plan to offset the loss of shrubs, the proposal is considered to be neutral with respect to the environmental role.

Sustainability Conclusion

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

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

Section 106:

Prior to a planning consent being issued, a S106 legal agreement pertaining to the following matters should be completed. Any applicable 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.

Monitoring Contribution for Holiday Use:

A sum of £1,800 to be used by the Council towards monitoring the occupancy of the development to ensure that the individual units are occupied as holiday accommodation only. This is in accordance with paragraphs 4.14.1 to 4.14.4 and table 4.13 of the Planning Contributions and Affordable Housing SPD.

Sustainable Transport:

A sum of £8,100 to be used by the Council towards sustainable transport measures in the harbour area including facilities for electric vehicle charging. This is in accordance with sections 4.3 and 4.4 and table 4.3 of the Planning Contributions and Affordable Housing SPD.

Voluntary No-Anchoring Zone:

A sum of £5,000 to be used by the Council towards managing the voluntary no-anchoring zone associated with the sea grass beds within the Marine Conservation Zone close to the application site. This sum shall cover the installation and maintenance of up to two additional marker buoys to be placed in the sea near to Beacon Cove to increase awareness amongst operators of watercraft of the voluntary

no-anchoring zone that exists in this area to avoid harm to sea grass beds. This is necessary in order to mitigate the increased recreational use of the Marine Conservation Zone and Beacon Cove as a result of the proposed development.

Monitoring Contribution for Online Advertising:

A sum of £1000 to be used by the Council towards monitoring compliance with the planning condition requiring that online advertising material pertaining to the operation of the proposed development must include suitable educational material regarding the ecological context of the site.

CIL: Not applicable.

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: Not applicable.

Planning Balance

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme would contribute to addressing the Development Plan aspirations relating to investment into tourism and employment in Torquay's town centre and harbour area, would provide a well-designed, contemporary beach hut style development that would enhance the character of Beacon Cove and the Torquay Harbour Conservation Area, and would provide passive surveillance and security improvements that would help address concerns with respect to anti-social behaviour at Beacon Cove. Subject to the planning conditions detailed below and the Section 106 contributions detailed above, the proposal is considered to be generally in accordance with the Development Plan.

Conclusions and Reasons for Decision

It is considered that the proposal is acceptable in principle, and would not result in any unacceptable harm to visual amenities, neighbouring amenities, highways, flood risk and drainage, ecology, or arboriculture. The proposal is considered to represent sustainable development and is acceptable, having regard to the Torbay Local Plan, the Torquay Neighbourhood Plan, The South Marine Plan, the NPPF, and all other material considerations.

Officer Recommendation

That planning permission be granted, subject to:

Written confirmation from Natural England that they accept the conclusions of the Habitats Regulations Assessment and the Marine Conservation Zone Assessment, and;

The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency, and;

The completion of a S106 Legal Agreement to secure heads of terms as outlined below, delegated to the Assistant Director of Planning, Housing and Climate Emergency, and;

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

Conditions

Holiday use

The beach huts hereby permitted shall be used for short term holiday use only and not for permanent residential occupation. The beach huts shall not be occupied by someone as their primary residence and the applicant or an appropriate management company shall maintain a register of the names of all the occupiers of the beach huts and their home addresses, and shall make this information available at all reasonable times to the Local Planning Authority. No person(s) may occupy one or more of the units for more than 12 weeks in a calendar year.

Reason: The huts are not suitable for permanent residential occupation due to their size and location and these measures are necessary to ensure the beach huts are used for holiday purposes only to accord with saved Policies SDT2, TO1 and DE3 of the Adopted Torbay Local Plan 2012-2030.

Materials

Prior to the construction of the development hereby approved, details of all external building materials, including colour, shall have been submitted to and approved in writing by the Local Planning Authority. Samples of materials shall be made available for inspection by the Local Planning Authority as required. The development shall thereafter be constructed from the building materials as approved.

Reason: In the interests of ensuring the preservation of the visual quality of the Conservation Area, and in order to comply with Policies SS10 and DE1 of the Adopted Local Plan 2012-2030.

Design details

Prior to the construction of the huts, drawings at a scale of 1:10 showing the following details shall have been submitted to and approved in writing by the Local Planning Authority:

(1) Eaves overhang

- (2) Rain water goods
- (3) Fascia, soffit and barge boards
- (4) Reveals to windows/door openings

The beach huts shall not be occupied until the above details have been completed as approved.

Reason: In the interests of ensuring the preservation of the visual quality of the Conservation Area, and in order to comply with Policies SS10 and DE1 of the Adopted Local Plan 2012-2030.

Construction method statement

No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. This shall clearly identify all risks to ecology and the Marine environment and measures to mitigate any likely impacts. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

- (1) Identification of parking of vehicles of site operatives and visitors.
- (2) Positions for loading and unloading of plant and materials.
- (3) Location of site compound for storage of all plant and materials used in constructing the development.
- (4) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- (5) Facilities for wheel washing.
- (6) Detailed measures to control the emission of all material, liquids, dust and dirt during construction particularly in relation to impact on the quality of seawater.
- (7) Details of a scheme for recycling/disposing of waste resulting from construction works.
- (8) Lighting plan confirming minimal light spill to landward side of the development.
- (9) Hours of construction to be restricted to daylight hours only.

Reason: This information is required prior to any works commencing on site to ensure that measures are in place to safeguard the quality of the Marine SAC, to avoid impacts on the local ecology and ensure that the construction works are carried out in an appropriate manner and to minimise the impact on residential amenity and in the interests of the convenience of highway users in accordance with policies NC1, TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

Retaining wall

Prior to the construction of the retaining wall to the rear of the beach huts hereby approved, details of its height, length, and the materials to be used shall be submitted to and approved in writing by the Local Planning Authority. The retaining wall shall thereafter be built in accordance with the approved dimensions and materials.

Reason: To ensure that the details of this structure are appropriate in the interests of the visual quality of the conservation area and to accord with policies SS10 and DE1 of the Adopted Torbay Local Plan 2012-2030.

Landscaping plan

No development shall take place until details of a scheme of hard and soft landscaping have been submitted to and approved in writing by the Local Planning Authority. This scheme shall include sufficient planting to offset the loss of shrubs and vegetation as a result of the development hereby approved and to mitigate against the loss of greenery at the site. All planting, seeding or turfing comprised within the approved scheme 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 six months 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 and C4 of the Adopted Torbay Local Plan 2012-2030.

Footpath

Prior to any works to reinstate the disused footpath at the rear of the building hereby approved leading up to the public highway, full details of its construction including any proposed means of enclosure shall be submitted to and approved in writing by the Local Planning Authority. The point of access of the footpath to the public highway shall be clearly marked on the scheme along with details of the access to the public highway. Once agreed, the works to reinstate the footpath shall be carried out in strict accordance with the approved details and shall be completed prior to the occupation of the units.

Reason: In the interest of visual amenity, and to ensure that that the footpath provides a safe and suitable means of pedestrian access, and in accordance with Policies DE1, DE3, SS10 and TA2 of the Adopted Torbay Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

Waste management plan

Prior to first occupation of the development hereby approved, a Waste Management Plan detailing measures for the control of litter relating to the operation of the development hereby approved and for the recycling, storage, and collection of waste likely to be generated by the development has been submitted to, and approved in writing by, the Local Planning Authority. Once agreed, the development shall be

operated in strict accordance with the Waste Management Plan unless otherwise agreed in writing by the Local Planning Authority.

Reason: To ensure the provision of satisfactory facilities for waste, and to avoid ecological harm to the Torbay Marine Conservation Zone and the Lyme Bay and Torbay Special Area of Conservation, and in accordance with Policies DE3 and NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.

Foul Drainage

Prior to the first occupation of the development hereby approved, a foul drainage connection to the mains sewer shall be provided in accordance with the foul drainage strategy hereby approved. Once provided, the foul drainage system shall be retained and maintained in good working order for the life of the development hereby approved unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of development amenity and avoiding ecological harm, in accordance with Policies DE3 and NC1 of the Adopted Torbay Local Plan 2012-2030.

Lighting plan

Prior to the first occupation of the development hereby approved, a lighting plan shall be submitted to and approved in writing prior to occupation of the beach huts. This shall be designed to minimise light impact on the cliff face and include measures to minimise any light spill on the landward side of the development and from use of the footpath. No lighting shall be provided unless in accordance with the approved lighting plans

Reason: To minimise impacts on bats and to comply with policies NC1 of the Adopted Torbay Local Plan 2012-2030.

Bird breeding season

No vegetation shall be removed during the bird breeding season from March to September, inclusive unless such action is approved in writing by a suitably qualified ecologist.

Any vegetation that could possibly support roosting bats shall not be removed unless it has been previously assessed by a suitably qualified ecologist. If breeding birds are found or the presence of bats suspected, clearance work will not be permitted until the ecologist is satisfied that works can continue.

Reason: To protect local wildlife and to comply with policy NC1 in the Adopted Torbay Local Plan 2012-2030.

Flood risk assessment

The scheme shall be constructed wholly in accordance with the Flood Risk Assessment hereby approved, with particular regard to the surface water drainage strategy, flood mitigation measures, and floor levels detailed within the Flood Risk Assessment hereby approved.

Reason: To ensure resilience in relation to possible flood risk and to comply with Policy ER1 of the Adopted Local Plan 2012-2030.

Parking and access management plan

Prior to first occupation of the development hereby approved, a Parking and Access Management Plan detailing parking and access arrangements for staff, guests, waste collection vehicles, and any other relevant service or commercial vehicles, shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter proceed in strict accordance with the approved Parking and Access Management Plan and parking and access shall be provided in accordance with the approved details prior to the occupation of the development and retained for its lifetime.

Reason: In the interests of highway safety and amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

Bin storage

Prior to first occupation of the development hereby approved, the bin storage facility indicated on the plans hereby approved shall be made available for use. Once provided, the bin storage facility shall be retained for the life of the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of visual amenity and neighbouring amenity, and in accordance with Policies DE1, DE3 and SS10 of the Adopted Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

Kiosk

No hot food preparation (excluding hot drinks or toasted bread products) can be carried out as part of the operation of the kiosk hereby approved unless details of ventilation/extraction equipment (including detailed appearance as well as measures to control noise and odour) have been submitted to, and approved in writing by, the Local Planning Authority, and fully implemented prior to commencement of any hot food preparation (excluding hot drinks or toasted bread products).

Reason: In the interest of visual amenity and neighbouring amenity, and in accordance with Policies DE1, DE3, and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

Ecology

The development hereby approved shall proceed in strict accordance with the recommendations set out in the Ecological Assessment Report and the Construction Environmental Management Plan hereby approved, with particular attention to measures for the control of dust and pollution during construction works and to the recommended biodiversity enhancement features.

Reason: So as to ensure that the development proceeds without ecological harm, and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan.

Geotechnical survey

Prior to the commencement of works, a geotechnical survey conducted by a registered professional shall be submitted to, and approved in writing by, the Local Planning Authority. The geotechnical survey shall set out any necessary mitigation in order to ensure that the development is safe from, and does not contribute to, any identified land stability issues. The development shall thereafter proceed in strict accordance with any and all mitigation measures set out in the approved geotechnical survey.

Reason: So as to ensure that the development is safe from, and does not contribute to, any land stability issues, and in accordance with Policy C3 of the Adopted Torbay Local Plan 2012-2030.

Crime prevention plan

Prior to first occupation of the development hereby approved, a Crime Prevention Plan detailing measures (including, but not limited to, secure boundary treatment with gates, contextually appropriate external lighting, and CCTV) to mitigate the potential for crime and anti-social behaviour shall be submitted to, and approved in writing by, the Local Planning Authority. The development shall thereafter proceed in strict accordance with the approved Crime Prevention Plan.

Reason: In the interest of mitigating the potential for crime and anti-social behaviour, and in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030 and Policy TH2 of the Torquay Neighbourhood Plan.

Access

No development shall take place until it has been demonstrated to the satisfaction of the Local Planning Authority how continuous, unfettered access along the path from Beacon Quay car park, along the northern edge of the former Living Coasts site and into Beacon Cove would be secured for use by occupiers of the holiday units hereby approved.

Reason: In the interests of ensuring safe and suitable access to and from the development, in accordance with Policy TA2 of the Adopted Torbay Local Plan 2012-2030.

Voluntary no-anchoring zone

No development shall take place until written agreement has been provided from all necessary third parties (including the Tor Bay Harbour Authority and the Marine Management Organisation) regarding the number, position, means of fixing to the sea bed, and the detailed specification of additional marker buoys to be placed in the sea to increase awareness amongst operators of watercraft of the voluntary no-anchoring zone around Beacon Cove due to the presence of sea grass beds. The development hereby approved shall not be occupied until the additional marker buoy(s) have been placed in accordance with the agreed details prior to occupation of the development hereby approved, and shall be retained and maintained in that condition for the life of development, unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of protecting and enhancing the sea grass beds located within the Torbay Marine Conservation Zone close to the site, and specifically to avoid ecological harm associated with the anchoring of watercraft, and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan, and Paragraph 174 of the National Planning Policy Framework.

Geology survey

Prior to commencement of works, a method statement for a geological survey to check for fossils within the application site (excluding the access ramp that leads from the Beacon Quay car park to the west) shall be submitted to and approved in writing by the Local Planning Authority, and implemented in accordance with the timeframe agreed within the method statement.

Reason: In the interests of preserving Torbay's geodiversity, and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

Information board

Prior to first occupation of the development hereby approved, an information board with suitable educational material regarding the ecological context of Beacon Cove and the activities which can cause damage must be provided as part of the development in accordance with details (relating to the size, siting, written and visual content, and appearance of the information board) which shall have been agreed in writing by the Local Planning Authority. The written and visual content of the information board shall accord with the information set out within the ecological documentation hereby approved.

Reason: In the interests of avoiding ecological harm to the Torbay Marine Conservation Zone and the Lyme Bay and Torbay Special Area of Conservation, and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan, and Paragraph 174 of the National Planning Policy Framework.

Online advertising material

All online advertising material pertaining to the operation/marketing of the development hereby approved shall include suitable educational material regarding the ecological context of Beacon Cove and the activities which can cause ecological damage. The details of this online information shall be agreed in writing with the Local Planning Authority prior to the occupation of any part of the development hereby approved. This information shall be included in all online marketing information relating to the development for the lifetime of the development.

Reason: In the interests of avoiding ecological harm to the Torbay Marine Conservation Zone and the Lyme Bay and Torbay Special Area of Conservation, and in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan, and Paragraph 174 of the National Planning Policy Framework.

Relevant Policies

Torbay Local Plan:

SS4 – The economy and employment
SS5 – Employment space
SDT2 – Torquay town centre and harbour
TO1 – Tourism, events and culture
C3 – Coastal change management
DE3 – Development amenity
DE1 - Design
SS10 - Conservation and Historic Environment
HE1 – Listed buildings
TA2 - Development access
TA3 - Parking requirements
ER1 - Flood Risk
NC1 - Biodiversity and Geodiversity
C4 – Trees, hedgerows and natural landscape features
SS14 – Low carbon development and adaptation to climate change
SS3 – Presumption in favour of sustainable development

Torquay Neighbourhood Plan:

TS4 - Support for brownfield and greenfield development
TE1 – Tourism accommodation on brownfield sites
TS3 – Community led planning
TE7 – Marine management planning
TH8 - Established architecture
TH2 – Designing out crime

THW5 – Access to sustainable transport

TE5 – Protected species, habitats and biodiversity

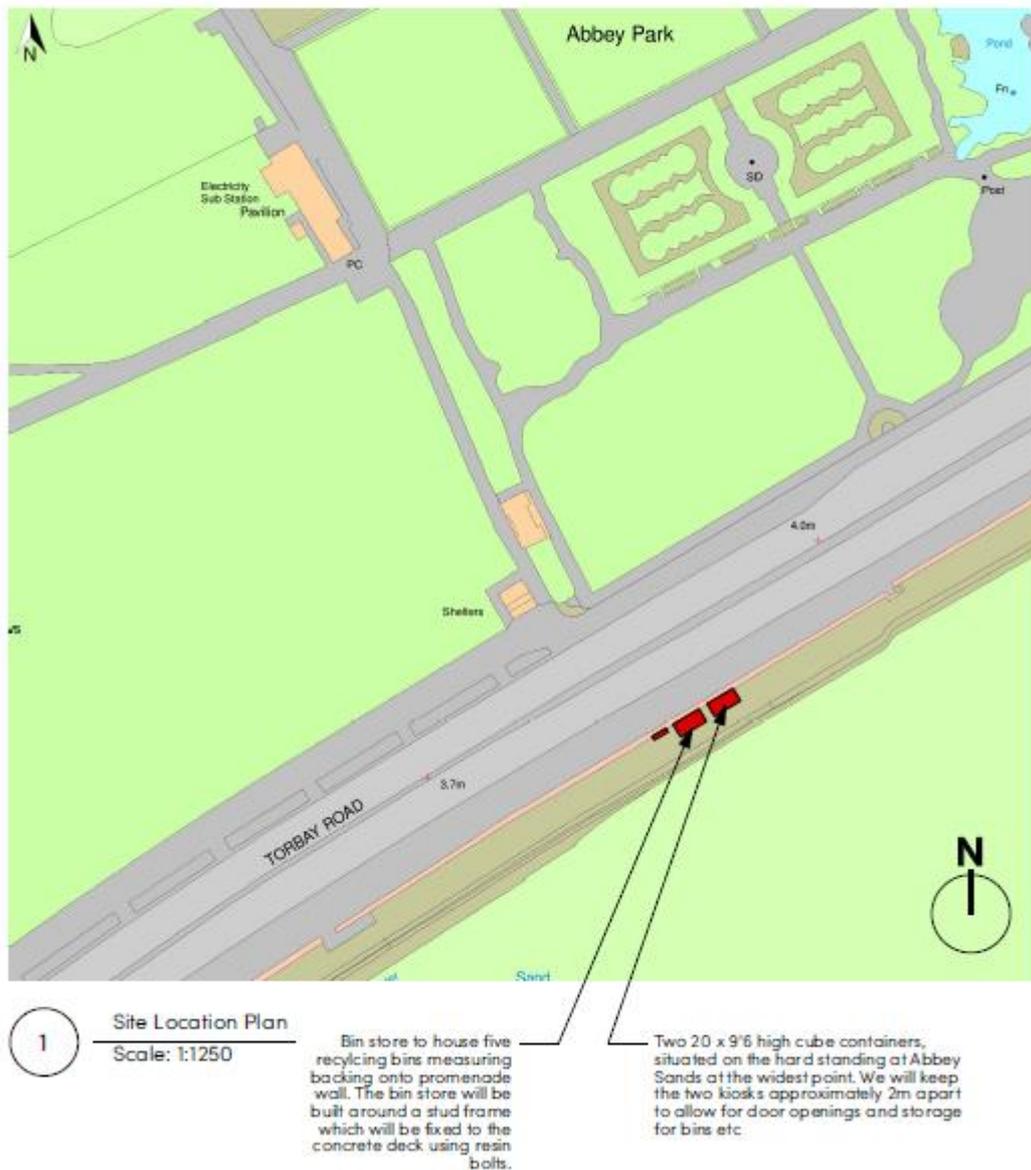
South Inshore and South offshore Marine Plan, 2018

- S-BIO-4: Proposals must demonstrate that they will avoid reducing the distribution and net extent of priority habitats.
- S-MPA-1: Proposals that support the objectives of marine protected areas and the ecological coherence of the marine protected area network will be supported. Proposals that may have adverse impacts on the objectives of marine protected areas and the ecological coherence of the marine protected area network must demonstrate that they will, in order of preference: a) avoid b) minimise c) mitigate adverse impacts, with due regard given to statutory advice on ecologically coherent network.
- S-CC-4: Proposals that may have a significant adverse impact on habitats that provide a flood defence or carbon sequestration ecosystem service must demonstrate that they will, in order or preference: a) avoid b) minimise c) mitigate significant adverse impacts.
- S-WQ-1: Proposals that may have significant adverse impacts upon water environment, including upon habitats and species that can be of benefit to water quality must demonstrate that they will, in order or preference: a) avoid b) minimise c) mitigate significant adverse impacts.
- S-TR-1: Proposals supporting, promoting or facilitating tourism and recreation activities, particularly where this creates additional utilisation of related facilities beyond typical usage patterns, should be supported
- S-TR-2: Proposals that enhance or promote tourism and recreation activities will be supported. Proposals for development must demonstrate that they will, in order of preference: a) avoid, b) minimise, c) mitigate significant adverse impacts on tourism and recreation activities.
- S-ML-2: The introduction of litter as a result of proposals should be avoided or minimised where practicable and activities that help reduce marine litter will be supported

TORBAY COUNCIL

Application Site Address	Torre Abbey Sands Beach Promenade Torquay
Proposal	Installation of 2 x 20ft converted shipping containers to house mobile catering concession and water sports rental. (Retrospective) (Revised plans received 03.06.21)
Application Number	P/2021/0300
Applicant	Mr S White
Agent	
Date Application Valid	12.March.2021
Decision Due date	07.May.2021
Extension of Time Date	
Recommendation	<p>Approval subject to:</p> <p>1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.</p> <p>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.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	June Pagdin

Location Plan



Site Details

The application site is on the promenade at Tore Abbey Sands Beach in Torquay. It comprises a small area (footprint of approximately 39sqm in total) against the stone wall between the beach promenade and the footway on Torbay Road. It is approximately 67m from the foot of the pedestrian access slope from Torbay Road and 50m from the access steps opposite the Riviera Centre.

The promenade is a level pedestrian route along the top of the beach. It is approximately 6m deep and is at a lower level than Torbay Road; separated from the

footway on Torbay Road by a stone wall. Wide, shallow-terraced steps lead down from the promenade to the beach on the seaward side.

The site location has been amended during the course of the application to a position outside the Scheduled Monument of Torre Abbey. It remains within the Core Tourism Investment Area of Torquay (Harbourside, waterfront and Belgrave Road) and in Belgravia Conservation Area. It is within Flood Zones 2 and 3 as designated by the Environment Agency. The beach is part of the Torbay Marine Conservation Zone.

Description of Development

Full planning permission is sought for the following:

- Two storage cabins clad in Cornish Larch (3m high x 3m deep x 6m long)
- One to be used as a paddleboard rental unit
- One as a catering unit -selling drinks and snacks
- Presence and use of cabins to be seasonal from beginning of May to end of September for a period of five years (May 2021 to September 2026)
- Cabins to be set upon "feet" which are bolted to the ground
- A bin store for five recycling bins also clad in Cornish Larch (1.3m high x 0.9m deep x 3.2m long)

A Design and Access statement was submitted. The small teardrop banners and signage would be classed as advertisements and governed by the advertisement regulations. These are temporary/ moveable and can be stored in the cabins overnight.

It should be noted that the initial proposal located the cabins on the shoreline of land within the Scheduled Monument of Torre Abbey Grounds. The location has been amended to outside the Scheduled Monument Boundary, seaward of the Riviera Centre.

The cabins have been installed and are in use for the purposes applied for during the planning application process, as such this is a retrospective application.

Pre-Application Enquiry

None

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 Torquay Neighbourhood Plan ("The Neighbourhood Plan")
- Healthy Torbay Supplementary Planning Document (HTSPD)
- Belgravia Conservation Area Appraisal

Material Considerations

- National Planning Policy Framework (NPPF 2021)
- 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

None

Summary of Representations

Approximately 19 objections were received to the original proposal in which the following matters were raised:

- Shipping containers do not improve the character and appearance of Belgravia Conservation Area
- Incongruous Visual impact on seafront and beach
- Would not enhance Torbay's tourism offer
- Containers were installed before planning permission obtained
- Position in the Abbey Grounds is unsightly
- Much bigger than previous container (referring to previous years)
- Need to be clad and to only be seasonal
- Some support for water sports
- Not mobile as fixed and bolted into concrete
- Another catering facility will compete with existing ones
- Place it further along not opposite an existing cafe
- Catering - not adequate ventilation and fire safety
- Smells of cooking food and waste on the promenade and beach
- Marketing of catering opportunity was not wide enough
- Queues for coffee will impede promenade
- Concern about waste build up on beach
- What will the lifeguard and coast guard provisions be?

It should be noted that matters relating to commercial competition in the tourism industry are not a material planning concern. The details of leases with Torbay Council are also not planning matters and are responsibility of Torbay Development Agency. Lifeguard provisions are not a material planning consideration for a development of this scale. However, for information, the beach does have blue flag status without an RNLI lifeguard provision

The cabins have been installed and began operating during the course of the planning application process. This report is based upon an assessment of the submitted proposals (as amended).

Summary of Consultation Responses

Torquay Neighbourhood Plan Forum: Initially objected to location. Revised comments following amendment to proposed location. Support for sport and leisure provision and low impact Geopark exploration. Position of cabins now improved subject to agreement of County Archaeologist. Visual impact balanced with health benefits. Support subject to Community Safety and Marine Management Plan issues being addressed.

Historic England: Initial objection to position within the Grounds of Scheduled Monument. Reconsulted and response pending.

Devon County Council Archaeologist: Initial objection to original location due to adverse impact on the setting of the abbey. No objection to amended plans showing siting outside Scheduled Monument.

Torbay Heritage Trust: Comment on original plans: Objection. Shipping Containers will not preserve or enhance the character of the Conservation Area. Contrary to NPPF and Torbay Local Plan Policies C2, DE1. Incremental detrimental changes to the area. Odour of food frying and take-away clutter. Comment on revised plans: Objection maintained to revised location due to impact of design on the Conservation Area.

Natural England: No objection.

Marine Management Organisation: No response.

English Riviera BID: Support. The proposal supports the promotion of water-sports and eco-tourism and caters for enjoying the great outdoors, healthy food and use of local produce.

Torbay Harbours: Support. Torre Abbey beach has been lacking facilities. Proposal is part of aim for Torbay to be a premier resort and obtain Blue Flag status for this beach. Proposal is seasonal (over summer) to address potential storm damage/rough seas over winter.

TDA: Support. Proposal aligns with English Riviera Destination Management Plan, investing in tourism and the Unesco Geopark and creating jobs. Please, confirm months of year to be operated.

Drainage: Support subject to provision of flood mitigation measures in the FRA and only in use between 1st May to 31st September.

Community Safety: Insufficient information regarding food safety: no detail of water supply, waste-water tank must be adequate to meet seasonal demand, no information about fuel for cooking and ventilation, generators should not cause noise or odour nuisance, hand washing and washing-up facilities will be needed.

Waste and Recycling: Applicant has not been in contact with SWISCo. Businesses are able to choose their waste contractor. No objection provided they have refuse collection in place and secure storage provided for waste and recycling.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of development
2. Visual Impact
3. Impact on Heritage assets
4. Impact on Amenity of the Locality
5. Impact on Highways
6. Ecology, Biodiversity & Marine Environment
7. Flood Risk and Drainage
8. Sustainability
9. Statement on Human Rights and Equalities Issues
10. Local Finance Considerations

1. Principle of development

Full planning permission is sought for the seasonal installation of two shipping cabins and a waste cabin (all clad in larch timber) on the Torre Abbey Beach Promenade. One cabin is for paddleboard hire and the other a catering facility. The cabins would be in position and operating between 1st May and 31st September each year.

Tourism

The site is within the Core Tourism Investment Area (CTIA) of Torquay Harbour and Waterside. Policy TO1 (Tourism, events and culture) supports tourist facilities and new tourism facilities particularly growth sectors such as sustainable tourism. The Policy supports in principle the provision of new tourist attractions especially those that make positive use of Torbay's marine environment and are in accessible locations focusing on the Core Tourism Investment Areas. Torbay Harbours has commented that the Blue Flag status of the beach is supported by the proposed rental of water-craft. Blue Flag status is a globally recognised award with stringent environmental, educational and safety criteria.

The paddle-boarding hire and the catering unit are considered to be tourism facilities which diversify the range of activities offered to visitors. The proposal would enable the expansion of an existing local business with 6 additional full-time posts and five more part-time ones. Their location within this CTIA is in accordance with Policy TO1. Policy TO3 supports marine-related development where consistent with wider environmental, heritage, biodiversity and amenity objectives.

Healthy Torbay

The Council's Healthy Torbay Strategy aims to improve the health of the people of Torbay and tackle health inequalities. Physical activity is one of the determinants of health and the Council supports provision of healthy activities as one of the

preventative measures against poor health. The Healthy Torbay Action Plan focuses on Physical activity as one of ten key priorities and identifies a key action as targeting residents' inactivity through sports and leisure provision. In addition, Policy SC1 of the Torbay local Plan supports developments that provide opportunities for physical activity for residents and visitors.

Paddle-boarding is a form of water-sport that is a physical activity that enables access to the natural marine environment. Provision of opportunities to take part in this sport are within the aims of the Healthy Torbay Strategy and Action Plan and in principle is in accordance with Policy SC1.

Policy SC2 requires new facilities to be in appropriate locations where they are accessible by a range of transport and comply with other policies of the Local Plan. The proposal provides paddleboard hire on the waterfront of Torquay Bay on Council managed land. The application site is located on Torbay Road, a major bus route within metres of the bus stops (in both directions). Torquay rail station is approximately 600m away. Cycle parking is available at the Riviera Centre and pedestrian crossings provide a link to the beach. The promenade is accessed by a flight of stairs to the north and a ramp to the south. Given this positioning, the proposal is considered to be in an accessible location.

The proposed catering cabin is also supported in principle by these Policies.

In summary, the proposal would provide additional tourism facilities and generate employment in an appropriate location. It would also provide opportunities for physical activity for residents and visitors to Torquay. The proposal is, therefore, acceptable in accordance with Policies SC1, SC2, TO1 and TO3 of the Local Plan and the Healthy Torbay Strategy. This is subject to Policy TO3, which requires development to be consistent with wider environmental, heritage, biodiversity and amenity objectives. These impacts are considered in the following sections of this report.

2. Impact on Visual Amenity

Paragraph 126 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'. Paragraph 134 of the NPPF states that 'permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The application is for two cabins and one bin store on the promenade on Torre Abbey Sands beach. In the submitted drawings, the cabins are 3m high, 3m deep

and each one is 6m wide. They are made from steel and are, therefore, strong structures. They are finished with dark grey paint and clad in vertical larch wood; a natural and hardwearing material which weathers to pale grey. They are located against the wall of the promenade and are approximately 2m apart. They sit below the level of the road, projecting above the stone wall by approximately 1.4m. They have opening shutters on the seaward side and shutters and doors on the end elevations.

The refuse and recycling store will be finished in the same material and measures 3.2m wide by 1.3m high and 0.9m deep. It sits below the level of the wall and is positioned at the northern end of the paddleboard cabin, nearest the access slope.

The immediate surroundings are composed of natural and manmade materials the stone wall, the red sandy beach and the concrete promenade and steps. The colours and textures of these materials provide the character of this section of the conservation area, that is quite distinct from the areas landward of the sea wall.

The cabins are visible above the promenade wall. However, the promenade is several hundred metres long and the cabins occupy a stretch of around 16m (including the 2m gap between them and the gap between the board store and the refuse bins). Being set down on the promenade below the level of the road their impact is reduced and the effect on visual amenities and sea views is limited in the context of the scale of the bay.

The land behind Torquay Road rises and from within the Riviera Centre grounds views of the sea along the central vista are not affected as the cabins are located to the south below the wall to the gardens that screens the carriage way of Torbay Road. When viewed from the Torre Abbey grounds, the cabins sit behind and below the established shelter which sits in the eastern corner of the grounds and is finished in render and a pitched roof. Views to the south from Torre Abbey grounds allow views of Corbyn Head and the rows of white and pastel coloured beach huts on Corbyn Beach.

Current situation

The installed cabins have been clad. However, the lower part of rear elevation against the sea wall has not been clad. As a result of the cabins being set up on feet part of the rear elevation is seen as the painted ribbed metal. Service provisions (water and electricity) enter the cabins on this elevation below the level of the sea wall. It is considered that the visual impact is increased as a result and the appearance shown in the submitted elevations should be achieved. However, it would not be pragmatic to require amendment to the cladding of the cabins during the peak season. It is recommended that recladding to either level with or below sea wall when the cabins are in place be implemented prior to the commencement of the 2022 season (1st May 2020).

Under the current operation of the site a few canoes and boards are stored upright against the sea wall when not in use and overnight. These are more visible than the cabins due to their colours, height and positioning. Storing them in the cabins when not in use would remove this impact. A condition can be imposed that craft be stored inside the cabins and this is recommended.

In the context of the CTIA, the cabins provide a visual draw and focus for water-based activity on the beach. The cabins are restrained and uncluttered in appearance with natural materials of good quality and muted colours in keeping with the semi-natural setting of the beach. They relate in functional terms to their location. In design terms, they relate to the surrounding context and are not considered to result in a significant visual impact on the promenade and views from the promenade and surrounding land.

Therefore, subject to the above-mentioned conditions over cladding and storage, the proposals are considered to be in accordance with Policy DE1 of the Local Plan. The impacts on heritage assets are considered in the section below.

3. Impact on Heritage Assets

The site lies within the Belgravia Conservation Area and is adjacent to the Torre Abbey Grade 1 Listed Building and Scheduled Monument.

Guidance on considering the impacts on designated heritage assets is provided in Paragraphs 199 to 208 of the NPPF (2021). Paragraph 199 states that great weight should be given to an asset's conservation and the more important the asset the greater the weight should be. Paragraphs 201-202 state that "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal". It also states that substantial harms should be outweighed by substantial public benefits. Policy HE1 of the Local Plan requires developments to preserve the setting of listed buildings and their settings.

Scheduled Monument

Scheduled Monument designation and Grade I Listed building status are both recognitions of an asset of great importance. Therefore, great weight is due to the conservation of Torre Abbey and its setting. Historic England and Devon County Council's Archaeologist objected to the original proposed location of the cabins within the grounds of the Abbey (as defined by Historic England and shown on the Local Plan Proposals Map). They recommended that an alternative site be identified outside the scheduled Monument in a location that does not compromise the monument's setting or its relationship with the shoreline, which was part of the 12th Century Premonstratensian monastery's domain.

The amended location is outside the Scheduled Monument. This positioning has satisfied the concerns of Devon County Council's archaeologist. Historic England's response is pending at the time of writing.

Conservation Area

The Listed Buildings and Conservation Areas Act 1990 gives Local Planning Authorities (LPAs) powers in regard to heritage assets. Section 72 requires an LPA, in determining planning proposals, to have special attention to the desirability of preserving and enhancing the character or appearance of a conservation area.

Policy SS10 of the Local Plan states that development proposals will be assessed against the need to conserve and enhance conservation areas while allowing sympathetic development within them.

The introductory section of the Belgravia Conservation Area Appraisal describes the area as containing residential suburbs, major hotels and significant amount of open space. Apart from Torre Abbey, most of the buildings date from 1860 and after. However, the area includes coastline, parks, recreation grounds, the walled gardens of Torre Abbey, the rock-faced Royal Terrace Gardens and the private gardens and terraces of numerous hotels. The boundary also includes the beach promenade.

Therefore, a key element of the Conservation Area's character is its provision of formal and informal recreational opportunities within the historic setting. The beach promenade is an established feature along the sea front of Torquay Road and, in addition to a pedestrian walkway, it provides seating opportunities on the terraced steps and open access to the sandy beach. The promenade has no fixed structures other than the seawall, built of local stone, the access steps and a ramp.

Policy SS10 seeks to maintain the character of the conservation area while allowing sympathetic development. The proposal would introduce a structure to this open setting. However, it is temporary in nature, being removed between October and April (inclusive). That said, it would be present during the tourist season but, as described in the previous section (Visual Impact), occupies a small stretch of the seafront compared to the overall length of the promenade. The simplicity and natural materials of the setting have been responded to in the uncluttered outline and choice of timber cladding. The design aims to minimise the impact on the Conservation Area and wider setting while providing recreational opportunities appropriate to the character of the conservation area.

The impact on the conservation area is considered to constitute a less than significant harm. In accordance with Policies SS10, HE1 and paragraph 202 of the NPPF (2021) the harm is to be weighed against public benefit of the scheme. These were identified in the Principle of Development section of this report as supporting and diversifying and expanding the tourism economy and providing opportunities for healthy physical activities for residents and visitors.

Subject to the full cladding of the cabins prior to the commencement of the next season (1st May 2022) and other recommended conditions of this report it is considered that, in this case, the public benefits outweigh the less than significant harms.

4. Impact on Amenity of the Locality

Policy DE3 requires all development to provide a good level of amenity for users and the surrounding uses in terms of noise, nuisance, and air pollution. They should also

provide storage for containers for waste and recycling. In order to limit the impact of new development, the Council may seek to restrict the hours of operation, time of deliveries, operation of machinery and other measures necessary to preserve amenity.

The proposed hours of operation are: 7am to 8pm every day. The rental of equipment includes paddle-boards but may also include canoes/kayaks. It is considered important to the peaceful quality of the beach that the rental of motorised water-craft is prohibited. This can be secured by condition and is recommended.

The concerns raised by consultation exercise about the catering cabin relate to noise of generators/machines, fumes from food cooking, litter and waste on the beach and obstruction of the promenade. The latter is also mentioned in relation to the paddleboard rentals.

Electricity and water supply

The catering franchise serves hot and cold drinks and cold snacks and grilled paninis (electric grill). Concerns were expressed about the need for generators to produce the power to run the catering machines. The need for generators is avoided by the Torbay Harbours' provision of an electricity supply directly to the cabins.

Use class of catering cabin

The range of food is limited to that which is normally associated with a coffee bar – hot and cold drinks, cold snacks and grilled paninis (electric grill). This falls within Use Class E(a) retail sale of goods (other than hot food). The preparation and sale of hot food take-away falls in a use class of its own (Sui Generis). It is considered that such a use would be inappropriate in this location due to the space requirement and the potential for cooking and food fumes to impact on the amenity of the beach and promenade and for extraction and ventilation equipment to cause noise nuisance and be unsightly. Therefore, it is considered reasonable and necessary to restrict the catering cabin to use class E(a). It is recommended that this is secured by condition.

Water storage

Policy W5 of the Local Plan requires development to demonstrate that the y can be delivered and operated without giving rise to unacceptable impacts on water disposal or have an adverse impact through pollutants or spills on the integrity of the Lyme Bay and Torbay Marie SAC. Concerns were also expressed by the Environmental Health Officer regarding the supply of sufficient water for hand washing and for the catering operation. Torbay Harbours has provided a fresh water supply directly to the cabin. The grey-water tank has a capacity of 1,000lt and is emptied on a regular basis (weekly at present but can be more often as needed). It is positioned between the cabins where it can be managed. The Flood Risk Assessment sets out that the grey-water is collected by the contractor ClearFlo. To secure this arrangement for future months/years, it is considered reasonable and necessary to require that this

element of the FRA is provided to prevent overspill onto the promenade and beach. A condition securing compliance with the FRA is recommended.

Refuse and recycling

With regard to refuse and recycling, the application includes a five-compartment bin store (2 for waste, 3 for recycling). These will require regular emptying. The applicant advises that the bins are to be provided and regular collections made by Biffa. To secure this arrangement for future months/years, it is considered reasonable and necessary to require that an effective collection service is maintained to prevent waste overflow onto the promenade and beach. A condition to this effect is recommended.

Deliveries

Delivery of supplies to the cabin are by delivery lorry from Torbay Road or by electric cycle from their operation in Torbay Marina. The operation is a small-scale one, however, to prevent obstruction and/or inconvenience, it is recommended that hours of delivery by lorry from Torbay Road are controlled. These should avoid times of day when Torbay Road is busiest, when the on-street parking spaces are fully used, and peak use of the beach and promenade. This can be secured by a condition and this is recommended.

Subject to the abovementioned conditions the proposal is considered to be acceptable with regard to the amenities of the beach and promenade further r to Policies DE3 and W5 of the Local Plan.

5. Impact on Highway Safety

Policy TA1 and TA2 promote sustainable locations for new developments and require adequate accessibility and safety to meet the needs of the development. The application site is located on Torbay Road, a major bus route within metres of the bus stops (in both directions). Torquay rail station is approximately 600m away. Cycle parking is available at the Riviera Centre and pedestrian crossings provide a link to the beach. For cars, Torquay Road provides metered parking. The promenade is accessed by a flight of stairs to the north and a ramp to the south. Given this positioning, the proposal is considered to be in a sustainable and accessible location. The proposal provides an opportunity for people to go paddleboarding without having to transport their equipment by car.

Policy TA2 requires layouts that contribute to footpath networks. The position on the promenade has been chosen to minimise the impact on pedestrian circulation. The promenade is 6m deep at this point. The cabins and bin store are positioned against the wall at the back of the promenade leaving 3m in front for pedestrian circulation. They are some distance from each access point (ramp and stairs) so do not obstruct the flow of pedestrians on those busiest parts of the route, where people may gather or wait to allow others up and down the stairway/ramp. The storage of the paddleboards is limited to within the cabin and against the wall adjacent to the waste bin store. It is recommended that maintenance of this aspect of the operation is

secured by a condition requiring all storage and operations to be kept within 3m of the sea wall to prevent inconvenience to pedestrians on the promenade.

With regards to queuing for the catering cabin this is a licencing issue rather than a material planning consideration. However, the location is on the widest section of the promenade and there are areas to the side where customers can queue and wait for their orders at high tide. At low tide the steps and firm beach provide an alternative to the promenade for many pedestrians.

Subject to this condition the proposal is considered to be acceptable further to Policies TA1 and TA2 of the Local Plan.

6. Ecology & Biodiversity

Policies SS8 and NC1 of the Local Plan seek to conserve Torbay's biodiversity and geodiversity. Paragraphs 179 to 182 of the National Planning Policy Framework seek to protect and enhance biodiversity. Paragraph 182 sets out that the presumption in favour of sustainable development does not apply where the proposal could affect a protected habitat site unless an appropriate assessment has concluded that the plan or project will not affect the integrity of the habitat site.

The proposal is close to (70m north-west of) the boundary of the Lyme Bay and Torbay Marine Special Area of Conservation. Natural England's conservation objective for this area is to ensure that the integrity of the site's natural habitats are maintained. This area contains offshore reefs and partially/submerged sea caves.

A Habitat Regulations Assessment and a Marine Conservation Zone Impact Assessment was undertaken by Devon County Council's Ecologist. Under Natural England's 'Advice on Operations', paddle boarding is excluded from having recreational impacts on the SAC. This is due to the range of distance the participant can go reducing the impact on any one particular spot. The pre-construction of the cabins and type of catering mean that issues of waste-water, surface water run-off pollution from construction and cooking oil would not arise. The grey-water storage holding tank would be pumped out by a contractor and not lead to increased demand for drainage or foul sewers.

The HRA and MCZ Assessment Report concluded that the likely significant effects on the Lyme Bay and Torbay SAC resulting from increased recreational pressures, increased waterborne pollutants and increased demand on drainage capacity and foul sewer infrastructure can be screened out of further assessment. Therefore, no further assessments are recommended.

Subject to the operation being maintained as set out in the submitted Flood Risk Assessment and in accordance with the conditions suggested in the Amenity section of this report, the proposal is compliant with Policies SS8 and NC1 of the Local Plan and paragraph 182 of 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 application site is within Flood Zones 2 and 3 A Flood Risk Assessment was submitted with the application (Aquatech AT2516 dated May 2021). The proposed uses fall within the categories “water-compatible” (paddleboard hire) and “less vulnerable” (catering). The site is 2.68m above ordnance datum. The FRA includes measures to secure the cabins to the promenade and raise them on feet to allow spring tides to flow underneath. In case of severe-weather-warnings the cabins can be removed to remote storage. The structures are flood resilient steel with fixtures and electrical controls etc no lower than work-top level. The FRA also states that the operator will subscribe to the Environment Agency coastal flood warning system and the site will not operate when there is a risk due to spring high tide. The operator will have a Flood Evacuation Plan. With regards to surface water run-off, the proposal does not increase the footprint of hardsurfacing on the promenade. The Drainage Officer has not objected to the proposal subject to the measures in the FRA being implemented and the season being restricted to 1st May to 31st September.

The cabins are to be removed from the site during the winter when storms and high tides can cause some flooding.

Subject to these conditions the proposal is in accordance with Policies ER1 and ER2 of the Torbay Local Plan.

8. Sustainability

Policies SS14 and ES1 of the Local Plan seeks to promote a low-carbon form of development with adaptations to climate change so as to minimise carbon emissions and make more use of natural renewable resources.

The proposal is in a sustainable location where customers do not need to drive to access it. The cabins are constructed of natural materials. Paddleboards and kayaks/canoes are usually made from plastic and their production uses non-natural materials but, being for rental, each craft provides the opportunity for physical activity to several people, requiring less boards/kayaks per user than privately-owned ones.

Paddleboards and kayaks/canoes are powered by a source of renewable energy. The catering cabin provides food to renew that source of energy. The cabin uses electricity to prepare food and drinks – the source of which is from the general grid, which increasingly is supplied from renewable sources.

The proposal is considered to have sufficient low-carbon credentials to meet the requirements of Policies SS14 and ES1.

9. 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.

10. Local Finance Considerations

S106: Not Applicable

CIL: Not Liable

Planning Balance

Paragraph 11 of the NPPF (2021) sets out the presumption in favour of sustainable development that is in accordance with the development plan. The principle of the proposed temporary (5 years to 2026) use is supported by Council Policies relating to expanding and enhancing Torbay's tourism offer as set out in the Local Plan Policy TO1, TO2 and TO3 and to health in the Local Plan Policies SC1, SC2 and the Healthy Torbay Supplementary Planning Document. The development is considered to be a sustainable one, subject to the material planning considerations set out in this report.

The proposal is considered to be acceptable in terms of its visual impact and to cause a less than significant level of harm on the heritage assets of Torre Abbey Scheduled Monument and the Belgravia Conservation Area, subject to the submitted cladding design being installed prior to the next season (1st May 2020).

The public benefits are considered to clearly outweigh the less than significant harms in this case.

Matters of beach amenity, flood risk and biodiversity have been considered and further to Policies of the Local Plan, can be controlled by planning conditions over the seasonal timing, the permitted uses, hours of delivery, storage in cabins and position within 3m of sea wall, adequate water and refuse storage and collections, hours of delivery and compliance with the FRA.

Conclusions and Reasons for Decision

The proposal, as amended, is considered to be acceptable in terms of the principle of the use, its visual impact, impacts on heritage, amenities of beach/promenade users, highways, biodiversity, drainage and carbon impact. Subject to conditions,

the proposed development is, considered to be in accordance with the policies of the NPPF (2021), the Local Plan and the Neighbourhood Plan.

Officer Recommendation

That planning permission be granted, subject to:

The planning conditions outlined below, with the final drafting of planning conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency

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

Conditions

1. Temporary Use

The development hereby permitted shall be for a limited period; the structures hereby permitted shall be removed, the use hereby permitted shall be discontinued and the land restored to its former condition on or before 30/10/2025.

Reason: The proposed development is for a limited time period to enable the Local Planning Authority will be able to review the operation of the site and its impacts on the amenity and environment of the surrounding area further to the Local Plan.

2. Seasonal

The cabins and waste bin store hereby permitted shall only be installed and operating on the site between the 1st May and 30th September of each year during the period of this temporary permission. Between 6th October of each year and 24th April of the following year (over winter) the cabins and waste bin store and all associated equipment shall be removed from the site and the land restored to its former condition.

Reason: In the interests of amenity and safety from flood risk during winter months further to Policies DE3 and ER1 of the Local Plan.

3. Materials

The cabins and waste bin hereby permitted shall be clad in the manner and materials hereby approved (Drawing No's EL001A and EL002B). The cladding on the upper part of the South East elevation (facing the sea wall) shall be implemented at the height in relation to the sea wall as shown in the drawings prior to the 1st of May 2022 and thereafter maintained at that level.

Reason: In the interests of the visual appearance of the cabins in the Belgravia Conservation Area further to Policies DE1, and SS10 of the Local Plan and Policy TH8 of the Torquay Neighbourhood Plan.

4. Storage

Storage of rental equipment when it is not in use shall be limited to inside the cabins hereby approved and the 2m wide area between the cabins on the promenade and within 3m of the seawall. No rental equipment shall be stored on the promenade to the south of the paddleboard rental cabin.

Reason: In the interests of the visual amenity of the site and pedestrian convenience further to Policies DE1, DE3 and TA2 of the Local Plan.

5. Catering Cabin use

The cabin hereby permitted for use as a mobile catering concession shall be used for purposes within Use Class E(a) retail only and not for other uses within Class E as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order.

Reason: in the interests of the amenity of the beach and promenade and to enable control over the impacts of the use of the cabin within the Lyme Bay and Torbay SAC and Belgravia Conservation Area further to Policies DE1, SS10, DE3, SS8 and NC1 of the Local Plan.

6. Rental Cabin Use

The cabin hereby permitted for use within Use Class E(a) for water sports rental shall only be used for rental of non-motorised watercraft including paddleboards, canoes and kayaks. The cabin shall not be used for rental or storage of any motorised watercraft or any equipment not associated with the approved use. The cabin shall not be used for other uses within Class E as defined by the Town and Country Planning (Use Classes) Order 1987 (as amended) or in any provision equivalent to that class in any statutory instrument revoking and re-enacting that Order.

Reason: in the interests of the amenity of the beach and promenade and to enable control over the impacts of the use of the cabin within the Lyme Bay and Torbay SAC and Belgravia Conservation Area further to Policies DE1, SS10, DE3, SS8 and NC1 of the Local Plan.

7. Remove Permitted Development Rights

Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) (Amendment), (No.2) (England) Order 2015 (as amended) no development of the types described in Schedule 2, Part 3 (Changes of Use) shall be carried out without the prior written consent of the Local Planning Authority.

Reason: In the interests of the amenities of the area. beach and promenade and to enable control over the impacts of the use of the cabin within the Lyme Bay and Torbay SAC and Belgravia Conservation Area further to Policies DE1, SS10, DE3, SS8 and NC1 of the Local Plan.

8. Waste and Recycling Contract

The uses hereby permitted shall be implemented in accordance with the following waste storage and collection plan:

- a) Provision of waste and recycling storage unit in accordance with the approved elevational drawings
- b) Waste and recycling shall be stored in the storage unit and not outside the unit or on the surface of the promenade or the beach
- c) Waste and recycling shall be collected regularly by the contractor as necessary to prevent any overspill onto the promenade and beach

Reason: In the interests of the amenities of the promenade and beach further to Policies DE3 and NC1 of the Torbay Local Plan.

9. Hours of delivery

Delivery of goods to the cabins by hereby permitted shall take place outside the peak hours of beach usage and not between 8am and 6pm on any day.

Reason: In the interests of the convenience and safety of other users of the beach promenade and the footway on Torquay Road further to Policies DE3 and TA2 of the Local Plan.

10. Flood Risk Assessment

The development hereby approved shall be implemented in accordance with the flood mitigation measures identified in the submitted Flood Risk Assessment (Aquatech Ref No AT2516 dated May 2021).

Notwithstanding the approved Flood Risk Assessment, amendments to the mitigation measures shall be submitted by the Local Planning Authority within 4 weeks of the date of this decision which shall include details of footings and means of securing the cabins to the promenade. Once the details are approved by the Local Planning Authority the agreed mitigation measures shall be provided within 2 weeks unless an alternative timetable is agreed in writing with the LPA.

Reason: In the interests of public safety and preservation of water quality in the event of flooding further to Policies ER1 and ER2 of the Local Plan.

11. Water Collection

The uses hereby permitted shall be implemented in accordance with the following grey-water storage and collection plan:

- a) Provision of grey-water storage unit (1,000 litre) capacity in the area between the two cabins
- b) Grey-water shall be collected regularly by the contractor (ClearFlo or similar and to same standard) as necessary to prevent any overspill from the storage unit onto the promenade and/or beach.

Reason: In the interests of the amenities of the promenade and beach further to Policies DE3 and NC1 of the Torbay Local Plan.

Relevant Policies

Torbay Local Plan:

TO1 Tourism, events and culture

TO3 Marine economy

SC1 Healthy Bay

SC2 Sport, leisure and recreation

DE1 Design

SS10 Conservation and the historic environment

HE1 Listed buildings

DE3 Development amenity

TA1 Transport and accessibility

TA2 Development access

SS8 Natural environment

NC1 Biodiversity and geodiversity

ER1 Flood risk

ER2 Water management

SS14 Low carbon development and adaptation to climate change

ES1 Energy

W5 Waste Water Disposal

Torquay Neighbourhood Plan

TH8 – Established Architecture

TORBAY COUNCIL

Application Site Address	Land Off Orchard Way, Edginswell Torquay
Proposal	Enabling works for future development. Extension of Orchard Way with associated retaining walls and landscaping.
Application Number	P/2021/0123
Applicant	Torbay Council
Agent	KTA Architects Ltd
Date Application Valid	17.03.2021
Decision Due Date	16.06.2021
Extension of Time Date	16.07.2021
Recommendation	<p>Approval: Subject to;</p> <p>The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.</p> <p>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.</p>
Reason for Referral to Planning Committee	Major Development (size of site).
Planning Case Officer	Scott Jones



Site Details

The site comprises of 2.4 hectares of unkempt grass/scrubland to the west of Orchard Way and the existing commercial buildings that form Edginswell Business Park. There is a tree and scrub belt along the south-western boundary of the site adjacent to residential properties that sit off Edginswell Lane. The site slopes from south-west to north-east with the south-western corner being the high point of the site. There is a drop of approximately 15m across the site. Across the remaining borders to the north-east there is a nearby watercourse and rail line, before the land rises again to Riviera Way, and to the north-west lies Hamlyn Way, with a public right of way on the intervening strip of land that connects Edginswell Lane with Torquay Road to the North. Orchard Way presently terminates at the western edge of the site.

Regarding further context the site sits within the Edginswell Future Growth Area, as designated within the Torbay Local Plan, and is within the adopted 'Torquay Gateway (Edginswell)' Masterplan area, which envisages commercial uses on the land. There are also a number of listed building within 100m to the south and east of the site, although none directly border the site. In terms of further heritage interests there is an entry recorded on the Historic Environment Record for a post-medieval 'catch meadow' within the site. Other notable matters include an adjacent watercourse to the north which is an identified flood risk area and the adjacent land around the watercourse and railway line is part of a broader linear identified Local Nature Reserve

and Urban Landscape Protection Area. The site is also within the identified Landscape Connectivity Zone associated with the Greater Horseshoe Bats (South Hams SAC).

In terms of some further context the site is part of the wider envisaged Edginswell Business Park, as outlined within the historic major 'hybrid' (detailed and outline) proposals approved and partly implemented on adjacent land to the east under planning reference P/2007/1030 (as amended), which proposed commercial buildings/uses on this part of the site.

Description of Development

The application is for groundworks to alter the land levels of the site in preparation for future potential uses, together with the extension of the current highway into the site.

Regarding the groundworks the proposals are principally a 'cut-and-fill' scheme to lower the southern half of the site and raise the northern half of the site, resulting in two principal plateaus either side of the proposed road extension.

At the south-west border the lowering of the ground levels includes the proposal for a crib wall to retain the engineered drop in level. The retaining structure will be between 1.5m and 5m along the south-west border above which there is a 5m landscaping strip proposed featuring specimen tree species, smaller tree species and shrubs on the high side of the structure. The wall also turns north towards the western end adjacent to the existing Public Right of Way, grading down from around 3.5m to the natural level.

A further retaining structure is proposed more centrally within the site in the form of a concrete retaining wall. This will partly retain the proposed highway but also navigate the drop in level from the upper to the lower plateau. The 'L' shaped structure is approximately 1.5m-2m high at either end but raises to a height of around 4m within its length.

At the northern edge of the site a graded earth bank is the third engineered structure being proposed, which is proposed to retain the 'fill' on the lower half of the site and the subsequent drop in level to the adjacent land. The earth bank will traverse a drop of around 4.5m.

The proposed highway extension consists of a 70m extension of the existing carriageway westwards into the site, with a 2m wide footway on the northern side and a 3m wide foot/cycleway on the southern side. There is a proposed 'stub' access junction proposed to the southern side approximately halfway along the proposed road.

Pre-Application Enquiry

None.

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 Adopted Torquay Neighbourhood Plan (TNP)

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

Major 'Hybrid' Application: P/2007/1743: Mixed Use Development Comprising Business Use Class B1, Car Showroom, Retail Warehouse And Residential And Public House/Restaurant (Class A3/A4) With Associated Highway Works And Car Parking.(In Outline). Approved.

Planning Application: P/2009/0055: Amendments to planning permission (app number P/2007/1743/MOA) comprising a draught lobby to main entrance and additional fire door at ground floor level to office building O2. Approved.

Minor Material Amendment (Section73 Application): P/2016/0955: Variation of condition P1 of P/2007/1743 - to allow amendments to the appearance, footprint and internal layout of one car showroom and alterations to the layout of the parking and car display area. This permission relates solely to those elements granted consent and have extant detailed planning permission under reference P/2007/1743 (two car showrooms and one retail unit). Approved.

Summary of Representations

2 Objections. Key issues as follows:

- Loss of the historic 10m landscape buffer to properties
- Amenity impact on neighbours from the loss of the buffer
- Visual impact of the loss of the buffer
- Lack of conformity with the Masterplan
- Potential impact on stability

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No comments.

Natural England:

No objection. Natural England considers that the proposed development will not have significant adverse impacts on statutorily protected nature conservation sites or landscapes.

Torbay Council's Ecology Advisor:

The proposals are unlikely to have a significant effect upon greater horseshoe bats associated with the South Hams SAC.

In regard to habitat loss the site currently holds grassland and hedgerows and post development will result in a tree-lined planting strip and enhanced orchard area, both towards the southern border. Post development it is calculated that this represents a loss of 2.65 'habitat units' or a net loss of 28%. These 2.65 units will need to be provided offsite.

In terms of broader species works should be undertaken outside of the nesting season to protect birds and the reptile method statement should be followed.

Propose conditions are necessary in regard to lighting, habitat mitigation, construction measures, landscape creation and management, times of clearance, accordance with the submitted ecology reports, and repeat badger surveys.

Highway Authority:

No objection. It is advised that any future development proposals should be supported by a Transport Assessment / Statement to accompany the planning submission, which will be subject to review by the Highway Authority before a recommendation can be made. The applicant will also be required to ensure that this is inclusive of identifying pedestrian and vehicle visibility splays from the new proposed accesses, as well as undertaking a swept path analysis exercise, to ensure these are designed to an adoptable standard.

Torbay Council Strategic Planning / Transport:

It is noted that the application includes additional highway towards the west of the site. Although detail could wait for a future full planning application it is recommended that any future proposals provide connectivity between Orchard Way and the path running along the north west boundary of the site. This should be accessible to both pedestrians and cyclists.

With regards to the path along the north west boundary and the proposed reinforced embankment development will need to ensure a safe and suitable barrier is provided to protect against falls from height given the extent of the reinforced embankment which appears to be up to 3.95m at its highest point.

The masterplan also shows a route from Orchard Way through or to the south east of plot 1 linking to the space between plot 1 and the watercourse/railway. This is not indicated on these plans and should also be sought as part of wider connectivity improvements, as should the space at the rear, through and around this site for use by the wider community.

It is important that the route, including the additional highway shown, is built to adoptable standards and (ideally) adopted by the Council for safeguarding purposes.

This could be secured through condition. At the very least a footpath and cycle route connection should be dedicated as such and preserved and appropriately maintained as such in perpetuity.

Torbay Council Drainage Engineer:

Following the submission of further information, including a site specific flood risk assessment and surface water drainage design for the above planning application, providing the surface water drainage is constructed in accordance with the submitted design, there is no objections on drainage grounds to planning permission being granted.

Torbay Council (TDA) Engineer:

It is understood work is in hand to ascertain geotechnical characteristics at this location among others, with which to inform the detail of the current indicative arrangements. Suggest covering any boundary uncertainty by attaching a planning condition similar to the following if granted permission;

‘No development of the proposed boundary ‘crib’ or other retaining walls shall take place without geotechnical investigation and reporting by a qualified geotechnical consultant. Conclusions and recommendations arising from the same should be recognised and adopted by the developer in the proposal and detailing of the installed retaining structure, to include construction and in-service phases.’

Torbay Council’s Senior Tree and Landscape Officer:

The proposed landscaping was agreed at pre-app stage to mitigate for the loss of the trees along the boundary - the trees to be removed are G1,G2, G3 G4, NT2 and NT3 to facilitate the enabling works.

It is recognised that the existing tree stock provides a landscape feature along the boundary with its appeal being on the group effect of the trees in the landscape. Except for G3 that has been afforded B category status the remainder of the trees to be removed are C category with a limited life expectancy.

The proposed landscape is a robust design using native trees and bolster planting within the orchard using local varieties. The landscape will provide a dense screen in the long term. The offset is that there will be short to medium term loss of trees in the landscape but owing to their categorisation they are not expected to usefully live beyond 20years.

The large off-site Ash, OT1, requires 20% of its root protection area to be removed to facilitate the ground levels required for any further development proposals. Although unlikely to structurally damage the tree there will be loss of physiological function from the severance of the fibrous and small diameter roots. As the report indicates OT1 is likely to succumb to Ash Dieback although there is no summary on its current level of infection. The age of the tree, its historic management (coppice) has led to a potentially ecologically valuable habitat along the tree line. Owing to the ecological potential of the tree and the current unknown infection level of the tree in respect of Ash Dieback it is deemed that adjustments are sought to the layout so the full root protection area of OT1 is recognised.

It is noted there is no LVIA present as part of the submission which would provide a broader context of the impact.

Torbay Council's Community Safety Officer:

Document 3467 'Construction Phase' contains the usual information asked for in a construction management plan regarding the control of noise and dust etc. However it is noted that they are suggesting the following hours:

"Construction hours will be from 7am to 7pm Monday to Friday, 7am to 1pm on Saturdays and closed on Sundays."

Recommend standard hours, 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays, are secured to limit local disturbance.

Devon County Council Archaeologist:

The proposal is in an area of archaeological interest relating to the medieval and post-medieval settlement of Edginswell. Groundworks are likely to expose and destroy archaeological features and finds relating to the settlement. The proposal area also contains the remains of part of a post-medieval water meadow system. However, the archaeological evidence is not, in my opinion, of such significance for me to recommend refusal of the application. Archaeological impacts can be satisfactorily mitigated by condition. Should any of the water meadow gullies survive, it may be appropriate to consider retaining them within any proposed landscaping and/or SUDS scheme.

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 any heritage assets with archaeological interest.

Environment Agency:

It is noted that the application is only for the enabling works and not for the development itself. The concrete retaining wall adjacent to Plot 1 looks like it is probably outside of the indicative flood zone, but it may be worth getting confirmation of this from the applicant and that there will be no development/land-raising within the indicative flood zone. However, a detailed FRA may need to accompany the detailed application for Plot 1 to show that the development can satisfy flood risk policy, i.e. that the development will be safe over its lifetime and not increase flood risk elsewhere.

Regarding the access the extended section appears to be located within flood zone 1. However, part of the existing access extends through flood zone 3 and therefore emergency evacuation of the site will be a consideration for you and the emergency planners with any future application for development of the site.

Provided that there is no development taking place within Flood Zone's 2 and 3 in the current application then we would have no further comments to make.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact, including heritage impacts
3. Residential Amenity
4. Highways and Movement
5. Ecology and Trees
6. Flood Risk and Drainage
7. Low Carbon Development, Climate Change and Waste Reduction

1. Principle of Development

The site has been historically linked with the adjacent business park, principally as it was part of the wider proposals in the historic major mixed-use scheme submitted and approved 14 years ago, which was implemented and partly built out. The land subject to this application was outlined to deliver a small number of business buildings/uses and a bulky goods retail unit within this historic application. The business uses associated with the historic 'hybrid' application have fallen away as no Reserved Matters were submitted within the appropriate time limit, but the retail unit sits as an extant permission over part of the site as it was approved in detail.

Notwithstanding that only part of the site still benefits from an extant planning permission the site is still clearly identified for commercial uses in the current Development Plan. In terms of the Local Plan the site is part of the Edginswell Future Growth Area (identified within Policy SS2) and is identified as an employment site within Policy SS5 (Employment space). There is also an adopted Masterplan relevant to the site and wider area (Edginswell) and this identifies the site as part of 'Edginswell Business Park'. The Masterplan aligns with Local Plan support for high quality business uses and purports that some form of mixed use may be suitable. The indicative layouts and commentary within the Masterplan are divergent to the historic scheme granted planning permission but there is consistency in terms of the land being part of the longer-term aspirations and within the 'boundary' of the business park. In terms of the more recent Neighbourhood Plan the site is again identified as an employment site (TJ1.10) and there is reference to the adopted Masterplan.

In terms of summing up matters of principle and planning policy, in the context of the Development Plan, there is consistency in terms of the land being identified for employment uses. The current engineering operations act as preparatory works for potential future commercial uses and in such circumstances are considered enabling operations that are linked to delivering potential future commercial uses, which are supported in terms of planning policy. As such the engineering works are considered aligned with the aspirations of the Development Plan in terms of principle when considered in the round.

The application, in terms of principle, is considered suitably aligned with the strategic and employment policies contained within the Development Plan, notably Policies SS2 and SS5 of the Torbay Local Plan and Policies TS2 and TJ1 of the Torquay Neighbourhood Plan, and guidance contained within the Adopted Torquay Gateway (Edginswell) Masterplan.

2. Design and Visual Impact, including heritage impacts

The principal considerations are the visual impact of the loss of the existing habitat and site character, which is principally scrub and grassland with sporadic border trees, and the visual impact of the proposed works, this being the regraded land and the retaining features created within.

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'.

There is no landscape designation over the land in terms of the Development Plan, but it is noted that the site forms part of the identified landscape area of a secluded Valley (3B Edginswell Valley) in the Torquay Landscape Character Assessment (2010). The wider area is identified as moderately sensitive with a management strategy to conserve. It is unclear whether this character assessment, which is dated 2010, reflected the local change in context from the consented mixed-use scheme, which appears to have commenced around 2009. There is no notable comment however there is notation that if development were to be permitted in this area it would be well contained from the wider area by the valley topography but would lead to the loss of an attractive and intimate local valley and detract from character of adjoining land. This suggests the assessment possibly pre-dated the build-out of the earlier phase of the business park but was possibly aware that development was forthcoming/likely.

In terms of design and visual impact is it practical to consider that part of the site benefits from an extent permission to build a bulky goods unit and that there is broad policy support through the Development Plan to deliver employment across the site. The inherent loss of the open features is hence not particularly significant, but more how the proposals influence the design and visual impact of future development.

In terms of the core of the site the proposed plateaus present a form of development that is similar to the historic proposals. This will present a stepped form of land that responds to the fall in land levels towards the valley floor to the north. The proposed land levels do not inherently present a matter of concern in terms of how it would influence the design and visual impact of future development.

In terms of the retaining features the northern graded bank, which is closest to the watercourse and rail line, is considered an acceptable form of engineering within what is principally an external facing element of the development. The solution provides landscape potential and would sit comfortably as a visual feature from further afield and from close proximity, should the adjacent water meadow secure the access and open walking route envisaged within the original mixed-use application. In terms of the central concrete retaining wall there is clear expectations that the wall will become an internal facing service yard based on the extant retail permission and historic layouts. Its impact from mid-distanced views from the north would appear only temporary in nature and limited. In terms of the southern-most retaining element this

appears the most sensitive element of the scheme and has raised some public concern in terms of how its form and location would constrain the landscape potential to visually separate the commercial element from the more rural residential character of Edginswell Lane. In terms of the detail the crib wall itself will be inward facing and post-development (of commercial uses) is unlikely to be a prominent feature within the public realm. In terms of the landscaped bank above this feature a 5m tree and shrub border is proposed, which would include feature oak and pine specimens along its length. There is local concern that the linear feature is not sufficient and is not as robust as the historic '10m landscape buffer' proposed via the historic mixed-use development. The Council's Landscape and Arboricultural Officer has considered the proposal and concluded that the proposed landscaping is a robust design and will provide a dense screen in the long term, whilst recognising that although the tree removal will present a short to medium term loss of trees in the landscape these have a short (20 years) expectancy and the proposals will present a longer-lived feature. Notwithstanding the concerns raised within representations when considering the conclusions of the specialist officer the detail of the southern-most wall and its associated landscaping is considered acceptable in terms of its landscape and visual impact.

Having considered both local and national policy guidance the design is considered to provide an acceptable form of development within the context. This conclusion has taken into account the public representations and specialist advice in terms of the robustness of the landscaping.

Regarding heritage assets the scale and form of the engineering proposals will not impact the setting of nearby listed buildings to the south. The proposal is hence considered acceptable having considered the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority pay special attention to the desirability of preserving or enhancing listed buildings and their settings.

3. Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring occupiers and surrounding uses. 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 proposed development, post-construction, will not impact the amenity of neighbouring occupiers, which principally sit to the south of the site off Edginswell Lane, as the groundworks and retaining structures will not result in any form of loss of privacy, light, outlook etc. As a precursor to potential future development subsequent proposals would offer scope to consider the impact of buildings and uses on neighbouring occupiers. Notwithstanding the above conclusion the construction phase does have the potential to effect neighbours, principally through noise, dust and general disturbance during construction. The application is accompanied by construction phase information, which has been reviewed by Community Safety and considered acceptable in terms of managing most of the processes during

construction that may impact neighbours. One point of concern is the proposed construction hours and it is recommended that notwithstanding the documents detail should be conditioned as being contained within the hours of 0800 and 1800 Monday to Friday and between 0900 and 1300 on Saturdays, with no working on Sundays or bank holidays. Regarding further construction and post-construction matters there has been a concern raised in public representation regarding land stability. The Council's Engineer has considered the matter of groundworks close to residential plots and has recommend that a planning condition is attached to secure a level of detail and understanding on the engineering solution beyond the current level.

With conditions to secure appropriate working hours during construction and to secure engineering detail to ensure that their will be no impact upon adjacent land in terms of stability the proposals are acceptable in terms of any impact upon the amenity of adjacent occupiers, in accordance with Policy DE3 of the Torbay Local Plan.

4. Highways and Movement

The NPPF guides that in assessing specific applications for development it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; and c) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree (Para 108). It also furthers (Para 109) 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 proposal seeks to extend the existing highway (Orchard Way) approximately 70m westwards into the site and aside to this the development is seeking only preparatory works for potential futures uses. Due to the form of development the key issue is principally whether the highway extension is a suitable design for the future commercial context. The Highway Authority have confirmed that they do not object to the proposals following receipt of this additional information through the course of the application process. Considering the professional advice received from the Highway Authority the proposal is considered acceptable in terms of the highway works proposed.

Regarding associated matters strategic transport concerns have been discussed by Officers regarding the safety of users of the adjacent Public Right of Way running along the north west edge of the site, due to a subsequent drop in level created by the proposed retaining structure, together with concerns on future connectivity regarding promoting sustainable modes of travel. In regard to the safety issue it is considered reasonable to secure an appropriately formed barrier on top of, or adjacent to, the proposed crib wall that will run along the north west section abutting the Public Right of Way via a planning condition. An appropriately worded condition is proposed within the schedule of conditions at the end of this report. Regarding future connectivity this is principally a matter that is relevant to future detailed development proposals for the site. The applicant has been advised of the policy desire to promote sustainable forms

of transport and improve/provide good connectivity through development, including the masterplans indicative expectation of a foot/cycleway connection to the north west.

Considering the points above and having regard to guidance contained within the NPPF which 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 (Para 109), the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies DE1 and TA2 of The Local Plan, and guidance contained within the NPPF.

5. Ecology and Trees

Policy NC1 of The Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Policy C4 seek the retention of trees and other natural features. 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 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 (Para 170).

Regarding ecology matters the site is largely scrub grassland and occasional trees and in terms of notable policy context it is located within the Landscape Connectivity Zone associated with the Greater Horseshoe Bat (South Hams SAC). In terms of species and habitats it is concluded that there are no constraints that should impede the grant of planning permission in terms of ecology considerations. The site is not particularly sensitive in terms of protected species and there are several proposed planning conditions to duly manage and mitigate the impact of the works on reptiles, birds etc and to secure the proposed replacement planting. These conditions are listed in the schedule at the end of this report. The sensitivity of the site and impact of the development on the Greater Horseshoe Bat has been assessed and it has been concluded that the site is not particularly sensitive and there would be no Likely Significant Effect. Natural England have commented on the application and raise no objection.

Regarding biodiversity the loss of the existing habitat has been assessed and notwithstanding the tree planting adjacent to the south west border and the enhancement meadow/orchard within the south west corner, it has been concluded that there would be a net loss of 2.65 'habitat units' or a net loss of 28%. To mitigate this loss compensatory habitat would need to be provided/enhanced offsite and a planning condition is proposed to secure this in line with advice provided by the Council's ecology provider.

Regarding trees there is proposed removal of a handful of specimens along the south west boundary to facilitate the enabling works. The Council's Arboricultural Officer has reviewed the context and has recognised that the existing tree stock provides a landscape feature along the boundary with an appeal of its group effect in the

landscape. In this context the proposed replacement planting is considered acceptable and is deemed a robust design using native trees, which will provide a dense screen in the long term. It is recognised that there will be short to medium term loss of trees in the landscape, but this is considered an acceptable impact when considering the life expectancy of the current trees, which are not expected to be long-lasting. There is one element that is considered to require some further consideration, which is the incursion of the proposed wall into the Root Protection Area of an offsite Ash tree (OT1). The advice of the Council's Arboricultural Officer is that on the current information although the work is unlikely to structurally damage the tree the wall should be moved to respect the full Root Protection Area. This advice is subject to the receipt of further information on the health of the tree and its ecological value, which has been requested from the applicant. As matters stand the officer recommendation is that the scheme is amended unless further information on the health and likely impact on the tree is submitted that amends this professional advice.

Subject to resolution of the Root Protection Area of tree referenced OT1, having considered the submitted assessments, and subject to conditions to secure the tree planting, offsite mitigation, and broader ecology matters, as detailed within the schedule of conditions within this report, for the reasons stated above the proposals are in-line with the aspirations of Policies NC1 and C4 of The Local Plan, The Neighbourhood Plan, and advice contained within the NPPF

6. Flood Risk and Drainage

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

The proposed groundworks will largely retain the site as a natural permeable surface, with the principal surface change being the relatively moderate extension to the highway centrally within the site.

The application is supported by a site specific flood risk assessment that seeks to demonstrate that the development would not increase the risk of flooding and accord with policy advice contained within the Development Plan and the Environment Agency's Critical Drainage Area Advice Note for Torbay.

In terms of detail it is proposed that the surface water arising from the proposed highway will be managed via the local highway drainage network, discharged into this system at an attenuated rate equivalent to a greenfield run-off. As a point of note the existing highway drainage ultimately discharges into the nearby watercourse. The remainder of the site, which will remain unpaved, is to continue to discharge as per the existing situation re unmanaged natural infiltration. This presents a situation where the surface water disposal for the development plots will be confirmed when detailed proposals come forward for the sit, which is considered appropriate.

The Council's Drainage Engineer has considered the drainage proposals and, following the receipt of revised detail that overcomes certain issues on detail, the proposal is considered suitable for approval on drainage and flood risk grounds, in accordance with Policies ER1 and ER2 of the Torbay Local Plan and advice contained

within the NPPF. A planning condition is recommended to ensure that the proposed management for the highway run-off is secured and maintained for the life of the development.

7. Low Carbon Development, Climate Change and Waste Reduction

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy W1 (Waste hierarchy) of the Local Plan seeks that all development should seek to minimise the generation of waste, having regard to a waste hierarchy, which includes prevention, for example using less material in design and other measures to minimise waste generation.

The supporting information submitted with the application does not explore the issue of low carbon development or climate change in any great detail. The absence of detail on these aspirations does not appear to be integral to the broader merits of the proposal as it is accepted that the engineering operations have limited scope to deliver low carbon development or positively influence climate change, and it would be future detailed proposals for the site that would be duly scrutinised on these policy aspirations. Regarding waste reduction goals again the supporting detail is not overly expressive of the design considerations however, notwithstanding this, there appears a broadly substantiable emphasis to the scheme in terms of seeking to secure functioning commercial levels on a sloping site through a cut-and-fill process that limits the reliance on taking soil/waste offsite to potential landfill, which would be unsustainable in terms of transport needs and ultimately the creation of waste.

The development is, for the reasons above, considered suitable for approval, in accordance with Policy SS14 and W1 of the Torbay Local Plan, with further expected scrutiny of low carbon and energy proposals reserved for future proposals that may come forward over the land.

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

Job creation is a driver of economic growth and there would be economic benefits should the preparatory works help facilitate the delivery of commercial development on a site that has been long earmarked for such purposes. Aside this more immediately the preparatory works will provide economic benefits to the construction industry. 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 is whether it would help deliver job opportunities in the local area. Initially the construction phase will provide activity and employment opportunities and longer term the preparation of the site can only positively influence the attractiveness of the site for future development proposals, which would present the key benefit in term of employment opportunities for local residents. These short and longer terms benefits 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 ecology and biodiversity and drainage. These matters have been considered in detail within this report.

The environmental benefits are considered neutral, with the form of development and planning conditions principally aligned with mitigating environmental impacts that would naturally be linked to developing (or in this case preparing for development) greenfield sites. 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 when considered in the round.

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

CIL

Not Applicable.

S106

Not Applicable.

EIA/HRA

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

HRA: Due to the scale, nature and location this development is not considered to have a likely significant effect on European Sites.

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 promote economic growth would produce a positive impact overall and help with the delivery of detailed commercial proposals for a long-identified site.

Conclusions and Reasons for Decision

The proposal is considered acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and is acceptable in terms of access, ecology and flood risk matters.

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

Officer Recommendation

Approval: Subject to;

The resolution of the relationship of the southern crib wall and the Root Protection Area of tree OT1, to the satisfaction of officers;

The conditions as outlined below with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Emergency.

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

Hours of construction

Notwithstanding the submitted detail hours of operation throughout the construction phase shall be between 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and at no time on Sundays and Bank Holidays.

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

WSI (PC)

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 (2019), 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.

Structural details (PI)

Prior to commencement of works to build the proposed boundary 'crib' or other retaining walls details of the structural assessment and design of these structures shall be submitted to and approved in writing by the Local Planning Authority. The details shall be accompanied by evidence of a supporting geotechnical investigation and reporting by a qualified geotechnical consultant and the conclusions and recommendations arising from the same should be recognised and adopted within any proposed design. The development shall proceed in full accordance with the approved details.

Reason: To secure an appropriate and safe form for development and to protect highway safety and local amenity, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF.

Safety Barrier

Prior to the installation of the retaining structure along the north west boundary adjacent to the Public Right of Way details of a safe and suitable barrier to run along this retained boundary shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved detail and the approved barrier shall be provided within 8 weeks of the practical completion of the related retaining structure unless an alternative timetable has been agreed in writing with the Local Planning Authority

Reason: To secure adequate safety features are provided, in accordance with Policies DE1, DE3 and TA2 of the Torbay Local Plan 2012-2030

Construction Method Statement

The development shall proceed in full accordance with the submitted 'Construction Phase Information for the Engineering Works' (Document Reference 3467 – Orchard Way, Edginswell. Torquay), unless otherwise detailed in conditions pursuant to this notice.

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.

Tree Protection measures PC

Prior to the commencement of development a Tree Protection Plan and an Arboricultural Method Statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. The approved detail shall be adhered to throughout the construction phase of the development.

Reason: In order to ensure against harm to mature trees within the vicinity of the development either directly or to their rooting system, in accordance with Policy C4 of the Torbay Local Plan 2012-2030. These details are required prior to commencement to ensure protection measures are in place prior to potential harmful construction works commencing on site.

Highways Standards

Construction of the internal roads and footpaths within the internal layout shall be in accordance with the Torbay Highways Design Guide for new developments.

Reason: To ensure highway safety is not impaired, in accordance with Policies TA1, TA2 and DE1 of the Torbay Local Plan 2012-2030.

Ecology 1 - Lighting (PC)

Prior to the commencement of development a detailed Lighting Strategy shall be submitted to and agreed in writing by the Local Planning Authority. The Strategy shall seek to 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, and shall include details such as the following: artificial lighting associated with public realm lighting and internal and external lighting associated with any proposed buildings. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policy NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

Ecology 2 - In accordance with the EIA

Development shall commence and proceed in accordance with the actions set out in the Ecological Impact Assessment (GE Consulting, January 2021) and the Shadow Habitats Regulations Assessment (GE Consulting, March 2021).

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

Ecology 3 - CEMP (PC)

Prior to the commencement of development a Construction and Environmental Management Plan, which will include details of environmental protection throughout

the construction phase, shall be submitted to and approved in writing by the Local Planning Authority. The development shall proceed in full accordance with the approved details.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure important features and protected species are not unduly impacted.

Ecology 4 - LEMP

Within 6 calendar months of the commencement of development a Landscape and Ecological Management Plan, which shall include details relating to habitat creation, species specification and management, and timing of provision, shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be fully implemented.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9, DE1, C4 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

Ecology 5 - Habitat mitigation (PC)

Prior to the commencement of development, which shall include operations consisting of site clearance including clearance of vegetation, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the erection of a site office, the creation of a site compound and/or the creation of temporary means of access, a Compensatory Habitat Scheme appropriate to compensate for a Biodiversity Impact Assessment score of -2.65 Biodiversity Units shall have been submitted to and approved in writing by the Local Planning Authority. The compensatory habitat secured by the scheme will be functional within 12 months of commencement of development and be managed for a minimum of 30 years.

Reason: To secure an acceptable form of development in accordance with Policies SS8, SS9 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure that necessary mitigation is secured prior to operations.

Ecology 6 – Badgers (PC)

Prior to the commencement of development, including all forms of site preparation including scrub clearance, 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. The development shall proceed in full accordance with the approved detail.

Reason: To secure an acceptable form of development in accordance with Policies SS8 and NC1 of the Torbay Local Plan 2012-2030, Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF. This is required pre-commencement to ensure protected species are not unduly impacted.

Ecology 7 - Vegetation Clearance

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.

Reason: To ensure due protection is afforded wildlife, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and Policy TE5 of the Torquay Neighbourhood Plan and advice contained within the NPPF

Landscaping

The proposed landscaping shall be implemented in full within the first available planting season following substantive completion of the development hereby approved, unless otherwise submitted to and agreed in writing by the Local Planning Authority.

In the event of failure of any trees/plants, planted in accordance with the approved scheme, to become established and to prosper for a period of ten years from the date of planting (or following replacement), such trees/plants shall be replaced in the next planting season and maintained in accordance with an approved maintenance plan.

Reason: In the interests of visual amenity and in accordance with Policies DE1, SS8, SS9 and C4 of the Torbay Local Plan 2012-2030 and Policies TE5 and TH8 of the Torquay Neighbourhood Plan.

Drainage

The development shall proceed in full accordance with the submitted and approved Flood Risk Assessment and drainage plan. The drainage system shall then be maintained at all times thereafter to serve the development.

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

Informative(s)

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.

Relevant Policies

Development Plan Relevant Policies

- SS1 - Growth Strategy for a prosperous Torbay
- SS3 - Presumption in favour of sustainable dev
- SS8 - Natural Environment
- SS9 - Green Infrastructure
- SS10 - Conservation and the historic environment

TA1 - Transport and accessibility
TA2 - Development access
C4 - Trees, hedgerows and natural landscape
DE1 - Design
DE3 - Development Amenity
ER1 - Flood Risk
ER2 - Water Management
W1 - Waste management facilities
NC1 - Biodiversity and geodiversity

TS1 - Sustainable Development
TS4 - Support for Brownfield and Greenfield development
TH8 - Established architecture
TE5 - Protected species habitats and biodiversity

TORBAY COUNCIL

Application Site Address	Land At Quinta Playing Fields Quinta Road Torquay TQ1 3RN
Proposal	Installation of 10m high, emergency landing illumination beacon for Air Ambulance.
Application Number	P/2021/0560
Applicant	Mr Toby Russell – Devon Air Ambulance
Agent	Not applicable.
Date Application Valid	30/06/2021
Decision Due date	25/08/2021
Extension of Time Date	Not applicable.
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site is Quinta Playing Field. The proposed lighting column is located in the southern part of the site, by the sports pavilion, adjacent to a large, level open area of the playing fields which is the prime location for the proposed landing site. This site offers good access by air and good access to the local community. There is also parking at the site suitable for a land ambulance and/or other emergency services. The site forms part of the built up area, but is not otherwise subject to any designations within the Torbay Local Plan.

Description of Development

The proposal seeks permission for the installation of 10m high, emergency landing illumination beacon for Devon Air Ambulance.

Pre-Application Enquiry

None sought.

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 Adopted Torquay Neighbourhood Plan 2012-2030

Material Considerations

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

Relevant Planning History

No previous relevant planning history relating to the site.

Summary of Representations

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

Concerns raised include:

- Loss of light
- Not in keeping with local area

- Privacy/overlooking
- Impact on local area
- Noise

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No response received.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Flood Risk and Drainage

1. Principle of Development

The proposal is for the installation of 10m high, emergency landing illumination beacon for Devon Air Ambulance. To support night-time operations, Devon Air Ambulance is working with communities and organisations across Devon to develop a network of surveyed floodlit “community landing sites” that can be used during the ‘hours of darkness’ and over 167 of these sites have already been established. Using sites like this when it’s dark means Devon Air Ambulance can land in the heart of a community and reach patients more quickly and safely than if they had to land in a ‘dark field’. One of the most important components of these sites is the use of remotely controlled floodlighting: as well as making landing and take-off easier and safer, this lighting also helps paramedics and other emergency service personnel as they move on/off a site and as they assess and load a patient into the aircraft.

In the context of development within the built up area there are no Development Plan policies indicating that the proposal is not acceptable in principle. It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

2. Impact on Visual Character

Paragraph 126 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 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on

design'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Torquay Neighbourhood Plan states that development proposals must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

An objector has raised concerns that the proposal would have a negative impact on the local area and would not be in keeping with the local area. The lighting design of the proposal consists of a 10 metre painted steel column (hinged to enable lowering/raising for maintenance), 2 x 150 Watt LED Floodlights (dimensions 220mm H / 250mm D / 330mm W), 'T' shaped bracket for floodlights (700mm W), GSM switch (to remotely operate the lights), low voltage PVC armoured cable and assorted electrical fittings.

The layout and positioning of the lighting column has been carefully considered and has taken into account various factors: a) aviation safety - not creating glare for the aircrew when they approach to land under predominant wind conditions from the SW, b) practical / land use - not creating an inconvenient obstacle for those using / managing the playing fields, c) access - it is near to the main access point onto Quinta Road and d) visual - it is in an area located by the sports pavilion and near a storage shed and a hedge/fence which will help to create a backdrop. The column will be painted a green colour so that it will more easily blend into the surrounding environment, a planning condition is recommended to ensure that the column is RAL6009 Fir Green to blend in with the surrounding environment.

It is considered that the proposal is acceptable with regards to its impact on the character and appearance of locality. Subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy DE1 of the Local Plan, and Policy TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

3. Impact on Residential Amenity

Paragraph 130 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development should not unacceptably impact upon the amenities of neighbouring occupiers in terms of their outlook, privacy, or access to natural light.

An objector has raised concerns regarding residential amenity, in particular noise, loss of light and privacy/overlooking. It is important to note that the lights would only be used in the case of an emergency situation, when the Air Ambulance was required to land on the fields. These lights would be controlled by telephone and would be switched off as soon as they were no longer required. It is therefore unlikely that they

will be used regularly, and for prolonged periods of time. Impact on residential amenity through light disturbance would be minimal. The lighting poles are slim and set away from residential boundaries, as such there would be no loss of light to neighbours. The infrequent use of the site means that there would be no significant loss of privacy to neighbours.

In summary, given the separation distance between the site and residential properties and limited periods of operation, Officers do not consider that the proposal would have an unacceptable impact on the amenity of any nearby residents. A planning condition is recommended to ensure that the proposed development shall only be used for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

Subject to the aforementioned planning condition, the proposal is not considered to result in any serious detriment to amenities of neighbours by loss of privacy, outlook or access to natural light and therefore the proposed alterations are considered acceptable given the context. The proposal is considered to comply with Policy DE3 of the Local Plan.

4. Impact on Flood Risk and Drainage

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

The site is located within the Critical Drainage Area and the application has been accompanied by a flood risk assessment. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

Statement on Human Rights and Equalities Issues

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

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

relations between different people when carrying out their activities. Protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race/ethnicity, religion or belief (or lack of), sex and sexual orientation.

Local Finance Considerations

S106: Not applicable.

CIL: Not applicable.

EIA/HRA

ERA: 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: Not applicable.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development and it will provide significant public benefit. The proposal is in accordance with the Development Plan, including the Torquay Neighbourhood Plan. As such it is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and would provide acceptable arrangements in relation to flood risk. The proposed development is therefore considered acceptable, having regard to the Development Plan, and all other material considerations.

Officer Recommendation

That planning permission is granted, 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 for Planning, Housing and Climate Emergency.

Conditions

Materials

The lighting column of the development hereby approved shall be externally finished in RAL6009 Fir Green 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 Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan 2012-2030.

Usage

The development hereby approved shall be used only for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

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

Lighting Use

The light on the lighting column hereby approved shall only be switched on when needed to guide the landing or taking off of Air Ambulances and during activity at the site associated with the emergency situation. The light shall be switched off at all other times.

Reason: In the interest of amenity in accordance with Policy DE3 of the Torbay Local Plan 2012-2030

Informative(s)

1. 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.
2. You should note that certain wildlife habitats and species are subject to statutory protection under the Wildlife and Countryside Act 1981 (as amended) and/or the Habitats Regulations 1994. It is a criminal offence to breach the provisions of these legal constraints and if your development impacts upon such sites or species you are advised to take advice from a competent ecologist who has experience in the habitats/species involved and, as necessary, any relevant licenses from Natural England.

Relevant Policies

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

TH8 – Established Architecture

TORBAY COUNCIL

Application Site Address	Land At White Rock Playing Field Davies Avenue Paignton TQ4 7AW
Proposal	Installation of 10m high, emergency landing illumination beacon for Air Ambulance.
Application Number	P/2021/0564
Applicant	Mr Toby Russell – Devon Air Ambulance
Agent	Not applicable.
Date Application Valid	30/06/2021
Decision Due date	25/08/2021
Extension of Time Date	Not applicable.
Recommendation	Conditional approval subject to the conditions detailed below and delegated authority to Officers to resolve outstanding ecological matters. Final drafting of conditions and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site is White Rock Playing Field. The proposed lighting column is located in the south-western part of the site adjacent to a large, level open area of the middle of the western football pitch which is the prime location for the proposed landing site. The site offers good access by air and good access to the local community via Brixham Road and Davies Avenue. The site forms part of the built-up area but is not otherwise subject to any designations within the Torbay Local Plan. The site is located within the Sustenance Zone and Landscape Connectivity Zone of the South Hams Special Area of Conservation for Greater Horseshoe Bats.

Description of Development

The proposal seeks permission for the installation of 10m high, emergency landing illumination beacon for Devon Air Ambulance.

Pre-Application Enquiry

None sought.

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 Adopted Paignton Neighbourhood Plan 2012-2030

Material Considerations

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

Relevant Planning History

No previous relevant planning history relating to the site.

Summary of Representations

The application was publicised through site notice and neighbour notification letters. 2 letters of objection from 1 individual has been received.

Concerns raised include:

- Drainage

- Loss of light
- Overdevelopment
- Sets precedent
- Impact on local area
- Noise
- Traffic and access
- Trees and wildlife

Summary of Consultation Responses

Paignton Neighbourhood Forum:

No response received.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Ecology
5. Impact on Flood Risk and Drainage

1. Principle of Development

The proposal is for the installation of 10m high, emergency landing illumination beacon for Devon Air Ambulance. To support night-time operations, Devon Air Ambulance is working with communities and organisations across Devon to develop a network of surveyed floodlit “community landing sites” that can be used during the ‘hours of darkness’ and over 167 of these sites have already been established. Using sites like this when it’s dark means Devon Air Ambulance can land in the heart of a community and reach patients more quickly and safely than if they had to land in a ‘dark field’. One of the most important components of these sites is the use of remotely controlled floodlighting: as well as making landing and take-off easier and safer, this lighting also helps paramedics and other emergency service personnel as they move on/off a site and as they assess and load a patient into the aircraft.

In the context of development within the built-up area there are no Development Plan policies indicating that the proposal is not acceptable in principle. It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

2. Impact on Visual Character

Paragraph 126 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 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy PNP1(c) of the Paignton Neighbourhood Plan states that development proposals should where possible and appropriate to the scale and size of the proposal to be in keeping with the surroundings respecting scale, design, height, density, landscaping, use and colour of local materials.

An objector has raised concerns that the proposal would have a negative impact on the local area, would set a negative precedent and constitute overdevelopment. The lighting design of the proposal consists of a 10 metre painted steel column (hinged to enable lowering/raising for maintenance), 2 x 150 Watt LED Floodlights (dimensions 220mm H / 250mm D / 330mm W), 'T' shaped bracket for floodlights (700mm W), GSM switch (to remotely operate the lights), low voltage PVC armoured cable and assorted electrical fittings.

The layout and positioning of the lighting column has carefully considered and has taken into account various aspects: a) aviation safety - not creating glare for the aircrew when they approach to land under predominant wind conditions from the SW, b) practical / land use - not creating an inconvenient obstacle for those using / managing the football pitch, c) access - it is near to the main access point onto Brixham Road and d) visual- it is in an area with a trees/bushes and fence line which will help to create a backdrop. The column will be painted a green colour so that it will more easily blend into the surrounding environment, a planning condition is recommended to ensure that the column is RAL6009 Fir Green to blend in with the surrounding environment.

It is considered that the proposal is acceptable with regards to its impact on the character and appearance of locality. Subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy DE1 of the Local Plan, and Policy PNP1(c) of the Neighbourhood Plan, and the guidance contained in the NPPF.

3. Impact on Residential Amenity

Paragraph 130 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3

of the Local Plan states that development should not unacceptably impact upon the amenities of neighbouring occupiers in terms of their outlook, privacy, or access to natural light.

An objector has raised concerns regarding residential amenity, in particular noise and loss of light. It is important to note that the lights would only be used in the case of an emergency situation, when the Air Ambulance was required to land on the fields. These lights would be controlled by telephone and would be switched off as soon as they were no longer required. It is therefore unlikely that they will be used regularly, and for prolonged periods of time. Impact on residential amenity through light disturbance would be minimal. The lighting poles are slim and set away from residential boundaries, as such there would be no loss of light to neighbours. The infrequent use of the site means that there would be no significant loss of privacy to neighbours.

In summary, given the separation distance between the site and residential properties and limited periods of operation, Officers do not consider that the proposal would have an unacceptable impact on the amenity of any nearby residents. A planning condition is recommended to ensure that the proposed development shall only be used for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

Subject to the aforementioned planning condition, the proposal is not considered to result in any serious detriment to amenities of neighbours by loss of privacy, outlook or access to natural light and therefore the proposal is considered acceptable given the context. The proposal is considered to comply with Policy DE3 of the Local Plan.

4. Impact on Ecology

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

An objector has raised concerns regarding trees and wildlife. The site is within the Sustenance Zone and Landscape Connectivity Zone for the South Hams Special Area of Conservation for the Greater Horseshoe Bat. Devon County Council have been commissioned on behalf of Torbay Council to undertake a formal Habitat Regulations Assessment screening. An update will be given to Members at Planning Committee.

5. Impact on Flood Risk and Drainage

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. Policy PNP1(i) of the Paignton Neighbourhood Plan states that developments will be required to comply with all relevant drainage and flood risk policy.

The site is located within the Critical Drainage Area and the application has been accompanied by a flood risk assessment. An objector has raised concerns regarding drainage. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan and Policy PNP1(i) of the Neighbourhood Plan.

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106: Not applicable.

CIL: Not applicable.

EIA/HRA

ERA: 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: Update to be provided to Members at Planning Committee.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. Subject to the outcome of the formal Habitat Regulations Assessment screening, it is concluded that no significant adverse impacts will arise from this development and it will provide significant public benefit. The proposal is in accordance with the Development Plan, including the Paignton Neighbourhood Plan. As such it is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and would provide acceptable arrangements in relation to flood risk. Subject to the resolution of a formal screening, the proposed development is therefore considered acceptable, having regard to the Development Plan, and all other material considerations.

Officer Recommendation

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

Conditions

Materials

The lighting column of the development hereby approved shall be externally finished in RAL6009 Fir Green 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 Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan 2012-2030.

Usage

The development hereby approved shall be used only for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

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

Lighting Use

The light on the lighting column hereby approved shall only be switched on when needed to guide the landing or taking off of Air Ambulances and during activity at the site associated with the emergency situation. The light shall be switched off at all other times.

Reason: In the interest of amenity in accordance with Policy DE3 of the Torbay Local Plan 2012-2030

Informative(s)

1. 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.

2. You should note that certain wildlife habitats and species are subject to statutory protection under the Wildlife and Countryside Act 1981 (as amended) and/or the Habitats Regulations 1994. It is a criminal offence to breach the provisions of these legal constraints and if your development impacts upon such sites or species you are advised to take advice from a competent ecologist who has experience in the habitats/species involved and, as necessary, any relevant licenses from Natural England.

Relevant Policies

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

PNP1(c) – Design Principles

PNP1(i) – Surface Water

TORBAY COUNCIL

Application Site Address	Land At Barton Cricket Club Playing Field Barton Road Torquay TQ2 7NY
Proposal	Installation of 10m high, emergency landing illumination beacon for Air Ambulance.
Application Number	P/2021/0561
Applicant	Mr Toby Russell – Devon Air Ambulance
Agent	Not applicable.
Date Application Valid	30/06/2021
Decision Due date	25/08/2021
Extension of Time Date	Not applicable.
Recommendation	Conditional approval subject to the conditions detailed below. Final drafting of conditions and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Assistant Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee because it is on land owned by Torbay Council, is not a minor variation to an existing planning permission, and the application has received objections from neighbours, the Council's constitution requires that the application be referred to the Planning Committee for determination.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site is Barton Cricket Club Playing Field. The proposed lighting column is located along the western boundary of the cricket pitch adjacent to a large, level open area forming part of the cricket pitch outfield which is the prime location for the proposed landing site. This site offers good access by air and good access to the local community. There is also parking at the site suitable for a land ambulance and/or other emergency services. The site forms part of the built-up area but is not otherwise subject to any designations within the Torbay Local Plan.

Description of Development

The proposal seeks permission for the installation of 10m high, emergency landing illumination beacon for Devon Air Ambulance.

Pre-Application Enquiry

None sought.

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 Adopted Torquay Neighbourhood Plan 2012-2030

Material Considerations

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

Relevant Planning History

No previous relevant planning history relating to the site.

Summary of Representations

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

Concerns raised include:

- Light levels
- Privacy/overlooking

Comments include:

- It provides facilities

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No response received.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Impact on Visual Amenity
3. Impact on Residential Amenity
4. Impact on Flood Risk and Drainage

1. Principle of Development

The proposal is for the installation of 10m high, emergency landing illumination beacon for Air Ambulance. To support night-time operations, Devon Air Ambulance is working with communities and organisations across Devon to develop a network of surveyed floodlit “community landing sites” that can be used during the ‘hours of darkness’ and over 167 of these sites have already been established. Using sites like this when it’s dark means Devon Air Ambulance can land in the heart of a community and reach patients more quickly and safely than if they had to land in a ‘dark field’. One of the most important components of these sites is the use of remotely controlled floodlighting: as well as making landing and take-off easier and safer, this lighting also helps paramedics and other emergency service personnel as they move on/off a site and as they assess and load a patient into the aircraft.

In the context of development within the built-up area there are no Development Plan policies indicating that the proposal is not acceptable in principle. It is important to note that the point of general principle is subject to broader planning policy considerations and other relevant material considerations, which will be discussed in more detail below.

2. Impact on Visual Character

Paragraph 126 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 134 states that development that is not well designed should be refused,

especially where it fails to reflect local design policies and government guidance on design'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Torquay Neighbourhood Plan states that development proposals must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The lighting design of the proposal consists of a 10 metre painted steel column (hinged to enable lowering/raising for maintenance), 2 x 150 Watt LED Floodlights (dimensions 220mm H / 250mm D / 330mm W), 'T' shaped bracket for floodlights (700mm W), GSM switch (to remotely operate the lights), low voltage PVC armoured cable and assorted electrical fittings.

The layout and positioning of the lighting column has been carefully considered and has taken into account various factors: a) aviation safety - not creating glare for the aircrew when they approach to land under predominant wind conditions from the SW, b) practical / land use - not creating an inconvenient obstacle for those using / managing the cricket pitch, c) access - it is near to the main access point onto Barton Road and from that Cricketfield Road and d) visual - it is by a hedge with taller trees which will help to create a backdrop. The column will be painted a green colour so that it will more easily blend into the surrounding environment, a planning condition is recommended to ensure that the column is RAL6009 Fir Green to blend in with the surrounding environment.

It is considered that the proposal is acceptable with regards to its impact on the character and appearance of locality. Subject to the aforementioned planning condition, the proposal is considered to be in accordance with Policy DE1 of the Local Plan, and Policy TH8 of the Neighbourhood Plan, and the guidance contained in the NPPF.

3. Impact on Residential Amenity

Paragraph 130 of the NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users. Policy DE3 of the Local Plan states that development should not unacceptably impact upon the amenities of neighbouring occupiers in terms of their outlook, privacy, or access to natural light.

A letter of representation has raised concerns regarding residential amenity, in particular light levels and privacy/overlooking. It is important to note that the lights would only be used in the case of an emergency situation, when the Air Ambulance was required to land on the fields. These lights would be controlled by telephone and would be switched off as soon as they were no longer required. It is therefore unlikely that they will be used regularly, and for prolonged periods of time.

Given the separation distance between the site and residential properties and limited periods of operation Officers do not consider that the proposal would have an unacceptable impact on the amenity of any nearby residents. A planning condition is recommended to ensure that the proposed development shall only be used for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

Subject to the aforementioned planning condition, the proposal is not considered to result in any serious detriment to amenities of neighbours by loss of privacy, outlook or access to natural light and therefore the proposed alterations are considered acceptable given the context. The proposal is considered to comply with Policy DE3 of the Local Plan.

4. Impact on Flood Risk and Drainage

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

The site is located within the Critical Drainage Area and the application has been accompanied by a flood risk assessment. As the proposed development would not result in an increase in the impermeable area on the site, the proposal is deemed acceptable in terms of its impact on surface water flooding. Given the nature of the proposal, the proposal is therefore considered to be in accordance with Policy ER1 of the Local Plan.

Statement on Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106: Not applicable.

CIL: Not applicable.

EIA/HRA

ERA: 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: Not applicable.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development and the scheme will provide significant public benefit. As such it is in accordance with the Development Plan, including the Torquay Neighbourhood Plan. It is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area, or local amenity; and would provide acceptable arrangements in relation to flood risk. The proposed development is therefore considered acceptable, having regard to the Development Plan, and all other material considerations.

Officer Recommendation

That planning permission is granted, 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 for Planning, Housing and Climate Emergency.

Conditions

Materials

The column of the development hereby approved shall be externally finished in RAL6009 Fir Green 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 Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan 2012-2030.

Usage

The development hereby approved shall be used only for operations by the Devon Air Ambulance and other emergency services and for no other purposes.

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

Lighting Use

The light on the lighting column hereby approved shall only be switched on when needed to guide the landing or taking off of Air Ambulances and during activity at the site associated with the emergency situation. The light shall be switched off at all other times.

Reason: In the interest of amenity in accordance with Policy DE3 of the Torbay Local Plan 2012-2030

Informative(s)

1. 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.
2. You should note that certain wildlife habitats and species are subject to statutory protection under the Wildlife and Countryside Act 1981 (as amended) and/or the Habitats Regulations 1994. It is a criminal offence to breach the provisions of these legal constraints and if your development impacts upon such sites or species you are advised to take advice from a competent ecologist who has experience in the habitats/species involved and, as necessary, any relevant licenses from Natural England.

Relevant Policies

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

TH8 – Established Architecture