

Friday, 24 January 2025

PLANNING COMMITTEE

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

Monday, 3 February 2025

commencing at **5.30 pm**

The meeting will be held in the Banking Hall, Castle Circus entrance on the left corner of the Town Hall, Castle Circus, Torquay, TQ1 3DR

Members of the Committee

Councillor Brook (Chairman)

Councillor Billings (Vice-Chair)

Councillor Mandy Darling

Councillor Fox

Councillor Pentney

Councillor Strang

Councillor Tolchard

Councillor Virdee

A Healthy, Happy and Prosperous Torbay

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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 9 December 2024.

(Pages 5 - 12)

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. **Land Off St Mary's Road, Brixham (P/2023/0553)**

Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.

(Pages 13 - 98)

6. **Land Off Pilgrim Close, Brixham (P/2024/0562)**

Outline application for the erection up to 20 dwellings, together with associated infrastructure, landscaping and access works (all matters reserved apart from access).

(Pages 99 - 156)

7. **Thurlow House, 35 Thurlow Road, Torquay (P/2024/0429)** (Pages 157 - 204)
Remodelling of existing building including demolition of existing extensions, increase in ridge height, proposed extensions and alterations to allow for change from office use to residential and formation of 7no. apartments. Construction of new 'coach house' building within the ground to provide 4no. apartments. Associated external works including parking and landscaped grounds.
8. **Brixham Bowling Club, Nelson Road, Brixham (P/2024/0665)** (Pages 205 - 216)
Alterations to create disabled access including ramp and new entrance door.
9. **Appeals Monitoring Report** (Pages 217 - 226)
To note the report and Appendix 1 which includes the planning appeal decisions issued between 1 October 2024 and 23 January 2025.

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.

We are using hybrid meeting arrangements to give registered speakers the opportunity to either attend the meeting in person to give their views or to attend the meeting remotely via Zoom. If you would like to attend the meeting remotely to speak you will be provided with a Zoom link to join the meeting. We also ask that you provide a copy of your speech to governance.support@torbay.gov.uk, before 11 am on the day of the meeting, so that the Clerk will be able to continue to read out your speech if you lose connection or cannot be heard in the physical meeting. Remote attendees who lose connection may still be able to follow the meeting via the live stream on the Council's YouTube channel.

Councillors who are not members of the Planning Committee will also be able to join the meeting via Zoom and must use their raise hand function to declare any interests.

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, 29 January 2025. Site visits will then take place prior to the meeting of the Committee at a time to be notified.

Live Streaming

To encourage more people to engage in our public meetings the Council is trialling streaming our Planning Committee meetings on our YouTube channel in addition to recording the meetings and publishing the recording on our website. To watch the meeting live please visit <https://www.youtube.com/user/torbaycouncil>.

We are also using hybrid meeting arrangements to enable registered speakers to either attend the meeting in person or to attend the meeting remotely via Zoom. **Anyone attending the meeting remotely must register their intention to do so by 11 am on the day of the meeting and provide a copy of their speech to governance.support@torbay.gov.uk by this deadline.** If anyone attending the meeting remotely loses connection the meeting will continue and their speech will be read out by the Clerk and they will have the option to follow the meeting via the YouTube live stream.

Minutes of the Planning Committee

9 December 2024

-: Present :-

Councillor Brook (Chairman)

Councillors Billings (Vice-Chair), Bye, Carter, Mandy Darling, Fox, Pentney and Tolchard

(Also in attendance: Councillor Long)

71. Apologies for absence

It was reported that, in accordance with the wishes of the Conservative Group and the Liberal Democrat Group, the membership of the Committee had been amended to include Councillors Bye and Carter in place of Councillors Strang and Virdee respectively.

72. Minutes

The minutes of the meeting of the Planning Committee held on 11 November 2024 were confirmed as a correct record and signed by the Chairman.

73. 26 Cliff Road, Paignton, TQ4 6DH (P/2024/0645)

The Committee considered an application for the change of use to two flats and one maisonette for use as supported accommodation by the YMCA with replacement doors.

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 Mark Agar addressed the Committee against the application. Si Johns addressed the Committee in support of the application.

In accordance with Standing Order B4.1 Councillor Long addressed the Committee in support of the application.

At the meeting the Planning Officer advised, that since the report had been published one additional letter of support and five letters of objection had been received. The letter of support was written by the Applicant and provides commentary on the letters of representation received as part of the consultation period and seeks to highlight some of the benefits as a result of the proposal. The matters raised in the further letters of objection, respond to the comments of the Applicant and policing of the area.

Resolved:

Approved; subject to:

- 1) The conditions as outlined in the committee report with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;
- 2) Legal agreement/undertaking to secure a Berry Head ecological mitigation payment of £405;
- 3) The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations;

and an additional condition to secure the following:

- 4) That permitted development rights for the erection of boundary treatments (gates, fences, walls etc) be removed.

74. 44 Fore Street, Torquay, TQ1 4LY (P/2024/0432)

The Committee considered an application for the extension and reconfiguration of mixed-use residential-commercial building to six apartments. Existing commercial space to be retained.

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 Alan Griffey addressed the Committee against the application. Rodney Horder addressed the Committee on behalf of the Torquay Neighbourhood Forum against the application. Chris Kenney and Ian Handford addressed the Committee in support of the application.

Following discussion of the application the Council's solicitor advised that an issue had arisen just prior to the committee meeting. He reported that it appeared that the Council owned part of the area of land at the rear of the property and that an incorrect ownership certificate had been submitted with the application. He advised that were the committee minded to approve the application this should be subject to the Assistant Director being satisfied that no-one is prejudiced by the submission of an incorrect ownership certificate. He advised that this would involve consultation with the relevant Council departments to consider the implications of the development.

Resolved:

That the application be approved subject to the Assistant Director of Planning, Housing and Climate Emergency being satisfied that no one is prejudiced by the submission of the incorrect ownership certificate.

The decision is subject to the following draft conditions;

Pre-commencement conditions**Archaeology**

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 Adopted Torbay Local Plan 2012 - 2030 and paragraph 199 of the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development

Construction Management Plan

No development shall take place until a site specific Construction Management Plan has been submitted to and been approved in writing by the Council. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, & dust. The plan should include, but not be limited to:

- Procedures for maintaining good neighbour relations including complaint management.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following 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.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Control measures for dust and other air-borne pollutants.

Reason: In the interests of the amenities of surrounding occupiers during the construction of the development in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

Construction Traffic Management Plan

Prior to Commencement of the hereby permitted development, a Construction Management Plan must be submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Management Plan shall include details of:

- a. Construction vehicle numbers, type, routing;
- b. Access arrangements to the site;
- c. Traffic management requirements
- d. Construction and storage compounds (including areas designated for car parking, loading / unloading and turning areas);
- e. Siting and details of wheel washing facilities;
- f. Cleaning of site entrances, site tracks and the adjacent public highway;

- g. Timing of construction activities (including delivery times and removal of waste) and to avoid school pick up/drop off times;
- h. Provision of sufficient on-site parking prior to commencement of construction activities;
- i. Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
- j. where works cannot be contained wholly within the site a plan should be submitted showing the site layout on the highway including extent of hoarding, pedestrian routes and remaining road width for vehicle movements.

Reason: In order to protect highway safety and the amenity of other users of the public highway and rights of way in accordance with Policies TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030.

Ecology

No development shall take place until a full mitigation license application has been made to and approved by Natural England in respect of the proposal to install the bat night roost shown the approved layout drawing no. 12001 revision P5. No works shall commence within no. 44 Fore Street until this bat roost has been provided. Any timber treatment used must be on the approved list provided by Natural England in their Technical Information Note TIN092 - Bat Roosts and Timber Treatment Products. Once provided the bat roost shall be retained in perpetuity.

Reason: In order to provide an alternative night roost for the Lesser Horseshoe Bat currently using no. 44 Fore Street for this purpose in line with the recommendations set out in the approved Bat Ecological Impact Assessment dated September 2024 in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

Roofing materials

Prior to the installation of any roof covering a sample of the natural slate roofing material proposed shall be submitted and approved in writing by the Local Planning Authority. The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

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

Joinery

Notwithstanding the approved plans and details, prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority:

- Broken sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: In the interest of visual amenity and in accordance with Policies DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy Th8 of the Torquay Neighbourhood Plan.

Conditions prior to occupation

Materials

Prior to the first occupation of the flats hereby approved the extensions to the building, bin store and bat roost hereby approved shall be clad in the materials identified on the approved elevation drawing no. 32000 Revision P7 and shall be retained as such for the life of the development, excepting that all new approved windows and doors shall be timber framed and, once installed, shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policies DE1, SS10 and HE1 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

Obscure glazing

Prior to the first occupation of the flats hereby approved the bathroom windows to be created on the first floor within Apartments 1.1 and 1.2; on the second floor within Apartments 2.1 and 2.2 and on the third floor within Apartment 3.1 shall be glazed in obscure glass and shall be non-opening below a height of 1.7 metres measured from the internal finished floor level. The windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.

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

Privacy screens

Prior to the approved balconies for approved Apartments 1.1 or 2.1 being brought into use, 1.7m high obscure glazed privacy screens (to a minimum of Pilkington Level 4 or similar standard) shall be erected on the south east side of each balcony, in accordance with the approved details, and shall thereafter be permanently retained indefinitely.

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

Parking

The new flats hereby approved shall not be occupied until the parking areas shown on the approved site layout drawing no. 12001 revision P5 have been provided. One of these spaces shall be permanently allocated to third floor Apartment 3.1 and the other space shall be permanently allocated to second floor Apartment 2.2. Once provided these parking spaces shall be retained in perpetuity.

Reason: In the interest of amenity for future occupiers and neighbour amenity in accordance with Policies DE3 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan.

Bike store

The new flats hereby approved shall not be occupied until the bike store shown on the approved internal layout drawing no. 22000 revision P6 has been provided. Once provided the bike store shall be retained in perpetuity.

Reason: In the interest of amenity for future occupiers and neighbour amenity in accordance with Policies DE3 and TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan.

Bin store

The new flats hereby approved shall not be occupied until the bin store shown on the approved internal layout drawing no. 12001 revision P5 has been provided. Once provided the bin store shall be retained in perpetuity.

Reason: In the interest of amenity for future occupiers and neighbour amenity in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan.

Drainage

The new flats hereby approved shall not be occupied until surface water drainage arrangements at the site have been constructed in accordance with the approved Flood Risk assessment incorporating Drainage Strategy dated 13/05/24. Once installed these drainage arrangements shall be retained in perpetuity.

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

Trees

Prior to the first occupation of the flats hereby approved the existing Sycamore trees shown on the approved layout drawing no. 12001 revision P5 shall be removed and replaced with two *ornamental Pear (Pyrus calleryana 'Chanticleer')* nursery stock trees 6 - 8cm in girth in the first planting season following the completion of the development and before any of the flats hereby approved are occupied. If either of these trees die, are removed or become seriously damaged or diseased within a period of five years from the date of the development being completed, they shall be replaced during the next planting season with others of a similar size and the same species

Reason: In the interest of arboriculture and the amenity of future occupiers and neighbours in accordance with Policies De1, DE3 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan.

Vehicle crossover

Prior to the first use of the approved vehicle access to St Dominic's Close hereby approved, a drain shall be installed across the access as widened to prevent rainwater from crossing the pavement and entering the highway. Once installed the drain shall be permanently retained.

Reason: in order to accord with saved Policies TA2 of the Torbay Local Plan 2012-2030.

Compliance conditions**Ecology**

The development shall be carried in strict accordance with the recommendations set out in the approved Bat Ecological Impact Assessment dated September 2024. This shall include the installation of the enhancement measure set out at section 8. of the report on page 31; namely the installation of three adjacent bat tubes, at least on bird nesting box, two bee bricks and planting for pollinators. Once installed these features shall be retained in perpetuity.

Reason: To prevent harm to protected species in accordance with policy NC1 of the Torbay Local Plan 2012-2030.

Lighting

All lighting used at the site must conform with Guidance Note 08/23 Bats and Artificial Lighting in the UK, Bats and the built environment series, Bat Conservation Trust (London) & Institution of Lighting Professionals (Rugby 2023) and the recommendations in the approved approved Bat Ecological Impact Assessment dated September 2024 on pages 29 and 30. No lighting whatsoever will be pointed at the LHS night roost, bat tubes or bird nest boxes.

Reason: To prevent harm to protected species in accordance with policy NC1 of the Torbay Local Plan 2012-2030.

Permitted development rights

Each flat within the development hereby permitted shall be occupied only by persons living as part of a single household (Class C3 of the Use Classes Order 1987). Notwithstanding the provisions of the Town and Country Planning (General Permitted Development Order) (England) 2015 (as amended) no part of the dwelling shall be used as a Class C4 House of Multiple Occupation (HMO).

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

Limestone rear boundary wall

For the avoidance of doubt, the existing limestone boundary wall at the end of the back garden to no. 44 shall be retained in its current position throughout construction of the development as shown on the approved internal layout drawing no. 22000 revision P6. Should in the event that the rear boundary wall is required to be built below ground level, the material used shall match the existing stone used within the limestone boundary wall. Should compliance with the condition be unachievable the design of any retaining wall shall be submitted to the Local Planning Authority prior to the commencement of any works.

Reason: In the interests of heritage in accordance with Policies SS10 and HE1 of the Torbay Local Plan 2012-2030.

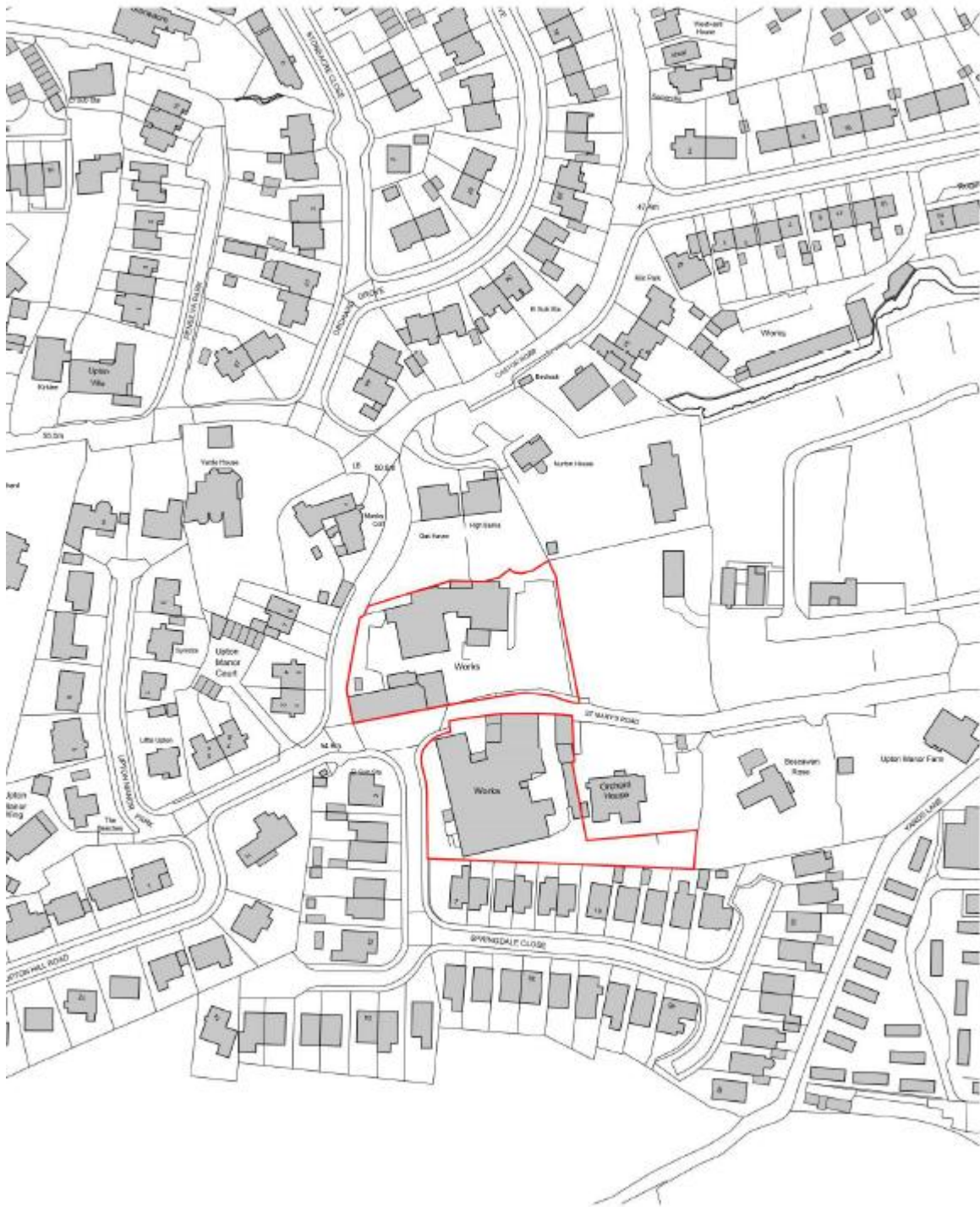
Chairman/woman

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TORBAY COUNCIL

Application Site Address	Land Off St Mary's Road Brixham TQ5 9NH
Proposal	Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.
Application Number	P/2023/0553
Applicant	Westcountry Land Enterprises (South West) Ltd
Agent	Mr R Dodge
Date Application Valid	05/07/2023
Decision Due date	04/10/2023
Extension of Time Date	18/10/2024
Recommendation	<p>Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.</p> <p>If Members of Planning Committee are minded to approve the application against officer recommendation, final drafting of the planning condition(s) will be delegated to the Divisional Director of Planning, Housing and Climate Emergency and in consultation with the chairperson.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site, land off St Mary's Road, comprises of two parcels of land that contain several buildings to the northern and southern flanks of St Mary's Road, Brixham. The site comprises a site area of 0.54ha.

The northern buildings ("St Marys Industrial Estate") are located within the South Devon National Landscape, while the buildings ("Old Dairy") to the south abut the South Devon National Landscape. The Levelling Up and Regeneration Act gained Royal Assent in October 2023, this has renamed the Areas of Outstanding Natural Beauty as National Landscapes.

The site is allocated in the Brixham Peninsula Neighbourhood Plan as a housing site for 25 units (St. Mary's/Old Dairy, Policy H11 of the Neighbourhood Plan). The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustenance Zone for such. The application site lies within a curlew bunting consultation zone. The site is designated as Flood Zone 1. There is a group Tree Preservation Order (1999.015 G1) north of the application site.

The northern parcel of land is bounded by:

- To the north: Residential development that falls within the South Devon National Landscape.
- To the east: Open countryside located within the South Devon National Landscape.
- To the south: St Mary's Road which is an adopted public highway and beyond is the southern parcel of the application site.
- To the west: St Mary's Road which is an adopted public highway and beyond is residential development.

The southern parcel of land is bounded by:

- To the north: St Mary's Road which is an adopted public highway and beyond is the northern parcel of the application site.
- To the east: Orchard House which is a detached private residential dwelling and other large, detached dwellings beyond and South Bay Holiday Park. The South Bay Holiday Park falls within the South Devon National Landscape.
- To the south: Springdale Close a residential close which contains a number of dwellings, beyond is open countryside.
- To the west: Springdale Close is an adopted public highway directly abutting the application site and beyond is residential development.

Despite nearby development, the character of the site cannot be fully appreciated from a top-down map and the existing historic traditional stone buildings serve a gateway function into the much more rural area designated a National Landscape.

Note: For the purposes of this report the term National Landscape and Area of Outstanding Natural Beauty (AONB) are both used and should be considered interchangeable. This reflects policies as written, retained wording towards AONBs within the Development Plan, and comments made prior to the renaming of AONBs as National Landscapes that occurred during the period of this application.

Description of Development

The proposal seeks permission for the demolition of the existing industrial buildings onsite and the erection of 28no. residential dwellings (22no. open market and 6no. affordable) together with access, landscaping and associated works on land to the north and south of St Mary's Road.

The proposed 28no. residential units would include the following mix:

Affordable housing:

- 2no. x 1-bed apartments; and
- 4no. x 2-bed apartments.

Open market housing:

- 10no. x 2-bed apartments;
- 1no. x 3-bed apartment;
- 7no. x 3-bed dwellinghouses (terraced, semi-detached); and
- 4no. x 4-bed dwellinghouses (end-of-terrace, semi-detached and detached).

The northern parcel of the application site is proposed to be occupied by 13no. residential units, which are in the form of flatted, detached, semi-detached and terraced development. The vehicular access would be from the northern side of St Mary's Road and 20no. allocated parking spaces are proposed (1no. per apartment, 2no. per dwellinghouse and 1no. visitor space).

The southern parcel of the application site is proposed to be occupied by 15no. residential units, which are flatted, semi-detached or terraced development. The vehicular access would be from the southern side of St Mary's Road and 24no. allocated parking spaces are proposed (1no. per apartment, 2no. per dwellinghouse, 4no. visitor spaces), 6no. of which are included within integral garages and 8no. of which are undercroft.

Across the proposed development, the residential units vary in two to three storeys in height. The proposed design incorporates a variety of gabled and hipped roofscapes. The proposed material palette includes natural stone, vertical timber cladding, standing seam metal cladding, and natural slate roofs. As well as metal fenestrations, balconies, and rainwater goods.

Relevant Planning History

Application site formed part of a wider planning applications:

P/2021/0890: Construction of 130 residential dwellings with access roads, infrastructure and public open space in outline, the proposal includes the demolition of existing buildings on the site. This application is accompanied by an Environmental Statement. The application is a departure from the Local Plan. Refused 30/06/2022 for the following reasons:

1. This proposal for major development would have a significant detrimental impact on the landscape character and scenic beauty of this part of the South Devon AONB that is not mitigated by exceptional circumstances in the public interest. The proposal is therefore contrary to Policies SS8, C1, SDB1, SDB3 and DE1 of the

Torbay Local Plan, 2015 and Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and the National Planning Policy Framework, 2021 in particular paragraphs 176 and 177.

2. The site contains distinctive landscape features and characteristics, some of which would be permanently lost or degraded and the adverse landscape effects are considered to be significant and adverse and irreversible. The LVIA does not fully consider effects of the proposals on the special qualities and valued features of the AONB and its conclusions therefore cannot be relied upon. As such the proposed development is contrary to C1, SS8 of the Torbay Local Plan, 2015 and Policies E1, E6 & E7 of the Brixham Peninsular Neighbourhood Plan and para 174 of the National Planning Policy Framework, 2021.
3. The layout does not enable refuse vehicles safe or acceptable access and egress to and within the site. There is no gateway or street barrier at the connection between the footway behind the hedge bank (to the east of the main access) and St Mary's Road. In addition insufficient information has been submitted to confirm that the proposal would not have an impact on highways safety for all road users including cyclists and pedestrians (in particular the RSA identifies concerns in relation to pedestrian access and visibility splays within the wider highway network which have not been addressed) nor as to whether the proposal would provide internal roads which would be to the level of quality suitable for the Local Highways Department to adopt, or for the residential units to be served by refuse vehicles. As such the proposal is considered to be contrary to Policy TA2 of the Torbay Local Plan, 2015, Policy BH8 of the Brixham Peninsular Neighbourhood Plan and guidance within the NPPF in particular paragraphs 8, 130,104, and 110.
4. The lack of safe pedestrian access to local facilities and services is likely to result in a development over-reliant on the private car. The development will result in adverse environmental and social impacts, it fails to provide quality housing in a sustainable location, it is not well connected and accessible and does not include safe walking and cycling access. The number of dwellings in this location represent an overdevelopment of the site and the undersized gardens will inevitably result in increased footfall and pressure to the AONB and wider Special Area of Conservation. The development therefore does not accord with the development plan when considered as a whole and material considerations do not indicate that a decision should be made counter to the development plan. This conclusion is made in accordance with guidance contained within the NPPF, notably Paras. 11, 12 and 14. As such it is considered that the development presents a clear level of conflict with Policies SS1 and SS11 of the Torbay Local Plan ,2015 and Policy T1 of the Brixham Peninsular Neighbourhood Plan.
5. The number of dwellings in this location represents an overdevelopment of the site. The increase in scale to the north and south of St. Mary's Road here is not considered to be a sensitive addition to the character and appearance of the area. The layout is substantially dominated by the road network with proportions of parking located to the front of dwellings emphasising the urban character of the development contrary to Policies C1, SDB1, SDB3, DE1 and DE3 of the Torbay Local Plan, Policies E1 & E2 of the Brixham Peninsula Neighbourhood Plan and

contrary to the National Planning Policy Framework, 2021, in particular paragraphs 130 and 176.

6. Insufficient arboricultural information has been submitted to confirm that the proposal would not have a significant impact on the current trees on site and those potentially impacted by the development off site which contribute to the surrounding street scene character. As such the proposed development is contrary to Policy C4 of the Torbay Local Plan, 2015 and the National Planning Policy Framework, 2021 in particular paragraph 131.
7. The proposal, in the absence of a signed S106 Legal Agreement, fails to secure the necessary provision of sustainable development, Public Open Space, Sport and Recreation, ecological mitigation, Education. Lifelong Learning Obligations, waste disposal and health contributions, provision and maintenance of the public open space, play areas, public access routes and allotments, and affordable housing, contrary to Policy H2 of the Torbay Local Plan 2012-2030 and the adopted Planning Contribution and Affordable Housing SPD.
8. In the absence of sufficient ecology assessment information, it has not been possible for the Council to undertake the necessary appropriate assessment exercise in accordance with the Habitats Regulations, and therefore to conclude whether or not the proposal would have acceptable effects in relation to ecology. As such, the proposal is considered to be contrary to Policy NC1 of the Torbay Local Plan, and the guidance contained in the National Planning Policy Framework.
9. The proposed development results in the loss of employment and loss of a tourism facility on a site where it has not been demonstrated that it is not viable to continue in tourism use. As such it is contrary to Policies TO1 & TO2 of the Torbay Local Plan 2015-2030 and Policy TO1 of the Brixham Peninsula Neighbourhood Plan.

P/1989/0566: Change Of Use Of Existing Camp Site To Static Caravan Site. Refused 11/05/1989.

Appeal relating to P/1988/1135 and P/1988/2393 was dismissed 11/12/1989.

P/1988/2392: Change Of Use Of Existing Camp Site To Touring Caravan Site. Refused 23/01/1989.

P/1988/1135: Erection Of 150 Dwellings (In Outline). Refused 15/08/1988.

Application site formed part of a wider area involved in a pre-application enquiry:

Pre-application enquiry - DE/2019/0049: Formation of 145 dwellings. Summary: Development within the BPNP allocation is suitable in principle, however it is considered that the layout for this area would need to be revised to consider its visual impact and be a landscape led scheme. The principle of development beyond the BPNP allocation is not considered to be acceptable based on the information provided. If an application is to be submitted that it would need to be supported by suitable levels of ecological and landscape impact surveys.

No pre-application enquiry was submitted for this proposal.

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"); and
- The Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan").

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024
- Published Standing Advice; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Summary of Representations

The application was publicised through a site notice, newspaper advert and neighbour notification letters and has been re-advertised. At the time of writing approximately 45 letters of objection (2 letters of objection have been made from the same household, 3 letters of representation and 1 letter of support have been received.

Note: Full responses are available to view on the public access system (<https://publicaccess.torbay.gov.uk/view/>).

The following provides a summary of the main issues identified:

Objections include:

- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Privacy/overlooking
- Drainage
- Traffic and access
- Impact on infrastructure, services and welfare facilities
- Noise
- Sets a precedent
- Trees and wildlife
- Impact on the Area of Outstanding Natural Beauty/National Landscape
- Construction impacts

- Pedestrian permeability and accessibility
- Air pollution
- Impact on climate change
- Loss of traditional stone buildings
- Impact on historic landscape
- Height of development
- It's shown in the Local Plan
- Lack of affordable housing
- Quantum of development
- Marine pollution
- Residential amenity
- Loss of employment uses
- Loss of light
- Housing mix
- Sewage

Comments in support include:

- It removes an eyesore
- It provides houses

Summary of Consultation Responses

Note: Full responses are available to view on the Council's public access system (<https://publicaccess.torbay.gov.uk/view/>).

Brixham Town Council:

Updated response not dated

No objection.

Response not dated

Objection. Brixham Town Council considers the number of dwellings in this location represents overdevelopment of the site.

National Health Service Devon:

Response dated 23/08/2023

Introduction:

This document provides a summary of the impacts of new housing developments on the primary care's capacity to provide health services, as well as a calculation of the contribution sought to mitigate the impact of the development on the local primary care infrastructure. It explains:

- The role and responsibility of Integrated Care Boards (ICBs) and Health and Wellbeing Boards;

- How GP facilities are funded;
- The planning policy context and decision-making process;
- The Impact created by the proposed development and;
- How the impact on the capacity to provide primary healthcare services can be mitigated by way of developer contribution and Community Infrastructure Levy (CIL) compliance

Integrated Care Board (ICB):

The ICB plans and commissions health care services from providers and has delegated responsibility for commissioning primary health care services. ICBs exist to maintain and improve the health of their registered population and are, therefore, concerned with preventing as well as treating ill-health.

Integrated Care Partnership (ICP):

The Local Authority together with the ICB, have an obligation to prepare joint strategic needs assessments. These strategies then inform joint health and wellbeing strategies to meet the assessed needs¹. Both the needs assessments and wellbeing strategies **must** then be taken into account when an ICB and the responsible Local Authority exercise **any** of their functions.²

1 s. 116A of the 2007 Act and the Health and Social Care Act 2012

2 S116B of the Health and Care Act 2022

Commissioning Health Care Services/Facilities Through NHS Funding

In a given year, central government through the Comprehensive Spending Review process sets the level of NHS funding. The process estimates how much funding the NHS will receive from central sources. The NHS receives about 80% of the health budget, which is allocated in England to NHS England/Improvement (NHSE/I), the governing body of the NHS in England. In turn, NHSE/I allocate funds to Integrated Care Boards (ICBs) which are clinically-led, statutory NHS bodies.

NHS-funded primary care services are delivered by independent contractors, usually GP partnerships, through General Medical Services (GMS), Alternative Provider of Medical Services (APMS) or Personal Medical Services (PMS) Contracts. GMS and PMS contracts are in perpetuity whereas APMS are a fixed-term, generally 5-10 years.

General Practices are funded using a weighted capitation formula based on existing registered patients which is updated quarterly in arrears. In addition, practices get income from achieving quality indicators as part of the Quality Outcomes Framework (QOF) and participating in nationally commissioned Direct Enhanced Services (DES) and ICB commissioned Locally Commissioned Services (LCS).

The projected ICB allocations by NHS England makes an allowance for growth in the number of people registered with GP practices. This population growth is based on mid-year estimates from the ONS age-sex specific population projections. Local housing projections, local housing land supply or existing planning permissions are not taken into consideration. The population projections only consider natural trends based upon births, deaths and natural migration and make a number of assumptions about future levels of fertility; mortality and migration based previously observed levels. The funding for ICB is reactive and the funding received from the Central

Government is limited. In the case of patient movement, the funding does not follow the patient in any given year.

Infrastructure Facilities Funding:

NHS England does not routinely allocate any additional funding to the ICB in the form of capital or revenue towards infrastructure projects to cater for the impact from new residential developments.

Within the service contracts between the ICB and GP practices, practices are required to provide premises which are suitable for the delivery of primary care services and meet the reasonable needs of patients within their catchment area.

The Regulations governing GP contracts require ICBs to reimburse the practices for their premises through rents payable for lease property or pay a “notional rent” (a market rent assessed by the District Valuer on the assumption of a “notional” 15-year lease) in respect of a GP-owned building³. For new builds or extensions, the ICB needs to agree the additional rent from a limited revenue budget. If the ICB has no ability to reimburse then the project to increase the capacity by way of alteration extension, or building a new facility will be at risk.

3 <https://www.kingsfund.org.uk/publications/gp-funding-and-contracts-explained>

Premises Development in Primary Care:

Delivering GP services in a new location represents a challenge for the ICB as no new GMS service contracts are now available. Therefore, for the new location to operate, either:

- the existing GMS service providers will have to relocate/expand; or
- a new (APMS or PMS) contract will need to be created and procured for the new premises' location

At the moment the ICB does not hold capital and does not own buildings, the procurement of new premises is either by:

- a Third-Party development (where a third-party developer funds the capital to build a new building, owns it and charges a commercial rent via a normally 25-year lease that represents the developer's return on capital, with the ICB reimbursing that rent); or
- a GP owner-occupied scheme (where the GPs own and develop but receive a notional rent, as described above), to fund the cost of the build.

Either way, such developments are most likely to occur for occupiers who hold an existing GMS or PMS contract, as APMS contract holders will not have a sufficient contract term to either enter a 25-year lease or invest in a new GP premises development.

The Decision-Making Process and Planning Policy Context:

Decision-Making

The starting point for the determination of planning applications is the development plan. Section 70(1) of the Town and Country Planning Act 1990 (“TCPA 1990”) provides that a Local Planning Authority (LPA) may grant planning permission unconditionally or subject to such conditions as it thinks fit. Section 70(2) of the TCPA

1990 provides that in determining an application for planning permission, the LPA; “shall have regard to the provisions of the development plan, so far as material to the application, and to any other material consideration. Section 38(6) Planning Compulsory Purchase Act 2004 states that applications for planning permission should be determined in accordance with the Development Plan unless material considerations indicate otherwise.

Whether or not a particular factor is capable of being a material consideration is a matter of law albeit that its factual context and weight are matters for the decision-maker. The health of communities has been a key element of government policy for many years and is reflected in adopted development plan.

Development Plan Policy:

The Torbay Council Local Plan 2011 to 2031 (adopted 29th October 2018.) states that:

“Policy SS11 Sustainable Communities

Development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay....

Development proposals will be assessed according to whether they achieve the following criteria, insofar as they are relevant and proportionate to the development:

- 1. Meet the needs of residents and enhance their quality of life;...*
- 4. Promote social inclusion, and seek to eliminate exclusion based on access to housing, health, education, recreation or other facilities;...*

Policy SC1 Healthy Bay

“All development should contribute to improving the health and well-being of the community, reducing health inequalities and helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal.

To achieve these requirements, applicants should demonstrate that they have had regard to the following:

- 1. Consideration of the opportunities available to address the cause of ill-health in the local area;*
- 2. Promotion of healthy, safe and active living for all age groups, including healthy living, options for older people; and*
- 3. Improvement of access to medical treatment services, including the provision of healthcare clusters where appropriate”.*

National Planning Policy Framework (NPPF):

Paragraph 2 of the NPPF states:

The National Planning Policy Framework (NPPF) must be considered in preparing the development plan, and is a material consideration in planning decisions. Planning policies and decisions must also reflect relevant international obligations and statutory requirements. Please also see paragraph 3 above.

The ICB is delivering primary care services at the point of demand through General Practice under the statutory requirement. Paragraph 2 of the NPPF contains an imperative upon the decision makers to reflect statutory obligations.

In addition, the health of communities has been a key element of government policy for many years and is, as stated above, reflected in adopted development plans. Please see NPPF Section 2 paragraph 8, Section 8 paragraphs 91 and 93.

The developer contributions are only sought from new development applications proposals where the contribution requested complies with the Community Infrastructure Levy (CIL) Regulation 122 tests:

1. This regulation applies where a relevant determination is made which results in planning permission being granted for development.
2. A planning obligation may only constitute a reason for granting planning permission for the development if the obligation is:
 - a) necessary to make the development acceptable in planning terms;
 - b) directly related to the development; and
 - c) fairly and reasonably related in scale and kind to the development.
3. In this regulation—

“planning obligation” means a planning obligation under section 106 of TCPA 1990 and includes a proposed planning obligation.

The Impact Created by the Proposed Development:

The proposed development is for 28 dwellings and this will create an estimated of population of 61 new residents within the development based an average household size of 2.17.

The closest GP surgeries to the proposed development are:

- Compass House Medical Centre - Compass House Medical Centre
- Compass House Medical Centre - Brixham Hospital
- Mayfield Medical Centre - Brixham Hospital
- Compass House Medical Centre – Galmpton Surgery

It is envisaged that the vast majority of the residents of the proposed development will register as patients with these practices.

The current combined medical centres providing primary care are up to their capacity and will not be able to absorb the increased patients arising from the proposed development.

The only way to mitigate the impact is to increase the physical capacity of the existing surgeries. The ICB has carefully calculated the space needed to mitigate the impact, drawing upon the document “*Devon Health Contributions Approach: GP Provision document*” (<https://www.devon.gov.uk/planning/planning-policies/other-county-policy-and-guidance>) which was agreed by NHS England. The detailed calculation is attached to this document as Appendix 1. The calculation is directly linked to the proposed development and is fairly and reasonably related in scale and kind to the development.

Compass House Medical Centre in Brixham has no room to expand on its present site and the Compass House and Mayfield branch surgeries at Brixham Hospital are at their maximum size.

Compass House Branch surgery at Galampton has advanced plans to expand the surgery building on to land adjacent to the surgery building. Funds have been raised to help support this expansion and s106 contributions from this potential planning development could be used to be part of the pooled funding to support the surgery 's expansion

The contribution requested is necessary. Without the contribution to increase the physical capacity, the proposed development will put too much strain on the said health infrastructure, putting people at risk. Waiting times would increase and access to adequate health service would decline, resulting in poorer health outcomes and prolonged health problems. Such an outcome is not sustainable as it will have a detrimental socio-economic impact.

In addition, having no or limited access to the primary care will have a knock-on effect on secondary healthcare, in particular on A&E services, as those people who cannot access their primary care usually will present themselves at the A&E adding additional pressure on the already stretched secondary care.

The development directly affects the ability to provide the health service required to those who live in the development and the community at large. Without securing such contributions, the ICB would be unable to support the proposals and would object to the application because the direct and adverse impact that the development will have on the delivery of primary health care.

Torbay Council's Affordable Housing Officer:

Response dated 02/08/2024

Summary

The Strategic Housing Service conditionally supports the proposal:

- The scheme delivers 21% affordable housing which accords with the policy requirement of a minimum of 20% on brownfield sites of 20 or more homes.
- The proposed affordable housing tenure mix of 5 (83.3%) social rent and 1 (16.7%) shared ownership is strongly supported. The high level of provision of social rent should be given considerable weight due to the severe need for social rented dwellings in Torbay,
- The proposed inclusion of a single 2-bed flat for shared ownership is not supported. This unit should either be provided as an additional 2-bed flat for social rent, or as a shared ownership house.

Policy Context

The policy framework in relation to the proposal can be summarised as follows:

- The site is allocated for 25 homes in terms of Policy BH3 of the Brixham Peninsula Neighbourhood Plan.
- Policy H2 of the Torbay Local Plan sets out an affordable housing requirement of 20% on brownfield sites of 20 or more dwellings, with an affordable housing tenure mix of 1/3 social rent, 1/3 affordable rent and 1/3 intermediate/shared ownership.
- Policy SC5 of the Torbay Local Plan seeks to reduce child poverty including through the provision of affordable homes to meet the needs of low-income families.

- Policy SS11 of the Torbay Local Plan seeks to create sustainable communities and to close the gap between the most and least disadvantaged neighbourhoods, including by (amongst other things) eliminating exclusion based on lack of access to housing.
- Policy BH2 of the Brixham Peninsula Neighbourhood Plan supports the provision of affordable homes in the peninsula to persons with a local connection to the peninsula or by key workers working within the peninsula.
- Policy BH4 of the Brixham Peninsula Neighbourhood Plan supports the development of housing on brownfield sites in preference to greenfield sites.
- The Planning Contributions and Affordable Housing SPD provides additional guidance on requirements for the provision of affordable housing.

Housing Need Justification Affordable

As of 24 June 2024, Torbay has 1,678 households on the Devon HomeChoice register. In terms of the number of households with a local connection to Brixham, the housing need as of 5 July 2024 is as follows:

	1 Bed	2 Bed	3 Bed	4 Bed	5 Bed	Total
Band A	0	0	0	0	0	0
Band B	11	10	11	2	2	36
Band C	20	23	18	10	0	71
Band D	61	19	7	2	0	89
Total	92	52	36	14	2	196

Source: Devon HomeChoice data for households with a local connection to Brixham – 05 July 2024

The figures above provide a snapshot in time of the current number of households registered on Devon HomeChoice that need an affordable home for rent. In Torbay, only households that fall within the top four housing need categories are currently recorded. Households that would otherwise fall within Band E are not included in the assessment of local need in Torbay. It should be noted, however, that the above does not take account of the need and demand for shared ownership, which is recorded by individual RPs as homes come on stream (similar to the way private sale housing works in respect of expressions of interest from interested purchasers). It is therefore not necessarily the full extent of all affordable housing needs, but is an indication of minimum demand in the local area.

Torbay's 2021 Housing and Economic Needs Assessment quantifies the amount of affordable housing for rent and for sale that needs to be delivered across The Bay from 2021 to 2031 in order to meet Torbay's affordable housing needs. This identified a need to provide an additional 387 affordable homes for rent and 334 affordable homes for sale each year.

The Council needs to have a strong pipeline of affordable housing in Brixham and throughout The Bay in order to meet current affordable housing needs as well as the needs that will arise in the future; this proposal will make a noteworthy contribution in this regard, and therefore gains the support of the Strategic Housing Service.

Proposal:

The application proposes the development of an allocated brownfield site for 28 homes. From a Strategic Housing perspective, the scheme would provide an inclusive, good quality development with a contemporary design approach, with tenure blind design. If approved, the proposal would make use of an underutilised site to provide much needed homes for local people through an attractive form of development.

The proposal includes the provision of 6 (21.4%) affordable homes on site. This accords with the Local Plan Policy H2 requirement of a minimum of 20% affordable housing on brownfield sites of 20 or more homes.

The Strategic Housing Service strongly supports the high level of provision of social rented homes due to the significant need for social rented housing in Torbay.

The Planning Contributions and Affordable Housing SPD states that, as a starting point, the housing mix (in terms of sizes and types) of the affordable housing should be in proportion with that of the open market dwellings within the scheme. The open market dwellings in the scheme comprise 10 x 2-bed flats (45.5%), 1 x 3-bed flat (4.5%), 7 x 3-bed houses (31.8%) and 4 x 4-bed houses (18.2%).

The proposed affordable housing provision comprises 2 x 1-bed flats for social rent, 3 x 2-bed flats for social rent, and 1 x 2-bed flat for shared ownership. The Strategic Housing Service does not support the proposed provision of a single 2-bed flat for shared ownership as this is very likely to present site management complications for the RP. Rather, this unit should either be provided as an additional 2-bed flat for social rent, or as a 2-bed or 3-bed shared ownership house. The Strategic Housing Service's support for this proposal is therefore subject to a revised affordable housing schedule comprising:

Either:

	Social rent		Affordable rent		Shared ownership	
	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)
1-bed (2-person) flats	2	33.3%	0	0%	0	0%
2-bed (3-person) flats	4	66.6%	0	0%	0	0%

Or:

	Social rent		Affordable rent		Shared ownership	
	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)
1-bed (2-person) flats	2	33.3%	0	0%	0	0%
2-bed (3-person) flats	3	50%	0	0%	0	0%
2/3-bed (4-person) house	0	0	0	0	1	16.7%

Torbay faces a particularly severe need for social rented homes which is the tenure that is the most affordable to households in the highest priority categories of need. Given the level of need for social rented homes, and the specifics of the proposed site layout and the management requirements that this presents for the RP, the Strategic Housing Service consider either of the above to be a suitable and acceptable affordable housing provision for this particular scheme. Considerable weight should be given to the high level of social rented housing that is proposed.

In accordance with the requirements of Policy DE3, all of the affordable homes comply with the minimum sizes set out in the Nationally Described Space Standards (NDSS). The submission is silent on whether any of the proposed affordable homes would be provided to meet the standards in Building Regulations Part M(4)(2) for accessible and adaptable dwellings. While the proposed affordable homes on the first and second floors of the apartment block on the northern half of the site would appear to be unable to meet the requirement in Part M(4)(2) for step free access (as the upper floors are accessed by stairs rather than by a lift), Unit 03 (a 1-bed social rented flat on the ground floor) has the potential to be provided as an accessible dwelling.

S.106 Provision and Requirements

In respect of the detailed obligations required to make the scheme compliant, these must be captured within a Section 106 agreement securing the following:

- An affordable housing mix as set out above, with obligations to be agreed in writing with the Council prior to start on site;
- A minimum of one affordable home to meet Building Regulations Part M(4)(2), in respect of accessible housing;
- The developer to have agreed in writing with the Head of Strategic Housing prior to start on site, the approved purchaser of the Registered Provider (RP) that will be transferred the completed affordable homes, and to use all reasonable endeavours to get into contract for delivery with that RP within 3 months of start on site;
- If the original approved RP withdraws from the purchase, to sell to a second (and subsequent, as necessary) RP, approved in writing by the Council;
- The on-site affordable homes to be transferred to the approved Registered Provider on a nil-grant basis, and prior to the transfer, sale or occupation of any open market dwellings, with nomination rights granted to the Council in perpetuity;
- The affordable and open market homes to be delivered tenure blind, such that there is no visual or quality difference between the tenures of homes on-site.

More Information

Applicants should refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document which is available to view online on the Council web site.

Torbay Council's Principal Policy and Project Planner:

Updated response dated 17/01/2025

The implications of the December 2024 NPPF:

The most recent Planning Policy comments on application P/2023/0553 are from 2nd July 2024 advised that changes to the NPPF and other material considerations must be taken into account. This note does not repeat previous policy comments, but considers the policy changes in the updated NPPF published in December 2024. The new Framework took immediate effect for decision making purposes. The overall effect of the NPPF is to significantly increase the case for approving housing applications, in line with the Government's express policy objectives. This clearly needs to be taken into account alongside other material considerations, such as the LPA's legal duty towards National Landscapes and heritage assets.

The Framework, along with a revised Standard Method set a binding minimum Local Housing Need figure for Torbay of 940 dwellings a year. This is no longer an “advisory starting point” but a binding need figure. There must be “strong” constraints not to meet this level of need. This figure is not achievable in Torbay, but the council needs to do all it can to maximise housing delivery insofar as consistent with the Presumption in Favour of Sustainable Development at Paragraph 11 of the Framework. This is especially the case for Brixham which is highly constrained and needs to maximise its limited housing opportunities, especially on sites that are already allocated for development.

The starting point for an allocated site would be to approve the application under paragraph 11(c). However, I note from discussions that the proposal has been assessed to conflict with the development plan, despite being allocated in the Brixham Peninsula Neighbourhood Plan (H3-12). Therefore, the “Sharpened” Presumption in Favour of Sustainable Development and paragraph 11(d) of the Framework becomes central to reaching a view.

11....For **decision-taking** this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for refusing the development proposed⁷; or
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.⁹

When considering “Footnote 7” constraints such as National Landscape, Special Area of Conservation or Designated Heritage Assets, the wording of 11 d)(i) has been revised to indicate that there must present a “strong reason” for refusal. This is a higher bar than the previous test of a “clear reason”. This reinforces the Government’s clear policy of increasing housebuilding. The Framework’s policies on conserving and enhancing the natural environment (ch 15) and the historic environment (ch 16) remain largely unchanged, except for rebranding of AONBs as “National Landscapes” to reflect the change to their status in the Levelling Up and Regeneration Act.

The “tilted balance” at 11(d)(ii) has been revised to require particular attention to be given to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places, and providing affordable housing individually or in combination. Footnote 9 indicates that paragraphs 66,84,91,110,

115,129, 135 and 139 of the Framework are the policies that should be given “particular regard”. The changes to the “tilted balance” at paragraph 11(d) (ii) have added additional complexity to the Presumption, and some of the policies flagged at Footnote 9 may pull in different directions. I would suggest the following, but this is a matter for detailed site specific assessment:

- paragraph 66 (affordable housing) clearly points in favour of approval and reflects the importance that the Framework gives to the provision of affordable housing.
- 84 and 91 are broadly neutral.
- Paragraphs 110 (sustainable locations) and 115 (transport and access considerations) are a matter for detailed site specific assessment.
- Paragraph 129 (a-e) (making effective use of land) generally point in the application’s favour in terms of promoting densification of the built up area to meet needs.. However, 129 d) refers to the desirability of maintaining an area’s prevailing character and setting...or of promoting regeneration and change”. Paragraph 129e) refers to the importance of securing well designed, attractive and healthy places. These highlight the importance that the framework attaches to maintaining an area’s character, and is dependent upon a detailed assessment of proposals.
- Paragraph 135 (a-f) refer to achieving well designed places in relation to a) function and overall quality of the area over the lifetime of the development; b) visual attractiveness as a result of good architecture, layout and landscaping; c) sympathetic to local character and history including the surrounding built environment and landscape setting (whilst not preventing appropriate innovation or change, such as increased densities); d) strong sense of place; e) optimise the potential for development; and e) create safe and inclusive environments that promote health and well-being with a high standard of amenity for users. These will require a detailed site assessment, and it is clear that St Marys Road does have a special character as a gateway site into the National Landscape. The requirements of 135(c) for development to be sympathetic to local character and history may be especially pertinent.
- Paragraph 139 indicates that development which is not well designed should be refused, having regard to design codes etc., whilst good quality design should be approved. As above, this is a matter for detailed consideration of the proposal.

Paragraph 125 (c) of the Framework, which has been amended to indicate that suitable brownfield land within settlements should be approved for homes unless “substantial harm” would be caused. This is a higher test than the previous wording that such sites were “acceptable in principle”. This is not one of the policies highlighted in Footnotes 7 or 9.

Taken as a whole, the crux of the changes to the Framework are to support the development of allocated brownfield sites within the built up area. But the Framework does retain significant emphasis on good design.

As set out in previous comments, it is clear that the application raises a number of complex issues in relation to the South Devon National Landscape, designated and undesignated heritage assets, design, neighbour amenity, ecology and accessibility issues etc. The consideration of these matters is for yourselves and other specialist

consultees. I have noted above that the amended presumption draws particular attention to design and local character considerations as part of a “tilted balance” assessment (should one be necessary).

I fully endorse the comments that the site’s merits can only be understood from visiting the area in person, and that a top-down map view does not provide an accurate assessment of the area’s character and setting. In reaching a “Planning Balance” view I would ask that the Presumption tests are applied, and that substantial weight is given to the provision of housing, and particularly to the provision of affordable housing.

Previous response dated 02/07/2024

I refer to the above consultation to P/2023/0553 for the demolition of existing barns and erection of 28 dwellings, land to the north and south of St Marys Road, Brixham. I previously provided comments in March 2024 and August 2023. I have updated these to reflect the wider policy position at July 2024. I note that amended plans and an addendum to the Heritage Assessment have been submitted since my March comments. The December 2023 NPPF may be further amended, and changes to the Framework should be kept under review.

The northern buildings (“St Marys Industrial Estate”) are located within the South Devon National Landscape (AONB); the buildings to the south (Old Dairy) abut the AONB. The site is close to the South Hams SAC, and Berry Head to Sharkham Point area that is covered by multiple environmental designations.

The site is allocated for 25 dwellings in the Brixham Peninsula Neighbourhood Plan (H3-I2) (BPNP). It was formerly allocated for housing in previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan 2012-30. In this context I would not regard the 3 additional dwellings as a departure from the development plan, although Brixham Town Council has raised this as an objection. An assessment of the three additional dwellings’ impact on the wider layout, design and built-form issues is relevant. The BPNP Housing Site Assessment does not have the force of Section 38(6) but is still a material consideration as it sets the background to the housing allocation in the main plan. The housing site assessment document states that *“The current buildings at the St Mary’s Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversations of existing buildings or demolition and new build to provide a more efficient use of land”*.

The BPNP settlement boundary (E3) is more tightly drawn to the buildings than the Torbay Local Plan countryside area boundary (Policy C1 area). The application appears to be within the BPNP settlement boundary, which extends directly north from the boundary of the Old Dairy with Orchard House.

Previous responses dated 02/08/2023 and 13/03/2024 can be found online that relate to the original submission.

Torbay Council’s Principal Historic Environment Officer:

Updated response dated 16/10/2024

I previously provided comments on the scheme in March 2024 which identified that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals were considered to be contrary to Policy SS10 of the Torbay Local Plan.

Further comments were then provided for a revised scheme which still included the demolition of a number of non-designated heritage assets on the site rather than their conversion as part of a heritage-led regeneration scheme. Therefore, harm to heritage assets continued to be identified.

These comments are in response to the submission of further landscape plans and information.

Although the further submissions provide some clarity on proposed landscaping, they do not include the retention of the historic buildings on the site and therefore my previous comments and the harm identified to the historic environment can still be applied.

I would continue to advise that in line with the requirements of the NPPF, the identified harm to heritage assets will need to be weighed against the associated public benefits of the proposed development, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Should the application be approved, my previous comments with regards to potential conditions can still be applied.

Updated response dated 23/07/2024

I previously provided comments on the scheme in March 2024 which identified that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals were considered to be contrary to Policy SS10 of the Torbay Local Plan.

These comments are in response to the submission of the following:

- Addendum to the Heritage Assessment
- Revised Design and Access Statement
- Revised plans and elevations

The proposed revisions to the scheme include a revised palette of external materials which are proposed to incorporate salvaged material from the demolition of the existing structures on the site, along with the reduction of scale, height and massing of some elements of the scheme. This approach is quoted within the submitted supporting information to reference a more agricultural rather than an industrial style as previously proposed.

Whilst the overall design approach can be considered to be an improvement on the previous scheme, the opportunity for a heritage-led regeneration scheme which incorporates the existing heritage assets on the site which have demonstrable heritage value has not been taken.

As a result, although the overall design approach has improved, the proposed development would still cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset, as outlined within my previous comments.

In line with the requirements of the NPPF, the identified harm to heritage assets will need to be weighed against the associated public benefits of the proposed development, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Should the application be approved, I would request that the following be secured through condition:

- A full record of the buildings to be demolished made and deposited into the HER prior to their removal.
- Existing natural stone walling materials to be salvaged, stored and reused on the site.
- Samples of all external walling and roofing materials.
- Details of all external joinery including windows, doors, rainwater goods etc.
- Details of boundary treatments (it should be noted that stone boundary walls should be used over timber fencing, as stone walls are an important characteristic of the site).

Previous response dated 15/03/2024 that relates to the original submission

Detailed Proposals:

Demolition of existing industrial buildings and erection of 28 residential dwellings (22 open market and 6 affordable) together with access, landscaping and associated works on land to the north and south of St. Mary's Road.

Relevant Policy:

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".

This statutory requirement needs to be considered alongside relevant heritage guidance contained in the National Planning Policy Framework (2023) which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance. It requires local planning authorities to identify and assess the particular significance of any heritage asset that may be affected by a proposal (Para 195).

Paragraph 197 goes on to state that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 205 considers that 'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'.

Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification' (Para 206).

Paragraph 208 adds 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 including, where appropriate, securing its optimum viable use'.

With regards to non-designated heritage assets, paragraph 209 advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Should a heritage asset be lost either wholly or in part, paragraph 210 requires local planning authorities to take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

In terms of the Development Plan, it is guided that development proposals should have special regard to the desirability of preserving heritage assets and their setting (Policy SS10 of the Local Plan).

Significance of Identified Heritage Assets:

With regards to heritage assets, the site contains a number of non-designated heritage assets and there is one Grade II listed building located approximately 20m to the northwest of the site, 1, 2 and 3 St. Mary's Road.

Designated:

1, 2 and 3 St. Mary's Road

This property was listed in 1975 and is believed to date from the 17th century but with a later remodelling in the early 19th century.

Its significance relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic

occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape.

It is considered that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary's Road and Upton Manor Road and from within its own curtilage.

The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

Non-Designated Heritage Assets:

There are a number of structures on the site which can be classed as non-designated heritage assets. These include both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site.

It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The site has a complex narrative which the submitted Heritage Statement suggests should be further explored.

The structures on the site are assessed to demonstrate the following heritage values:

Evidential value

The northern group of buildings appear to have been built around an earlier structure, elements of which still survive. There are many features including the former farm buildings, boundary walls and archaeological remains which have a high evidential value.

The southern group of buildings, although more heavily altered in the 20th century, share a similar value with clear evidence of significant historic fabric being present within the existing structures and potentially as archaeological remains.

Aesthetic/Architectural value

The northern group of buildings retain some architectural features of significance, such as external segmental arches with voussoirs, keystones and stonework. Although the site has been unsympathetically altered in the past, these features can still be easily read and make a positive contribution to the site.

The southern group of buildings still demonstrate some vernacular architectural details, although, 20th century development on the site has had a greater impact on its readability. However, some buildings, particularly the eastern range, do continue to make a positive contribution to the site.

Historical value

Both groups of buildings provide physical evidence of the historical agricultural use of the site and the contribution that this has made to the evolution of the site and the historical landscape of the surrounding area.

Communal value

The site has some communal value through the past employment uses of the site and its recognition as a local business. The historic structures would make a small contribution to this value.

Archaeological value

Upton Farm is recorded on the Devon Historic Environment Record (HER) as a post-medieval farm and the Site is located in a landscape of known archaeological potential. The Devon and Torbay HER records finds of prehistoric and Romano-British date in the wider area, indicating reasonable potential for widespread settlement activity. The site has demonstrable archaeological value which would benefit from further study.

Summary:

Although the buildings have been altered as a result of past unsympathetic development within the site, the site has clear demonstrable evidential, architectural and historic value.

The existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

Impact on Significance of Heritage Assets:

The wholesale demolition and clearance of the site would cause substantial harm (through complete loss of significance) to the existing historic buildings and their historic relationship with each other and the wider landscape. This would need to be assessed within the context of paragraph 203 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The current proposals for wholesale demolition appear to lack adequate justification and would also therefore be contrary to the requirements of paragraph 206 of the NPPF.

With regards to designated heritage assets, the application site is in relatively close proximity to 1, 2 and 3 St. Mary's Road, a Grade II listed building. The site is currently well screened due to the presence of a band of mature vegetation and walling; however, it is considered that intervisibility between the two sites is possible.

The proposed development would remove the historic/former agricultural character of the application site and replace it with residential development of a notably different scale, massing and character to that existing.

Although the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of paragraph 208 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance. There are no demonstrable heritage benefits associated with the proposals.

With regards to the proposed replacement buildings on the site, it is not considered that the design of the proposed development adequately reflects the historic use and special characteristics of the site. Whereas the introduction of contemporary architecture can be successful within historic settings, it is not considered that the proposed development is of sufficient architectural or visual interest for this sensitive site.

The principle of residential use of the site is likely acceptable, however, it is advised that the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

Conclusions:

As a result of the above, it is clear that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the single identified designated heritage asset. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

In line with the requirements of the NPPF, permission should be refused, unless it can be demonstrated that the harm caused can be outweighed by associated public benefits, whilst being mindful of the great weight which should be given to the conservation, and special regard afforded to the protection, of heritage assets. This would be a matter for the overall planning assessment of the proposals.

Torbay Council's Drainage Engineer:

Updated response dated 30/10/2024

I can confirm that providing the surface water drainage is constructed in accordance with the latest submitted drawing and hydraulic design, I have no objections on drainage grounds to planning permission being granted for this development.

Previous responses dated 02/08/2023, 09/10/2023, 16/07/2024 and 04/09/2024 relate to the original submission

Environment Agency:

Response dated 17/07/2024:

Environment Agency position

We have no objection to the proposed development subject to the inclusion of a condition which relates to the management of contaminated land on site. Suggested wording for this condition and the reason for our position is provided below.

Condition

Prior to the commencement of development approved by this planning permission (or such other date or stage in development as may be agreed in writing with the Local Planning Authority), the following components of a scheme to deal with the risks associated with contamination of the site shall each be submitted to and approved, in writing, by the local planning authority:

1. A site investigation scheme, based on the information gained in the desk study to provide information for an assessment of the risk to all receptors that may be affected, including those off site.
2. The results of the site investigation and risk assessment (1) and a method statement based on those results giving full details of the remediation measures required and how they are to be undertaken.
3. A verification report on completion of the works set out in (2) confirming the remediation measures that have been undertaken in accordance with the method statement and setting out measures for maintenance, further monitoring and reporting.

Any changes to these agreed elements require the express consent of the Local Planning Authority.

Reason: For the protection of controlled waters.

Reason for position

Firstly, thank you for obtaining clarity from the applicant about the nature of the previous use of the buildings as a garage/car service business. We have reviewed the submitted Preliminary Investigation Report (PIR) (ref.: C62033-1(00), dated May 2019) and the Ground Investigation Report, (ref.: C62033, dated June 2019 submitted in support of this application. We note that structures were still present at the time of the investigation and agree that it may be prudent to undertake some further confirmatory testing once the buildings in the west of the site are decommissioned and / or demolished. Given the limited testing across the site, we consider that planning permission should only be granted to the proposed development as submitted if the above planning condition is included. Without this condition, the proposed development on this site poses an unacceptable risk to the environment and we would wish to object to the application.

South West Water:

Updated response dated 11/07/2024:

Asset Protection

Please find enclosed a plan showing the approximate location of a public 150mm sewer in the vicinity. Please note that no development will be permitted within 3 metres of the sewer, and ground cover should not be substantially altered.

Should the development encroach on the 3 metre easement, the sewer will need to be diverted at the expense of the applicant.

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)

2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development (domestic roof and driveway run off only) Please note that discharging to the public combined sewerage network is not an acceptable proposed method of disposal, in the absence of clear evidence to demonstrate why the preferred methods listed within the Run-off Destination Hierarchy have been discounted by the applicant.

For Highway run off please contact the Highway Authority to agree disposal method. South West Water response relates to surface water discharge to our network, where the discharge is from buildings and yards belonging to buildings. Where the applicant has highlighted that the surface water does not connect to South West Water network, we are not commenting on this as it is not our responsibility.

South West Water has no duty to accept land drainage runoff, flows from natural watercourses or groundwater to the public sewer system, and this is not permitted to discharge to the South West Water network. The applicant should make alternative arrangements to deal with this separately during the development and once the construction work is complete.

South West Water are not responsible for Highway Drainage and our comments do not relate to accepting any of these flows. The applicant should discuss and agree with the Highway Authority, where the highway water connects to.

If the applicant wishes to connect this to South West Water network, then they should engage with us separately to see if we can accommodate this. No highway drainage will be permitted to be discharged to SWW foul or combined public sewer network either directly or indirectly.

If the applicant is looking to get their sewers adopted (surface and foul), then they should design and construction the sewers to the current version of the Design and Construction Guidance. The process for doing this can be found on South West Water's website at [Adoption of new sewers | Building & Development | South West Water](#)

Clean Potable Water

South West Water is able to provide clean potable water services from the existing public water main for the above proposal. The practical point of connection will be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

Foul Sewerage Services

South West Water is able to provide foul sewerage services from the existing public foul or combined sewer in the vicinity of the site. The practical point of connection will

be determined by the diameter of the connecting pipework being no larger than the diameter of the company's existing network.

The applicant can apply to South West Water for clarification of the point of connection for either clean potable water services and/or foul sewerage services. For more information and to download the application form, please visit our website:

www.southwestwater.co.uk/building-and-development/services/pre-development-services

Previous response dated 02/08/2023 can be viewed online that relates to the original submission.

Devon County Council's Ecologist:

Updated response dated 04/09/2024:

Based on the provided BNG metric and relevant site plans, that a not net loss in biodiversity is achieved at the very least through this development, which would be in line with both national and local planning policy.

Please add the following condition to any decision notice:

Condition: The development shall not commence until a Habitat Management and Monitoring Plan (the **HMMP**), prepared in accordance with the approved Biodiversity Metric Spreadsheet and including:

- a) a non-technical summary;
- b) the roles and responsibilities of the people or organisation(s) delivering the HMMP;
- c) the planned habitat creation and enhancement works to create or improve habitat to achieve the biodiversity net gain in accordance with the approved Biodiversity Gain Plan;
- d) the management measures to maintain habitat in accordance with the approved Biodiversity Gain Plan for a period of 30 years from the completion of development; and
- e) the monitoring methodology and frequency in respect of the created or enhanced habitat to be submitted to the local planning authority.

has been submitted to, and approved in writing by, the local planning authority.

Previous response dated 07/08/2023:

Further information required prior to determination.

Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats.

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

GHB activity: single GHB recorded during building surveys, to the east of within the site. No GHB recorded during activity surveys.

No suitable habitat for foraging, and no linear commuting features present on site. The site is dominated by hardstanding. Surrounding area is predominantly urbanised.

The proposed development will not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor will it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location of the development, in an area unfavourable to greater horseshoe bats, with no suitable foraging habitat or linear habitats.

In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), and given the above, there is unlikely to be a likely significant effect on the South Hams SAC. Appropriate Assessment is not deemed to be required. No mitigation required.

South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

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

In the absence of mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so Appropriate Assessment is needed.

Appropriate Assessment:

For CIL liable developments such as this, applications for additional dwellings within the Brixham Peninsula Neighbourhood Plan Area are required to pay a monetary contribution to offset the resultant additional recreational pressure on the calcareous grassland at the Berry Head to Sharkham Point Component of the South Hams Special Area of Conservation.

Therefore, if approved, this development would be required to pay contributions towards mitigating in-combination recreational impacts on the SAC.

HRA Conclusion - With this measure secured, there will be no adverse effect on the integrity of the SAC. If approved, this development will be required to pay CIL contributions towards mitigating in-combination recreational impacts on the South Hams SAC.

Lyme Bay and Torbay SAC

Recreational Impacts:

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC.

The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition. There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan.

Individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project.

If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

Other habitats

Trees:

Two heavily pruned early mature sycamore in southwest of the site. Not in good condition.

Both trees to be removed for development.

New native and ornamental tree planting across the site. This is deemed suitable and sufficient to compensate for the loss of trees and to enhance the site with this habitat type.

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

Ruderal vegetation:

Ruderal vegetation present at margins of hardstanding and buildings, occasionally managed.

Amenity grassland and non-native planting with species of wildlife value across the site. This is deemed suitable and sufficient to compensate for the loss of ruderal vegetation and to enhance the site for biodiversity.

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

Scrub:

Small areas of scrub present on margins of the site, not subject to any regular management, some areas cut on occasion. Majority of scrub to be retained.

Enhancement of scrub to create more diverse species mix and management for biodiversity. This is deemed suitable and sufficient to enhance this habitat type.

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

Hardstanding:

Roads and parking areas present and generally well maintained. No ecological importance.

No negative impacts due to negligible ecological importance of this habitat. No mitigation required.

European Protected Species

Bat commuting / foraging:

In 2019, 10x activity surveys were completed between April and October, with at least 1 survey each month. 4x static detectors deployed in 2019. Habitats the same in 2023, no further activity surveys undertaken.

Most activity recorded on habitats to the east, outside site boundary. Common pip foraging around street lighting within site. Single GHB recorded during building surveys, to the east of within the site. No linear features on site. Lack of favourable foraging habitat.

Lighting scheme implemented to follow best practice guidance from BCT and ILP. Luminaires lacking UV elements. Use of LEDs. Warm white spectrum, peak wavelengths higher than 550nm. Internal luminaires recessed. Specialist bollard or low-level luminaires. 0% upward light ratio. Security lighting on motion-sensors and short timers. Baffles, hoods, or louvres used to reduce light spill. This is deemed suitable and sufficient to mitigate against potential negative impacts on foraging and commuting bats.

Condition: No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. Reason: In the interests of nocturnal biodiversity.

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Bat roosts – buildings / trees:

A ground-level tree assessment was undertaken in April 2019 and again in April 2023. The 9 buildings on site were inspected in July 2019 and again in April 2023. DNA analysis of bat droppings in 2019 and 2023.

Buildings B2-9 subject to two emergence and single re-entry survey in 2019. 2023 no access into B1, parts of B4 and B5, and B9. Emergence survey of B6 scheduled during optimal bat survey period in 2023.

B3 – scattered old and new individual BLE droppings, 2019 and 2023.

B4 – accumulations of <10 old and new LHB droppings, 2019.

B6 – accumulations approx. 20 old and new droppings in 2023, likely LHB or BLE.

B7 – scattered old and new individual BLE droppings, 2019 and 2023.

B9 – accumulation of <10 old and new LHB droppings, 2019.

Roost summary:

B2 = day roost for individual / low numbers of common pipistrelle. B3 and B7 = day or night roosts for individual / low numbers of brown long-eared bats. B4 and B9 = day or night roosts for individual / low numbers of lesser horseshoe bats. B6 = further surveys required to determine the species of this roost, current evidence suggests BLE or LHB. No trees within site boundary that have potential to support roosting bats.

Further information required: The consultant ecologist has noted that emergence surveys of B6 have been scheduled during the 2023 bat survey period. The results of these surveys are required to be submitted for the LPA ecologist prior to determination, in order to comment upon the suitability of proposed mitigation.

Prior to any works commencing that will impact existing roosts, 3x bat boxes installed within or adjacent to the site. Works only undertaken during favourable weather conditions. Check of buildings for bats by licensed ecologist immediately prior to work commencing. Roofs to be soft stripped during suitable weather conditions. Purpose built bat roost above units 25-28 to replace lost roosting opportunities, for common pip, BLE and LHB. Large space to fly within building. Adjacent to retained and enhanced scrub for access to linear habitat features. Area around roost to remain dark. 1x integrated bat box per 2x units. Conditions will be required upon receipt of requested information.

GCN:

The development site does not lie within a GCN consultation zone. No waterbodies present within or adjacent to the site. GCN considered absent. GCN are unlikely to be negatively impacted by this development. No mitigation required.

Other Protected Species

Nesting birds:

Small areas of scrub provide suitable nesting habitat. B2, 5 and 7 had nesting house sparrow and wood pigeon in 2019 and 2023.

Removal of vegetation outside bird nesting season. 1x integrated nest box per 2x units. This is deemed suitable and sufficient to mitigate against potential negative impacts on nesting birds and to enhance the site with nesting opportunities.

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

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Cirl buntings:

The development site lies within a cirl bunting consultation zone. No habitats suitable to support the species. Cirl buntings are unlikely to be negatively impacted by this development. No mitigation required.

Reptiles:

Reptile surveys undertaken in 2019 using refugia deployed in April and checked between May and June. Habitats remain unchanged, as such, results deemed to remain valid. Low population of slow worm within the site, peak 2x adults in scrub/ruderal in south of site.

Reptile translocation into retained scrub in north with connectivity off-site. Captured using artificial refugia. Habitat manipulation prior to works commencing to make areas unsuitable for reptiles. Post-development log piles created within translocated area. This is deemed suitable and sufficient to mitigate against potential negative impacts on reptiles and to enhance the site with refuge opportunities.

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

Condition: Development shall be carried out in accordance with the actions set out in the Ecological Assessment. This condition shall be discharged when the consultant ecologist confirms in writing to the LPA that the recommendations have been implemented.

Badgers:

A badger survey was undertaken in April 2019, and again in April 2023. No evidence of badger setts within site or 30m radius surround the site during 2019 and 2023 surveys. Badgers may commute across the site.

Any trenches or deep pits left open overnight covered or means of escape provided. Inspected each morning. Pipework to be capped overnight. Inspection of storage mounds. This is deemed suitable and sufficient to mitigate against potential negative impacts on badgers.

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

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

Priority species

Hedgehog:

Hedgehog may commute across the site. Any piles of leaves or brash cleared by hand. This is deemed suitable and sufficient to mitigate against potential negative impacts on hedgehogs.

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

Overall enhancement / net gain (as per NPPF)

Net gain:

Further information required: The Biodiversity Net Gain Report refers to a completed BNG Metric Assessment. This metric spreadsheet is required to be submitted, in its original format, for the LPA to assess the results. Details are also required to clarify who will be responsible for managing and maintaining the habitats. Conditions will be required upon receipt of requested information.

Response dated 07/02/2024

I can confirm that the bat surveys for building B6 were carried out correctly. I am satisfied that the bespoke bat loft above plot 25 is sufficient. My only comment would be that the bat access and proposed bat tubes are not visible on the elevation plans for the plots. I would like them to be added so they can be conditioned, but I do not believe it is a reason for refusal.

One other comment is that the BNG metric stated within the BNG report has not been submitted for review – I am therefore unable to state definitively that the net gain achieved as stated in the BNG report is correct. Given the site baseline habitats are ecologically poor, I believe that a net gain in biodiversity is easily achieved, however I am not yet able to fully review this.

Natural England:

Updated response not dated

The advice provided in our previous response applies equally to this amendment. The proposed amendments to the original application are unlikely to have significantly different impacts on the natural environment than the original proposal.

Response dated 25/07/2023 that related to the original submission

FURTHER INFORMATION REQUIRED TO DETERMINE IMPACTS ON DESIGNATED SITES

Your authority will need to determine whether the proposal is likely to have a significant effect on the South Hams Special Area of Conservation (SAC) greater horseshoe bat population by undertaking a Habitats Regulations Assessment, proceeding to the Appropriate Assessment stage where significant effects cannot be ruled out.

Natural England is a statutory consultee at the Appropriate Assessment stage.

DESIGNATED SITES

The development is within a greater horseshoe bat *Sustenance Zone* and *Landscape Connectivity Zone* associated with the **South Hams Special Area of Conservation (SAC)**, designated in part due to its internationally important population of greater horseshoe bats. *Sustenance Zones* are key bat feeding and foraging areas.

As a competent authority under the provisions of the Habitats Regulations, you should have regard for any potential impacts that this proposed development may have and are required (by Regulations 63 and 64 of The Conservation of Habitats and Species Regulations 2017) to conduct a Habitat Regulations Assessment (HRA) to determine the significance of these impacts on European sites and the scope for mitigation. Our guidance on the use of HRA can be found here.

The Conservation Objectives for the South Hams SAC explain how the site should be restored and/or maintained and may be helpful in assessing what, if any, potential impacts the proposal may have.

Your HRA should assess whether the proposal could result in impacts on greater horseshoe bat roosts or foraging and commuting routes, for example by removing lengths of hedgerow or from artificial lighting. We advise that you follow the detailed guidance in the *South Hams SAC – Greater horseshoe bat Habitats Regulations Assessment Guidance* (October 2019).

Impacts should be avoided wherever possible, for example by retention of hedgerows and through restricting lighting. The Institute of Lighting Professionals has produced practical guidance on considering the impact on bats when designing lighting schemes - *Guidance Note 8 Bats and Artificial Lighting*¹. They have partnered with the Bat Conservation Trust and ecological consultants to write this document on avoiding or reducing the harmful effects which artificial lighting may have on bats and their habitats.

Where impacts on bat habitat cannot be avoided, a detailed HRA may be required and surveys may be necessary, as set out in the guidance. Any mitigation measures deemed necessary must be secured through planning conditions or obligations.

Other protected species

We have not assessed this application and associated documents for impacts on other protected species.

Natural England has produced standing advice² to help planning authorities understand the impact of particular developments on other protected species. We advise you to refer to this advice. Natural England will only provide bespoke advice on protected species where they form part of a SSSI or in exceptional circumstances.

Sites of Special Scientific Interest Impact Risk Zones

The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires local planning authorities to consult Natural England on “Development in or likely to affect a Site of Special Scientific Interest” (Schedule 4, w).

Our SSSI Impact Risk Zones are a GIS dataset designed to be used during the planning application validation process to help local planning authorities decide when to consult Natural England on developments likely to affect a SSSI. The dataset and user guidance can be accessed from the data.gov.uk website.

Further general advice on the consideration of protected species and other natural environment issues is provided at Annex A.

We would be happy to comment further should the need arise but if in the meantime you have any queries please do not hesitate to contact us.

For any queries regarding this letter, for new consultations, or to provide further information on this consultation please send your correspondences to consultations@naturalengland.org.uk.

SWISCo's Waste (Strategy and Performance) Team Manager:

Updated response dated 14/10/2024:

I note the information provided resolves the issues I raised with Building Regulations H6 and with accessibility to my satisfaction.

I still have concerns about management of parking outside of allocated spaces and how this will be managed / discouraged.

With regard to the need to drive onto unadopted highway to collect, I trust that the developer received the indemnity template and would encourage them to contact me once planning has been resolved, to take this forward. Although, ask the developer to be aware of the comments below, made previously;

Providing that the developer can prove that all roads (either adopted or unadopted) have been built to adoptable standards, this would be an acceptable option to us. I have attached a copy of a standard indemnity agreement for the developer to comment upon. As per the conditions of our insurance, we will also have to complete a risk assessment of the site once built before we can agree to drive on to the unadopted highway, which we will only do if the level of risk to our employees and others is found to be acceptable.

The agent has stated: *"We had proposed that parking enforcement would be dealt with by a private parking enforcement company to be managed by the resident's management company."*

This would be a satisfactory solution, especially if there is scope for us to liaise with a managing agent if there were access issues preventing collections taking place.

Previous responses dated 22/08/2023, 25/03/2024, 25/06/2024 and 27/08/2024 can be found online that related to the original submission and subsequent iterations.

Torbay Council's Senior Environmental Health Officer:

Updated response dated 01/07/2024

No objection subject to the inclusion of a planning condition for a Construction/Demolition Management Plan.

Previous response dated 12/07/2023 can be found online that related to the original submission.

Police Designing Out Crime Officer:

Updated response dated 26/06/2024

Previous response remains relevant.

Response dated 18/07/2023:

From a designing out crime, fear of crime and anti-social behaviour perspective, it is disappointing to see that the DAS makes no mention to crime prevention or security measures as such it is not known if this has already been considered, however, please find my advice and recommendations below.

As the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision making process for the planning authority the following is to inform the applicant:-

ADQ creates security requirements in relation to all new dwellings. All doors that provide entry into a building, including garage doors where there is a connecting door to the dwelling, and all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24.

As such it is recommended that all external doors and easily accessible windows are sourced from a Secured by Design (SBD) member-company List of Member Companies (Alphabetical). The requirements of SBD are that doors Accredited Product Search for Doors and windows Accredited Product Search for Windows are not only tested to meet PAS 24 (2022) standard by the product manufacturer, but independent third-party certification from a UKAS accredited independent third-party certification authority is also in place, thus exceeding the requirements of ADQ and reducing much time and effort in establishing provenance of non SBD approved products.

Secured By Design is a free from charge police owned crime prevention initiative which aims to improve the security of buildings and their immediate surroundings in order to provide safer places and more secure places.

Crime, fear of crime, ASB and conflict are less likely to occur if the following attributes of Crime Prevention through Environmental Design (CPtED) are also considered in the design and layout of the proposed scheme:-

Access and movement (Permeability) - Places with well-defined routes, spaces and entrances that provide for convenient movement without compromising security.

The communal entrances to the flat/apartments must also meet the minimum security standard of PAS24:2022. There must be a visitor door entry system and an access control system to enable management oversight of the security of the building. The visitor entry system should allow occupants to be able to grant access to visitors remotely at all restricted communal points. Please note a tradesperson or timed-release mechanism are not supported by the police as they have proven to be the cause of anti-social behaviour and unlawful access to communal developments. The visitor door entry system should allow the occupant to have a two way conversation and also be able to visually identify the visitor prior to granting access. It would be beneficial if the monitors displayed in colour to assist the occupier with the identification.

The access control system should grant occupants and authorised persons via an electronic key card or key fob as opposed to a key code entry system which has proven also to cause issue with regards to unlawful entry where the codes have been shared or not changed regularly.

Structure – (Design & Layout) - Places that are structured so that different uses do not cause conflict

Surveillance (Natural, Formal & Informal) - Places where all publicly accessible spaces are overlooked.

Lighting should be installed to all elevations containing a doorset, Please be advised that we would not support the use of low level bollard lighting as these should only be used for wayfinding and demarcation purposes as they generally do not provide sufficient up lighting to aid facial recognition, which can increase the fear of crime. A dusk till dawn lighting solution would be preferred over a PIR lighting solution as evidence suggests it can increase the fear of crime with the constant activation. The lighting on private dwellings could be on a switch, so allowing the occupant to make an informed decision as to having the light on or off.

Lighting for communal areas within the apartments/flat buildings should be 24 hour lighting (switched using a daylight sensor formally a photoelectric cells), it is acceptable for this to be dimmed during hours of low occupancy to save energy. This would normally include the communal entrance hall, lobby area, corridors and stairwells.

Ownership - Places that promote a sense of ownership, respect, territorial responsibility and community.

Physical protection - Places that include necessary, well-designed security features as required by ADQ and SBD Homes 2023.

It is welcomed that where fencing is being considered as a rear boundary perimeter treatment that this will attain a height of 1.8m. Where Devon Hedging is being proposed to act as rear boundary treatments for dwellings, it must attain a minimum height of 1.8m, they also must be robust enough to prevent and deter unauthorised access to the rear of the properties. It is also important that the plants being used for

the hedging do not go through any drastic seasonal change which could undermine the security of the boundary. Given it can take some time for the hedging to grow and thicken to be an appropriate boundary treatment, it should be supported by a temporary solution, such as wooden fencing for example.

It is not clear from the plans however if the intention is to install gates to provide access to the rear gardens, these must be lockable from both sides by means of a key for example. The gate must also attain the same height (1.8m) as the adjoining boundary treatment. Gates should be fitted as flush to the front building line as possible to prevent creating a recessed area.

The refuse and bin stores must be lockable to prevent unauthorised access. The internal side of the door should be fitted with a thumbturn or emergency furniture to allow for emergency egress and to avoid someone being locked inside the store. It would also be beneficial if the stores have lighting so the persons using either store have a clear line of sight into the store thus reducing any potential fear of crime especially during the hours of darkness.

It is not clear how mail delivery is being considered for the apartments and I would respectfully seek clarification on this, as theft of mail and associated offences can become problems when not carefully considered.

If Smart Meters are not being installed these should where possible be installed outside the dwelling at the front or as close to the front of the building ensuring they are visible and benefit from natural surveillance.

Activity - Places where the level of human activity is appropriate to the location and creates a reduced risk of crime and a sense of safety at all times.

Management and maintenance - Places that are designed with management and maintenance in mind, to discourage crime in the present and the future.

It is also recommended that a management and maintenance policy is drawn up prior to the first occupancy of the building to ensure that all communal areas are well maintained, and repairs are undertaken in a speedy manner so not to detract from the sense of ownership or undermine the security of the building.

Parking

All parking spaces should be clearly marked and allocated especially in the communal parking courtyards. It is appreciated that sensitive lighting is being considered from an ecological perspective however I would respectfully ask that lighting is considered from a crime, fear of crime and anti-social behaviour perspective as where parking courtyards are unlit they can increase the potential of crime, and also the fear of crime for the occupants parking in the hours of darkness. Please be advised that we would not support the use of low level bollard due to the reasons previously mentioned. Also, once a car is parked adjacent to a bollard light the light spill will be reduced to lighting the car only.

It is noted that units 25, to 28 have two tandem parking spaces each within their own garages, a concern regarding the tandem parking as it is likely from a practical and convenient point of view only one of the spaces will be used which will encourage

unplanned parking elsewhere, which can cause parking related issues. Where garages are proposed it would be recommended that they are constructed to be wide enough to allow for the occupant to remove the bicycle or bin whilst a car is parked within the garage. This would prevent the need to park elsewhere and any potential parking related issues.

Torbay Council's Senior Tree Officer:

Updated response dated 15/10/2024

No objections to principal of development. Soft landscaping to be secured by a planning condition subject to any minor amendments.

The application proposes the loss of G2 which is a low-quality group of sycamore on the roadside boundary. G1 & G3 are shown as retained. G1 is inaccessible to construction activity and not at risk from operational pressures. G3 is shown within tree protective fence.

Ornamental tree species are proposed for the southern boundary in a loose, scattered arrangement. The proposals will not create any obvious shading conflicts in the long term.

Trees in the northern section of the site continue the ornamental theme. The proposed Cotoneaster adjacent to the communal amenity space, conflicts with the drainage alignment and will need to be repositioned. Opportunities to incorporate narrow columnar or fastigate trees into the verge is a missed opportunity to provide natural screening to help soften the massing of the building in the street scene.

Soil volumes for trees have been stated with tree pit designs specified. This is encouraging and should assist with tree establishment and trees achieving their species potential.

The overall reliance on non-native and smaller ornamental trees in order to work with the site constraints will not lead to any future public amenity provision or enhancement of the local landscape. The site is constrained by the overall scale and layout of the development with associated infrastructure further reducing opportunities for structural planting.

Recommendations

The relocation of the single tree (*Cotoneaster cornubia*) could be achieved practically on site at the planting stage, provided any drainage runs are identified to ensure no future conflict with services. The landscaping plan could be amended to reflect this requirement.

Secure the provision of the soft landscaping plan in accordance with the Evolve Tree Consultancy Arboricultural Impact Plan & Landscaping Ref: EV-3528-Landscaping-AIA-09-24.

Previous responses received 07/08/2023 01/02/2024 and 10/07/2024 can be found online that related to the original submission and previous revisions.

WSP on behalf of the Highway Authority:

Updated response dated 08/07/2024

Introduction and Planning History:

The Highway Authority has previously issued two statutory consultee responses dated 16th August 2023, 6th October 2023 and 25th March 2024 which found insufficient information had been submitted.

The Applicant has since submitted additional details, dated 18th June 2024, which aims to address the outstanding highway issues. The Highway Authority has reviewed this in the sections below.

Analysis:

Confirm locations and quantum of cycle parking:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows the following Bike Storage:

- | | | |
|--|-----------------------------|---------------------|
| • Units 01-07 (flats):
spaces each | 1no Bike Store for 14 bikes | 2no |
| • Units 08-15 (houses):
spaces each | 1no Bike Store on each plot | 2no |
| • Units 16-23 (flats):
spaces each | 1no Bike Store for 16 bikes | 2no |
| • Units 24-25 (Maisonettes): | 1no Bike Store for 4 bikes | 2no spaces each |
| • Units 26-28 (houses): | Bike in Garages | number not defined. |

The updated Transport Statement (dated May 2024) states that “*each dwelling will be constructed with appropriate provision for the parking of at least two bicycles within the overall property demise,...*”. Confirmation is sought of the number of bikes to be stored within the garages of plots 26-28, as this is not specified on the Site Masterplan.

The type of cycle stand has still not been clarified. (i.e. 7 Sheffield stands / Two-Tier stands will be required for 14 cycles, and Sheffield stands need to be spaced at 1m minimum gaps, whilst Two-Tier stands need a ceiling height of at least 2.7m based on the DfT’s LTN1/20 standards).

The design details of the cycle stands are required to demonstrate the quantum of cycle parking can be accommodated in the shown Bike Stores, otherwise the proposals are considered contrary to NPPF para 114c. The Planning Officer should consider whether this matter can be dealt with by way of Planning Condition.

Submit a S38 Highway Adoption Plan:

The Applicant has submitted a proposed Highways Adoption Plan (Drawing No 012 Rev A).

The following comments were included within the 25th March 2024 response and are still applicable:

The updated Site Masterplan includes the provision of block paving along the footway on both sides of the site that fronts St Mary's Road which has been marked for adoption (the Site Masterplan key defines this as 'Paving to Pedestrian Routes'). The Highway Authority require the sections that are to be adopted to be tarmac/asphalt as this will avoid excessive maintenance / liability issues. The Site Masterplan should be updated at this stage of planning to avoid confusion at a later date.

For the northern site, the Highway Authority are satisfied with the adoption of the on-site turning head as this will be suitable for refuse collection.

For the southern site, the on-site turning head has not been offered for adoption, and the applicant is proposing this is a shared private drive. The applicant must be aware that Torbay Council refuse collection vehicles will not drive on unadopted highways, and therefore the waste collection arrangement must be clarified.... Therefore, based on this current arrangement, in order to provide a deliverable refuse strategy the turning head on the southern site will need to be adopted in order for refuse collection. The Torbay Highways Design Guide (Adopted Feb 2024) states that Shared Private Drives that are not adoptable are only permitted where fewer than 5 properties are served.

This is further supported by Policy BH8 of the Brixham Peninsula Neighbourhood Plan (Adopted Jun 2019) which requires new developments to comply with relevant adopted standards.

Bin Stores:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows a Bin Store in front of Units 01-07 in the northern site. Bins stores are shown in the southern site, adjacent to Units 16-23; between Units 16-23 and Units 24-25 and within the garages for Units 26-28. Unit 28 within the Site Layout Plan (Drawing No 172-003 Rev G) appears to be greater than 30m from the public highway, which exceeds the drag distance for collections based on Building Regulations.

It is recommended that the Torbay Waste Collection team reviews whether the Bin Stores proposed in both the northern and southern sites are an adequate size to accommodate the waste all units.

Parking arrangements:

The updated Site Masterplan (Drawing No 172-003 Rev G) shows the following parking arrangements:

- Units 01-07 (flats): 1no space each
- Units 08-15 (houses): 2no spaces each, 1no with Electric Charger
- Units 16-23 (flats): 1no space each
- Units 24-25 (Maisonettes): 1no space each
- Units 26-28 (houses): 2no spaces each in tandem arrangement, 1no with electric charger

The above parking for the units totals 39 spaces and the plan presents seven additional visitor spaces, of which, three have electric charging. This totals 46 spaces.

The number of spaces per flat / maisonette / house complies with Appendix F of the Torbay Local Plan 2012-2030.

Confirm that height of the western perimeter treatment of the northern section of the site shall be kept to within 600m height to aid pedestrian / vehicle intervisibility:

It is unclear from documents submitted what height the boundary wall is. This wall extends where the pedestrian access is situated.

Stage 1 Road Safety Audit:

An updated Stage 1 Road Safety Audit has been submitted (May 2024, Revision C). No issues within the scope of the Road Safety Audit were identified.

CTMP:

The CTMP provides a comprehensive overview of the management of construction vehicles and presents a prescribed Construction Traffic Route, Construction Programme and working hours. These elements are acceptable.

The number of on-site workers is at this stage unknown although it is stated that staff will utilise the designated workforce site car park. However, the document does not provide a plan to identify the designated workforce site car park.

Conclusion:

The Highway Authority wishes to raise an objection to the application due to insufficient details in relation to the cycle parking provision, refuse strategy & highway adoption, pedestrian safety at the western boundary crossing of the northern site, and construction workers site car park.

It should be clear that the Highway Authority are of the position that these design issues can all be resolved through the submission of amended plans/additional information.

Previous responses dated 16/08/2023, 06/10/2023 and 26/03/2024 can be found online that related to the original submission.

Western Power:

No response received.

Wales & West Utilities:

No response received.

South Devon National Landscape Office:

No response received.

WSP Landscape and Visual Peer Review:

Response dated 01/12/2023

To see full report please refer to the Council's website, extracts are provided below due to length of report.

A desk-based landscape and visual impact peer review has been undertaken aimed at identifying:

- Potential gaps in the baseline analysis data presented;
- Issues in relation to the methodology used and technical guidance followed (e.g. Viewpoint Selection, AVR representation); and
- The appropriateness of the findings and conclusions (including recommending additional assessment in relation to potential effects upon the South Devon Area of Outstanding Natural Beauty (AONB) if deemed necessary).

The Assessment indicates that there are likely to be effects arising as a result of the Proposed Development. It finds that these effects will be most noticeable during the construction phase, reducing over time, as the Proposed Development matures within its setting and proposed vegetation provides screening.

In terms of effects upon Landscape receptors, The Assessment finds that the greatest level of effect occurs at the site level, most notably during the construction phase. Effects upon larger Landscape receptors such as the South Devon AONB and Landscape Character Areas/Types are noted to be less, largely due to the relatively small scale of the Proposed Development, as well as the character of the PDS being defined by local context rather than that of the wider receptor.

In terms of effects upon Visual Receptors, the Assessment finds that the greatest level of effect is experienced by those receptors in close proximity to the PDS, and in particular during the construction phase, largely due to the presence of incongruent features such as plant and machinery, as well as noise and activity. Effects upon visual receptors further from the PDS, are notably less and further reduced over time during the operational phase.

The Assessment indicates that whilst there are likely to be both landscape and visual effects associated with the Proposed Development, particularly during the construction phase, these effects do not rise to the level where they are deemed to be significant.

WSP considered these findings to be reasonable, well justified and in accordance with the methodology.

Devon County Council's Landscape Officer

Updated response dated 07/11/2024

HEADLINE SUMMARY RESPONSE: Recognising policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024, the permanent harm to the historic character of the area and rich time depth the South Devon National Landscape that would result from the demolition of non-designated heritage assets should be weighed against the benefits of the scheme in the planning balance. Should the benefits of the scheme be determined to outweigh such harm, suitably worded conditions should be imposed requiring hard and soft landscape design as per my previous comments.

Following my response dated 10 October 2024, I have been made aware of further information submitted regarding the reasons why it is not feasible to convert and re-purpose the historic buildings on site for residential use. This comprises a letter dated 26 September 2024 from Gwella Contracting Services (Licenced Asbestos removal Specialists). This confirms that Asbestos Containing Materials are present and in a poor condition, and that the existing structural condition of the building presents numerous complications for retention and conversion, including the existing damp proofing that is insufficient and that would need complete replacement to satisfy Building Regulations.

I am not a structural engineer or a building surveyor, but a reasonable conclusion that I draw from this letter is that it is not feasible to convert and re-purpose the historic buildings on site for residential use, as encouraged through my previous comments which were in line with Aspiration 3 of the Torbay Local Plan and Urban Design Guide SPD.

Previous response dated 10/10/2024

HEADLINE SUMMARY RESPONSE: The proposed demolition of non-designated heritage assets would result in permanent harm to the historic character of the area and rich time depth the South Devon National Landscape, and there is insufficient information submitted to justify why these buildings of historic interest on the site cannot be included and repurposed as part of the development, therefore contrary to policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024. Such harm to be weighed against the benefits of the scheme in the planning balance.

Further to my response dated 22 August 2024, I have reviewed the revised information subsequently received, including the Arboricultural Impact Plan & Landscaping drawing and revised Tree Constraints Report, Arboricultural Impact Assessment and Tree Protection Plan dated September 2024. I conclude that:

- a) Proposals for tree removal are now clearer: tree group G3 would remain and would be enriched by planting of native shrubs. Whilst the proposals would require the removal of a group of sycamore (G2), these are not in good condition, and are outgrowing their location. I therefore agree with the assessment that the overall impact on trees would be low, and losses would be offset over time by proposed tree planting within the development.
- b) The proposals have not been revised to convert and re-purpose the historic buildings on site for residential use, as encouraged through my previous comments which were in line with Aspiration 3 of the Torbay Local Plan and Urban Design Guide SPD. The submitted documents still lack information on the reasons why such repurposing cannot be achieved. Given these buildings are undesignated heritage assets whose character and vernacular details contribute positively to the historic character of the area and 'rich time depth' of the South Devon National Landscape (one of its noted special qualities), their proposed demolition would remain contrary to policies SS10 and DE1 of the adopted Torbay Local Plan, and Policy LAN/P1 of the South Devon AONB Management Plan 2019-2024.

- c) Landscaping proposals now include details of proposed tree and shrub species, stock size and position, although detail is still lacking on the proposed 'Devon hedge,' and the estimated ultimate canopy spread, height and shadow of proposed tree species, and position of existing and proposed underground services. Whilst the proposed tree and shrub planting shown on the landscaping drawing are acceptable, I remain concerned that there is insufficient width allowed for creation of a proposed Devon hedgebank along the northern side of St Mary's Road. This normally requires 1.8m minimum. I therefore do not think this proposed landscape element is practically deliverable and represents a missed opportunity to extend the existing hedge along this lane to enhance its natural beauty. This is disappointing. The further information submitted also still lacks detail on proposed hard surfacing. If permission were granted, I therefore recommend a suitably worded condition requiring details of proposed landscaping including proposed walls, surfacing and edgings to be submitted for approval prior to commencement. I would encourage a rural rather than suburban style of design outcome, and robust planting to withstand drought conditions in a likely very narrow planter.

See also recommendations for conditions in my previous response.

Previous response dated 22/08/2024

HEADLINE SUMMARY RESPONSE: Request further information / clarification. Whilst the principle of residential development at the site is acceptable, including that part which falls within the South Devon National Landscape (SDNL), some key aspects of the proposed design are unclear, or raise key concerns.

Until the issues highlighted below are resolved, I consider there are grounds for a holding objection as contrary to policies DE1, SDB3, SS8C4, SS9, and SS10 of the Torbay Local Plan and LAN/P1 of the SDNL Management Plan. There is a risk of permanent harm to the special qualities, distinctive character and key features of the landscape context. The submitted design proposals lack information to assess whether opportunity has been (or could be) taken to enhance green infrastructure assets and the natural beauty of the SDNL. The demolition of heritage assets rather than incorporating them into the development would also be contrary to Torbay Local Plan Aspirations, Policy and Urban Design Guidance.

The LVIA has been carried out in line with good practice, although there are some issues that should be noted before the LVIA is relied upon by decision-makers. See LVIA Review below.

The proposed conversion of the site to residential use would be broadly consistent with the existing built previously developed character of the site. Given that parts of the site are unsightly and detract from the quality of the area, the proposals in principle can offer potential to contribute positively to the street scene and enhance the gateway into the South Devon National Landscape (SDNL).

However, there is concern about the design of the current proposal, notably the proposed demolition of historic stone buildings that make a positive contribution to the historic character and 'rich time depth' of the South Devon National Landscape (one

of its noted special qualities). The proposed reclamation of building stone from these buildings and re-use within the development would go some way to mitigating the loss, and the overall architectural design and palate of materials is more sympathetic to the character of the traditional buildings than the original application. However, the vernacular details and historic legacy of these buildings would be permanently lost.

Clarification is also needed around proposals for tree removal and landscaping, due to conflicting information and lack of detail on proposed hard surfacing, Devon hedgebanks, and planting.

These issues are also important to address given the northern part of the site falls within the South Devon National Landscape, and the southern part therefore within its setting. Torbay Council has a statutory duty (strengthened through the Levelling Up and Regeneration Act 2023) to 'further the purposes' of the SDNL by seeking to conserve and enhance its natural beauty. See Justification below for details and recommendations on how to address issues.

Should the application be determined on the basis of the currently submitted information, suitably worded conditions are recommended covering the following.

- a) Details of landscape proposals (hard and soft) to be submitted for approval prior to commencement. To include estimated ultimate canopy spread, height and shadow of proposed tree species, along with existing and proposed underground services.
- b) Landscape proposals to be implemented within the first available planting season following substantial completion of the development and maintained for a period of 5 years until established well. Any failed planting to be replaced to the same specification.
- c) Soft landscape /proposed habitats to be protected, managed and monitored for the lifetime of the development according to a Landscape and Ecological Management Plan (LEMP) submitted and approved within 5 years of date of commencement. To include a plan, accompanying report and timetable covering the intended purpose and structure/composition of all soft landscape elements, and details of management interventions and arrangements after the initial 5-year aftercare period that would ensure their intended design purpose and structure/composition would be fulfilled and sustained.
- d) Protection of trees in accordance with BS5837 and recommendations within the submitted AIA (as advised by Torbay Tree Officer).

JUSTIFICATION

1. Concern about loss of historic stone buildings.

These buildings are what remains of the historic farmstead of Upton Farm and have merit as non-designated heritage assets (with reference to Heritage Officer's response). They make a positive contribution to the character of Brixham's built environment and serve as a transition point from urban to rural character, providing a gateway into the National Landscape from the town of Brixham – as noted by others and in previous planning applications. Every effort should be made to conserve these heritage assets by converting and re-purposing them for residential use. However, the

submitted documents lack information on the reasons why such repurposing cannot be achieved.

Recommendation: Request revised designs that would allow retention of the traditional stone buildings OR request further information from applicant to justify why this is not reasonable or practical, for example a structural survey that demonstrates that a conversion of these buildings is not possible.

Reason: Aspiration 3 of the Torbay Local Plan which seeks to ‘*conserve and enhance the richness and diversity of the built, historic, marine and natural environments, which provide Torbay with its unique setting and important economic benefits...To safeguard heritage assets including those at risk in a manner appropriate to their significance, having regard to their ability to deliver economic regeneration, express local identity, reveal social histories and narratives and increase the connection of communities with place.... To ensure new development makes a positive contribution to local character and identity, including the wider landscape character...*’. See also policies highlighted.

2. Lack of detail about proposed species, planting density, stock size and means of establishment.

Neither the ‘Site layout plan’ nor the ‘Building application- post development habitats’ Drawing shows details of proposed tree and shrub planting species, density

Recommend: prior to determination submission of a Landscape Proposals Plan that identifies the typical species, stock size and planting density for areas of proposed soft landscaping, together with typical details showing design of proposed Devon hedgebank (including width and height dimensions), tree pits within hard landscaping, and hard landscaping. To include details of the intended purpose and structure/composition of such landscape elements.

Reason: to enable judgement as to whether the proposals would relate well to the character of the area, enhance the natural beauty of the SDNL, and be able to be delivered and sustained for the lifetime of the development.

3. Lack of detail about proposed Devon hedgebanks

These are mentioned in the Design and Access Statement and LVIA and indicated on the site layout plan. However, no details are provided, and the appearance of these features on the visualisations recently submitted look like low stone-faced planters with ornamental shrubs. Whilst I cannot scale from the submitted drawings, the width of these features do not look wide enough. Opportunity should be explored to match in and extend the existing Devon hedge along St Mary’s Road on the north side, even if this means losing some of the footway on the north side. This would contribute to enhancing the natural beauty of the SDNL.

Recommendation: see 2. above

4. Lack of or conflicting information regarding trees to be removed and retained

There is conflicting information regarding tree removal and new planting when comparing latest Design and Access Statement with Proposed Site Plan (Drg 003/G),

Tree Constraints Plan and the 'Building application- post development habitats' Drawing. Some documents indicate no trees would be retained, the Design and Access Statement states that all trees within the site would be retained. The LVIA lacks mention of tree removal at all.

The Tree Constraints Plan lacks detail of reference numbers and Categories of trees that would allow cross-reference to their descriptions stated in the submitted Tree Survey. The LVIA states that trees are of moderate or poor quality but does not cross-refer to detail in the tree survey to justify this.

No information has been found that allows the importance and value of trees on and adjacent to the site to be understood.

Proposals would require removal of street trees outside the red line yet no information is submitted that confirms the landowner is in agreement /any requirements for replacement planting. Street trees provide multiple benefits, including for climate adaptation so it is important to provide for their replacement. Can be covered by s.106 agreement.

Recommendation: See Torbay Tree Officer's response

N.B. The full response can be viewed online.

Torbay Council's Senior Structural Engineer:

Response dated 14/11/2024

I would generally observe that comments supporting the demolition of buildings within this application have been made on a speculative basis (e.g. 'suggesting' structural remediation work [Conversion vs New Build Viability], Section 2, para 1). Unverified claim of defective structural condition has been used to then conjecture need for extensive propping and/or realise significant risk to safety.

Little to no justification or evidence has been offered to substantiate statements. Meanwhile, and somewhat contrary to other statements made within the submitted documents, the hierarchy of sustainability might propose repurpose of buildings ahead of demolish/new build.

Some further points:

- How the installation of new service ducts and drainage requires *substantial* work to building structure is unclear.
- Gwella is primarily an asbestos removals contractor, not known to have structural engineering expertise or experience, and not known to be possessed, or claimed by the writer.
- Much discussion around the cost of asbestos removal might be deemed somewhat irrelevant, since removal will be required regardless of how the site is developed (some may even be retained in the case that it were to remain undisturbed); claims of ACMs likely to affect structural integrity have not been substantiated.

- Desktop inspection of the buildings finds very little of concern - a vertical crack to a northern elevation of buildings on the southern side of St Mary's Road is not clearly of major structural significance.
- Timber elements are described to be extensively rotten and requiring replacement, in turn necessitating costly propping. Demonstration and quantification of the extent of timber rot, and its influence on structure would be useful. If indeed timber elements require widespread replacement, phased works may avoid need for the extensive propping described.
- Specific demonstration of structural conflict in 'potential foundation issues' (Gwella, para 4) might provide a more convincing argument for demolitions.

Conclusions

The applicant might be invited to engage a structural engineer to provide a report of structural condition/propensity to structural repair. If it remains that some buildings cannot be justified to be removed, partial building retention on the site may alternatively be agreed.

The applicant might also be invited to provide a qualified/competent consultant's carbon calculation to demonstrate how new build might be more favourable than repurposing. Torbay Council's Climate Emergency Officer might be invited to comment further, and might be invited to validate any forthcoming calculation.

Planning Officer Assessment

Key Issues/Material Considerations

1. Policies Relating to Housing Development
2. The South Devon National Landscape
3. Design, Visual Appearance and the Character of the Area
4. Impact on Designated and Non-Designated Heritage Assets
5. Impact on Residential Amenity
6. Impact on Highway Safety
7. Impact on Trees
8. Impact on Ecology and Biodiversity
9. Impact on Flood Risk and Drainage
10. Affordable Housing Contributions
11. Designing Out Crime
12. Low Carbon Development

1. Policies Relating to Housing Development

The Development Plan (i.e. the Local Plan and the relevant Neighbourhood Plan) is the legal starting point for determining planning applications, and proposals should be assessed against it. A judgement should be made as to whether a proposal is in compliance with the Development Plan (when taken as a whole). Where the Development Plan is out of date in the case of applications such as this involving the provision of housing, it retains its statutory force, but the focus shifts onto the NPPF and presumption in favour of sustainable development. Policy SS3 of the Local Plan sets out its own Presumption in Favour of Sustainable Development. Policies SS12 and SS13 of the Local Plan set out measures to maintain a five year supply and to

“consider favourably” applications for new housing as far as consistent with other policies in the Plan.

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 25no. units (St. Mary’s/Old Dairy) which covers the area of the existing buildings north and south of St. Mary’s Road. The buildings currently in this location have no policy requirement that require them to be retained and the principle of meeting the Neighbourhood Plan allocation of 25no. residential units is considered to be acceptable. The proposed development is for 28no. residential units in this location, which exceeds the policy allocation. The application site was previously allocated for housing in previous Torbay Local Plans, and is shown as a potential housing site BPNPH11 on the Local Plan. The Council’s Principal Policy and Project Planner has stated that they would not regard the 3no. additional dwellings as a departure from the Development Plan.

Policy BH3 of the Neighbourhood Plan allocates residential development for the Neighbourhood Plan area, subject to proposals demonstrating that there is no likely significant effect, either alone or in combination with other plans or projects on the integrity of European sites. As previously confirmed, the application site is an allocated residential development site, known as “H3-I2 St Mary’s/Old Dairy”.

The Housing Site Assessment describes the application site as *“St Mary’s Industrial Estate site is located to the north of St Mary’s Road while the Old Dairy site is to the south. The Industrial Estate site consists of a series of older buildings which form an industrial estate variously used for car repair workshops etc. It also includes, as per the maps which accompanied the Local Plan and the SHLAA, an adjacent field to the east of the main industrial estate. This field includes the remains of a former building which has largely blended into the landscape in the process of time. The Old Dairy site consists of the currently disused buildings of a former dairy”*.

The Assessment outlines the opportunities for the application site as *“The current buildings at the St Mary’s Industrial Estate and Old Dairy sites are in a lower state of repair. The land could be developed either through conversions of existing buildings or demolition and new build to provide a more efficient use of land”*. It also outlines the constraints as *“The St Mary’s Industrial Estate site lies within the AONB and only part of this site is assessed to be previously developed land. Any development would need to take account of Greater Horseshoe Bats which are known to fly across or adjacent to the site. The Ecological Assessment undertaken by Kestrel of the St Mary’s Industrial Estate site made reference to the importance of retaining the hedge (which separates the Industrial Estate from the adjacent field). Access to the site is also quite tortuous”*.

Policy BH4 of the Neighbourhood Plan outlines that subject to compliance with other policies in the Neighbourhood Plan, residential development on brownfield site in preference to greenfield sites will be encouraged and supported. Policy BH4 confirms that brownfield sites within defined settlement boundaries, as designated under Policy E2 of the Neighbourhood Plan, are the preferred locations for development. The application site is brownfield in nature.

Paragraph 124 of the NPPF promotes the effective use of land in meeting the need for homes and other uses. Paragraph 125 of the NPPF guides that planning decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes and other identified needs, and promotes support for the development of under-utilised land and buildings, especially where it would help to meet identified needs for housing where land supply is constrained and available sites could be used more effectively.

Policy E2 of the Neighbourhood Plan defines the settlement boundaries in the Neighbourhood Plan area. The supporting Policy Map confirms that the application site is located within the settlement boundary. Policy E2 goes on further to outline that subject to compliance with other policies in the Neighbourhood Plan, proposals for sustainable developments within settlement boundaries will be supported where developments demonstrate good design and follow the guidance in the relevant Design Statement as outlined in Policy BH5 of the Neighbourhood Plan.

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites. Letters of representation supporting the proposal highlight that the proposal would provide housing, whereas those objecting have raised concerns regarding the quantum of development and the housing mix. Letters of representation have also indicated that the application site is shown in the Local Plan. Objectors have raised concerns over the loss of employment uses.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well-connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location.

As concluded within this report, there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8 and SS10 of the Local Plan, and Policies BE1, BH5, E1 and E2 of the Neighbourhood Plan.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay's most recent housing land supply which was published in April 2023, stated that the Council has 2.17 years, which is a significant shortfall. The Housing Delivery Test requires that the presumption in favour of sustainable development be applied as per Paragraph 11 of the NPPF.

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.

Whilst government guidance pulls in somewhat different directions, there is a clearly stated government objective of boosting the supply of housing. Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF. There is a pressing need for housing in Torbay, and the site is allocated for housing in the Development Plan. Accordingly, the presumption in favour of sustainable development is applied to applications involving the provision of housing.

Under the presumption, permission should only be refused where either:

- The application of policies in the Framework that protect the National Landscape or designated heritage assets provides a strong reason for refusal (i.e. the “tilted balance” at Paragraph (d)i) or
- The impacts of approving a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination (i.e. the “tilted balance” at Paragraph 11(d)ii).

Development plan policies are taken into account when assessing whether the harm caused would “*significantly and demonstrably*” outweigh the benefit.

For reasons set out in this report there is material harm to the South Devon National Landscape, contrary to the NPPF, notably Paragraphs 187 and 189, which confirms such is a protected asset that presents a strong reason for refusing the application. There is also less than substantial harm to the setting of a Grade II listed building, a designated heritage asset, contrary to the NPPF, notably Paragraph 214, whereby the public benefits of the proposal do not outweigh the identified harm. Paragraph 212 of

the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. As such, the harm to the South Devon National Landscape and designated heritage assets presents a strong reason for refusing the application.

As such the 'tilted balance' identified in Paragraph 11(d)(ii) of the NPPF is not enacted. National Landscapes and designated heritage assets are defined protected assets under Paragraph 11(d)i and given the harm to such, the policies in the Framework which seek to protect the protected areas of particular importance provide a strong reason for refusing the development. The "tilted balance" aspect of the presumption in favour of sustainable development at Paragraph 11(d)(ii) of the Framework therefore does not need to be applied.

It is also considered that the impacts of approving the development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole (i.e. the "tilted balance" at Paragraph 11(d)(ii)). This is set out in the final section of the report dealing with the planning balance.

For completeness, it is noted that Footnote 9 and Paragraph 11(d)(ii) draw particular attention to key policies for directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes. Whilst these considerations may also pull in different directions, the proposal presents significant and demonstrable conflict with the objective of securing well designed places.

2. The South Devon National Landscape

The northern parcel of the application site is located within the South Devon National Landscape, which is 1 of 46 areas within England, Wales and Northern Ireland safeguarded in the national interest for its distinctive character and beauty. The legal designation is as an Area of Outstanding Natural Beauty (AONB). The Levelling Up and Regeneration Act has renamed the Areas of Outstanding Natural Beauty as National Landscapes.

Section 85 of the Countryside and Rights of Way Act 2000 places a general duty on public bodies in exercising or performing any functions in relation to, or so as to affect, land in an Area of Outstanding Natural Beauty in England, to further the purpose of conserving and enhancing the natural beauty of the Area of Outstanding Natural Beauty. The Levelling Up and Regeneration Act replaced the former "*duty of regard*" with a stipulation that authorities "*must seek to further the purpose of conserving and enhancing the natural beauty*" of the Area of Outstanding Natural Beauty.

Planning Practice Guidance states that "*All development in National Parks, the Broads and Areas of Outstanding Beauty will need to be located and designed in a way that reflects their status as landscapes of the highest quality*" (Paragraph: 041 Reference ID: 8-041-20190721).

Policy SS8 of the Local Plan states within the AONB, the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. The policy goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated.

Policy SDB1 of the Local Plan advises that Brixham is expected to provide 660 new homes over the plan period but that this should be done without prejudicing the integrity of the AONB and Special Areas of Conservation, and provided that the interests of priority species, such as the Greater Horseshoe Bat and Cirl Buntings, can be safeguarded.

Policy SDB3 of the Local Plan confirms that the AONB around Brixham, including Berry Head National Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes.

Policy E1 of the Neighbourhood Plan states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and new development will need to respect these qualities and wherever possible enhance them.

In accordance with paragraph 189 of the NPPF, great weight should be given to conserving and enhancing landscape and scenic beauty of designated areas, including National Landscapes, which have the highest status of protection. The NPPF outlines that the scale and extent of development within National Landscape should be limited, and development within its setting to be sensitively located and designed to avoid or minimise adverse impact on the designated areas.

Paragraph 190 of the NPPF confirms that when considering applications for development in protected areas, including National Landscapes, permission should be refused for major development [see Footnote 67] other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Footnote 67: For the purposes of paragraphs 190 and 191, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

The application site serves strongly as a gateway to the South Devon National Landscape. Objectors have raised concerns about the proposed development and its impact on the National Landscape. Whilst technically, the application is a major planning application as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, consideration must be given as to whether the proposed development in the northern parcel of the site would be considered major development within the National Landscape. The section of the application site which is located within the National Landscape is the northern parcel and the proposal in this part of the application site is for 13no. residential units, the parcel is within the built up area and the site, together with the southern parcel, is allocated for residential development. It is considered that the proposal in the northern parcel of the application site does not constitute “*major development*” in the National Landscape as defined in Footnote 67 of the NPPF due to the reasons stated above.

The overriding policy intent in the Local Plan, Neighbourhood Plan and the guidance contained within the NPPF points towards protecting the National Landscape and now requires the Council to seek to further the purpose of conserving and enhancing its natural beauty, and providing quality housing in sustainable locations.

The application site is situated within the “*Main Cities and Towns*” character type as per the Devon Landscape Character Assessment and the Torbay Landscape Character Assessment. The application is accompanied by a Landscape Visual Impact Assessment (LVIA) which has been updated given the revised scheme. The LVIA that was submitted with the original submission was reviewed by the Councils Landscape consultant WSP. The updated LVIA has been reviewed by Devon County Council’s Landscape Officer. The South Devon National Landscape Office have not commented upon the application.

The South Devon Area of Outstanding Natural Beauty Management Plan 2019 - 2024 (South Devon AONB Partnership, 2019) identifies ten special qualities of the South Devon AONB, which are:

- *Fine, undeveloped, wild and rugged coastline;*
- *Ria estuaries (drowned river valleys), steep combs and a network of associated watercourses;*
- *Deeply rural rolling patchwork agricultural landscape;*
- *Deeply incised landscape that is intimate, hidden and secretive away from the plateau tops;*
- *Iconic wide, unspoilt and expansive panoramic views;*
- *A landscape with a rich time depth and a wealth of historic features and cultural associations;*
- *A breadth and depth of significant habitats, species and associated natural events;*
- *An ancient and intricate network of winding lanes, paths and recreational routes;*
- *Areas of high tranquillity, natural nightscapes, distinctive natural soundscapes and visible movement; and*
- *A variety in the setting to the AONB formed by the marine environment.*

The applicant has updated their LVIA (July 2024), which concludes that:
“*The likely effects on the South Devon AONB have been assessed as minor adverse at construction and year 1, reducing to minor adverse to negligible at year 15. The*

Proposed Development will not be wholly uncharacteristic given the existing developed nature of the Site and its local context, the characteristic materiality used and will not result in unacceptable effects upon the special qualities or wider character of the AONB.

In summary, the Proposed Development at the Site will be on a previously developed and allocated site within the Settlement Boundary of Brixham. Whilst the Site partially lies within the South Devon AONB, the Site and its surrounding context are clearly of a suburban and previously developed character, representing a far less sensitive area of the AONB. The loss of landscape features as a result of the Proposed Development will be limited to a traditional stone building and other buildings located on Site and two trees on the south-western Site boundary. Traditional stone and wooden cladding will be used in the design of the scheme to provide characteristic features and a sense of time-depth to the development with the Site's previous usages. Additional tree and characteristic hedgebank planting is also proposed within the Site as part of the proposals. Residual effects at year 15 on views of the Site from the surrounding landscape are at worst, negligible where the Proposed Development will always be viewed within the context of Brixham."

The Council's Landscape Consultant (WSP) undertook a desk-based peer review of the originally submitted LVIA. The peer review being aimed at concluding on the soundness of the report rather than being a stand-alone assessment, including in relation to potential effects upon the National Landscape. WSP as consultant landscape advisers notes that whilst there are likely to be both landscape and visual effects associated with the proposed development, particularly during the construction phase, these effects do not arise to the level which WSP consider from their desk-based study to be deemed to be significant.

It should be noted the Devon County Council's Landscape Officer previously commented upon the previous planning application (ref: P/2021/0890) which was an outline application for 130no. residential units, which included the application site. The Landscape Officer noted that there would be *"degree of harm to the rural landscape character, and AONB special qualities resulting from the removal of the traditional stone buildings of Upton Farm and the widening of St Mary's Lane with consequent need to remove the existing stone-faced hedgebank to the north of the lane"*.

Whilst this current proposal is subject of only the brownfield northern and southern parcels either side of St Mary's Road, it is evident that the existing traditional stone buildings provide rural landscape character and offer a special quality of the National Landscape. The Landscape Officer on the previous application identified that the application site offered a special quality to the National Landscape – *"The cluster of traditional historic stone buildings of Upton Farm along St Mary's lane and the historic hedgebanks along St Mary's lane contribute to "A landscape with a rich time depth and a wealth of historic features and cultural associations"*

The applicant has provided an updated LVIA, which Devon County Council's Landscape Officer has reviewed. The Landscape Officer has provided three formal responses to the application. The first two responses concluded that the proposed demolition of the non-designated heritage assets would result in permanent harm to the historic character of the area and rich time depth of the South Devon National Landscape. The Landscape Officer stated that insufficient information had been

provided to justify why the non-designated heritage assets which are of historic interest cannot be included or repurposed as part of the proposed development, therefore contrary to Policies DE1 and SS10 of the Local Plan and Policy LAN/P1 of the South Devon AONB Management Plan.

The applicant requested the Landscape Officer reviewed two supporting documents (a letter dated September 2024 from Gwella Contracting Services and a document dated November 2023 from Westcountry Land & Homes). The Landscape Officer provided a third formal response, which maintained the concerns relating to the harm the demolition would present. Within the third consultation response, the Landscape Officer highlighted that they are not a Structural Engineer or Building Surveyor and caveats their response accordingly. Following this response, the Council's Senior Structural Engineer was consulted and concluded that the commentary provided within the two documents are made on a speculative basis and little to no justification or evidence has been offered to substantiate statements. The applicant was invited to engage a Structural Engineer to provide a report of structural condition/propensity to structural repair, the invitation was rejected by the agent.

The proposal involves the total demolition of the existing traditional historic buildings which offer a wealth of historic features and cultural associations. The proposal would remove this special quality of the National Landscape. The existing buildings provide a rural character and "gateway" into the National Landscape as it transitions from town into countryside. Whilst the proposed reclamation of the stone from the non-designated heritage assets and re-use within the palette of materials is considered to go some way to mitigating the loss of the buildings, the overall architectural design and palette is considered to be more sympathetic to the character of the traditional buildings than the original submission. However, the vernacular details and historic legacy of the non-designated heritage assets would be permanently lost.

It is therefore considered that the harm identified by the Landscape Officer remains and must be weighed against the benefits of the scheme in the planning balance. Such harm should be given great weight in the planning balance when weighing against the benefits of the scheme, as per Paragraph 189 of the NPPF.

Given the proposed development, particularly in relation to the loss of the existing traditional historic stone buildings, and its location within and adjacent to the South Devon National Landscape, it is considered that the proposed development would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape, as it fails to conserve and enhance such. The proposal is therefore contrary to Policies SS3, SS8, SS10 SS11, SDB1, SDB3, DE1 and H1 of the Local Plan, Policy E1 of the Neighbourhood Plan, and the guidance contained within the NPPF.

3. Design, Visual Appearance and the Character of the Area

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF "Achieving well-designed places" offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state 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 139 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, taking into account any local design guidance and supplementary planning documents such as design guides and codes'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy BH5 of the Neighbourhood Plan requires that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. To achieve good design, an important part is to respond to and integrate with local character and landscape context as well as the built environment. Policy BH5 reiterates the NPPF, that planning permission will be refused where poor design fails to take opportunities available for improving local character and quality of an area and the way it functions. Policy BH6 of the Neighbourhood Plan provides design guidance in relation to roofscape and dormer management.

It should be noted that this application has been submitted without any prior engagement with the Local Planning Authority, this is a missed opportunity given the pre-application service the Council offers. There is also the opportunity for the independent Torbay Design Review Panel to review the proposal to which the applicant has not engaged with either. It is also unfortunate that the applicant has failed to provide suitably scaled existing drawings, namely elevations, floorplans and sections of the buildings. The applicant submitted two plans (refs: 172-006 and 172-008) which are a collection of distorted 3D images of the existing site and surrounding area. It should be noted that the submitted Heritage Statement by Southwest Archaeology contains existing floorplans, however such are caveated with '*sizes are approximate*' and it states that some buildings have not been surveyed. This is simply not sufficient, as it is not clear as to the existing heights, levels and openings within the site which are material to this application given the sensitivity of the site within the South Devon National Landscape, being in close proximity to the South Hams Special Area of Conservation (SAC) and in relation to neighbouring properties.

The application site comprises of existing built form in the way of a mixture of one, two and three storey period stone and render commercial buildings, with areas of hardstanding. The application site is allocated for residential development and there are no policy constraints to prevent the demolition of the existing buildings onsite. It should be noted that the Planning Inspector when assessing P/1988/1135 and P/1988/2392 considered that the existing traditional stone buildings on the application offered a "*significant contribution to the character of the area*".

Units 1-7 is flatted development that comprises of a main two storeys built form, with a three storey corner feature. The proposed roofscape would have a mixture of hipped and gable features. The proposal will be constructed of natural stone and vertical natural timber cladding. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposal varies in height, the two storey element ranges from 7.5-8 metres in height whereas the three storey element is approximately 10.8 metres in height.

Unit 8 is a detached, two-storey dwellinghouse, that would have a gable roofscape. The proposal would be finished in natural stone and natural vertical timber cladding with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The detached dwellinghouse would be approximately 7.6 metres in height.

Units 9-10 are semi-detached two-and-a-half storey dwellinghouses. The proposed units would have flat roof, off-set dormers to their frontage. The proposal would be finished in natural stone, black stained vertical timber cladding with a natural slate and standing seam metal panel finish. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These semi-detached dwellinghouses would be approximately 9.1 metres in height.

Units 11-13 are two storey terraced dwellinghouses that would have a gable roofscape. The proposal will be finished in natural stone, vertical natural timber cladding and grey standing seam metal panel. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. These terraced dwellinghouses would be some 8.1 metres in height.

Units 14-15 are two storey semi-detached dwellinghouses. The proposed roofscape would be gabled. The proposal will be finished in natural stone and vertical black timber cladding. The roofing materials would comprise of natural slate. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The semi-detached dwellinghouses would be some 7.6 metres in height.

Units 16-25 is flatted development that comprises of three storey built form with a pitched roof that has gable features. The proposal will be finished in natural stone, vertical natural timber cladding and grey standing seam metal cladding. The roofing materials would comprise of natural slate and standing seam metal panels. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The proposed flatted development is contained within two main blocks, one of which measures approximately 9.3 metres and the other approximately 10.3 metres. There is an adjoining link between the largest flatted development block and the 2no. flats that are sited above the undercroft parking.

Units 26-28 are three storey terraced dwellinghouses. The proposed roofscape would be pitched with gable features. The proposal will be finished in natural stone and vertical black timber cladding. The roofing materials would comprise of standing seam grey metal. The proposed fenestration would be grey aluminium, with rainwater goods and ironmongery also being grey in appearance. The terraced dwellinghouses would be some 9.9 metres in height.

It should be noted that the revisions throughout the lifetime of this application have not reduced the height or scale of the proposed development.

Letters of representation supporting the proposal state that the proposed development would remove an eyesore. Whilst objectors have raised concerns that the proposal would have a negative impact on the local area, is not in keeping with the local area, would result in overdevelopment of the site, and would set an unwanted precedent. Objectors have also raised concerns regarding the height of the development.

The proposed layout indicates the external finishes of the application site, however the submitted Proposed Layout (ref: 172-003 Rev E) does not provide a complete key of all the material choices. There are limited datum levels and details of the height extents of the proposed boundary treatments, which makes it not possible to comment upon the visual impact of such and whether some would impinge on highway visibility splays.

The application site provides a gateway to the South Devon National Landscape. The existing buildings onsite provide a rural gateway and former agricultural cultural heritage characteristic to the National Landscape.

The proposed design of the entire proposal has been revised during the lifetime of the planning application, originally the design was poor and not in keeping with the surrounding area, given its somewhat modern and contemporary industrial design. However, the revision does include some improvement however it fails to demonstrate a heritage-led approach to the regeneration of the site.

It is considered that the proposal fails to acknowledge the local character and destroys the rural gateway. The proposal in totality, given its siting, scale and design would fail to integrate within the existing street scene and does not positively enhance the built environment. The Neighbourhood Plan emphasises the need for new development to respect the character and appearance of the surrounding area, whilst the existing buildings are of a differing character and appearance to the existing surrounding residential development, the use of the existing buildings differs from the existing residential development given it serves a commercial purpose. The proposal seeks to align with the surrounding residential use, but demonstrably fails to respect it through its scale and design.

The existing buildings are formed of traditional stone or block and render, with the surrounding properties displaying mixes of render and buff brick. The proposal seeks to introduce vertical black timber cladding which is considered to be unacceptable as it would appear a stark contrast and is not evident elsewhere in the surrounding area. The revised proposal provides a revised palette of materials which is broadly satisfactory with the exception of the black timber cladding, as the application site is the gateway site in and into the National Landscape.

Whilst the existing buildings particularly dominate the southern section of the site in terms of footprint, the buildings respond to the changes in level, whereas the proposal provides a stark difference. The roofscapes of the existing buildings are varied but somewhat hidden from the public realm, whereas the varying roofscapes of the proposal would be dominant and visible given the increase in height. The proposal would remove the rural gateway to the South Devon National Landscape and would present a dominant stark built form.

Whilst the proposal has been revised, the proposed height of the development is concerning. Limited details have been provided with regards to levels and so the following comments are caveated on that basis. Given the existing buildings and structures on site which appear to adapt to the topography of the site, the proposal in contrast would introduce additional height. The proposed development in terms of height would be at prevailing odds with the surrounding area. It is considered that the proposed scale would not respect or enhance the local character and would fail to relate to the surrounding built environment in terms of height.

There are several locations within the proposed development where openings are either disproportionate or at odds with the other openings included on the same elevation, most of which would be visible from the street scene and are considered to be unacceptable. The inclusion of flat roofed dormer to Units 9 and 10 is unsympathetic and uncharacteristic. The quantum of floor to ceiling glazing on the flatted development block for Units 16-25 would not positively contribute to the streetscene given future occupiers belongings and paraphernalia being easily visible to passersby.

The NPPF focuses on securing well-designed places, it is considered that the current proposal does not provide such, instead demonstratively stark and incongruous built form that is at prevailing odds with the existing residential development and removes a rural gateway into the National Landscape. The proposed development would result in built form that would be wholly out of character with the existing area and would result in the loss of traditional stone buildings that make an important contribution to the character of the area. The development as a whole would be dominant and visually intrusive, and the overall scale and design is considered to result in a detrimental impact upon the existing street scene and locality, contrary to Policies DE1 and SS10 of the Local Plan, Policy BH5 of the Neighbourhood Plan and the guidance contained within the NPPF, in particular Paragraph 139.

4. Impact on Designated and Non-Designated Heritage Assets

Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that "*In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses*".

This statutory requirement needs to be considered alongside the NPPF which recognises that heritage assets range from sites and buildings of local historic value to those of the highest significance.

Paragraph 210 of the NPPF goes onto to state that in determining applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- c) the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 212 of the NPPF considers that *“when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance”*.

Paragraph 213 of the NPPF states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.

Paragraph 215 of the NPPF outlines 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 including, where appropriate, securing its optimum viable use.

With regards to non-designated heritage assets, Paragraph 216 of the NPPF advises that in weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Paragraph 217 of the NPPF confirms that should a heritage asset be lost either wholly or in part, local planning authorities should take all reasonable steps to ensure that the new development will proceed after the loss has occurred.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay’s conservation areas. Policy BE1 of the Neighbourhood Plan confirms that proposals which affect designated and non-designated heritage assets must comply with the requirements of the NPPF and relevant policies of the Local Plan. Policy BE1 goes on to state that all developments should ensure a high quality of design that respects the specific character and historic legacy of each settlement and the surrounding area.

Objectors have raised concerns regarding the loss of the existing traditional stone buildings, as well as impact on the historic landscape.

The Council’s Principal Historic Environment Officer has confirmed that the application site contains a number of non-designated heritage assets and there is a Grade II listed building (1, 2 and 3 St. Mary’s Road) located approximately 20 metres to the northwest of the application site. The significance of 1, 2 and 3 St Mary’s Road relates predominantly to its evidential value through the survival of 17th century fabric, historic value through being a physical embodiment of the historic occupation of the area and the evidence of past inhabitants on the site, and its aesthetic value from its contribution to the surrounding townscape. The Officer considers that with regards to its setting, the building may have formed part of a wider designed landscape, however, the perception of this former landscape has now been largely lost through 20th century development. The asset is now predominantly experienced from St. Mary’s Road and

Upton Manor Road and from within its own curtilage. The setting of the asset is therefore considered to make some contribution to its significance. The application site, due to its proximity, past agricultural use and historical relationship is considered to form a part of the asset's setting.

The Council's Principal Historic Environment Officer has outlined that both the northern and southern groups of buildings, a stone boundary wall along St. Mary's Road and potentially other structures associated with the former agricultural/industrial use of the site could be classed as non-designated heritage assets. It is believed that the site contains built fabric and features which date from the 18th century and possibly earlier set within a predominantly 19th century agricultural landscape. The Council's Principal Historic Environment Officer has outlined the heritage values of the application site, such can be found in the consultation responses on the public file. Whilst the existing buildings have been altered as a result of past unsympathetic development within the site, the site has clear demonstrable evidential, architectural and historic value. The Council's Principal Historic Environment Officer confirms that the existing historic buildings on the site can therefore be considered to be non-designated heritage assets.

The total demolition and clearance of the site would cause substantial harm, through complete loss of significance, to the existing historic buildings and their historic relationship with each other and the wider landscape. This loss should be assessed within the context of Paragraph 210 of the NPPF and the heritage harm appropriately considered within the overall planning balance. The proposed development lacks convincing justification and would therefore be contrary to the requirements of Paragraph 213 of the NPPF.

The application site is in close proximity to 1,2 and 3 St. Mary's Road. The site is currently well screened due to the presence of a band of mature vegetation and walling. The proposed development would remove the historic/former agricultural buildings on the application site, but would utilise the salvaged materials from the traditional stone buildings into the external materials palette. The Council's Principal Historic Environment Officer has stated that the setting of this asset only makes a modest contribution to its significance, the impact of the proposed development would result in an adverse change within its setting and would therefore cause a low degree of 'less than substantial' harm to the significance of the designated heritage asset. This would be required to be assessed within the context of Paragraph 215 of the NPPF and should be weighed against the public benefits of the proposals as part of the overall planning balance.

With regards to the proposed development, the Council's Principal Historic Environment Officer does not consider that the design of the proposed development is heritage-led and therefore does not take into account or incorporate the existing heritage assets which have demonstrable heritage value. The Officer has confirmed that the revised palette of external materials including the salvaged material from the demolition of the traditional stone buildings would provide an agricultural style. The introduction of contemporary architecture can be successful within historic settings, however it is considered that the proposed development is not of sufficient architectural or visual interest for this sensitive site and fails to provide a heritage-led regeneration scheme that incorporates the existing assets which have demonstrable

heritage value. The Officer has advised that whilst the revised scheme is an improvement upon the originally submitted scheme, the heritage harm identified could be reduced or potentially removed should a heritage-led regeneration approach to the site be considered.

The Council's Principal Historic Environment Officer has concluded that the proposed development would cause clear harm to a number of identified non-designated heritage assets and the designated Grade II listed building (1, 2 and 3 St Mary's Road) heritage asset.

Within the context of Paragraph 214 of the NPPF, it is considered that the proposed development would result in less than substantial harm to designated and non-designated heritage assets, whereas the main public benefits of the scheme would result from the provision of 28 no. residential units. In this instance the benefits that are offered by the development do not outweigh the harm to the designated heritage asset and the loss of the non-designated heritage assets, the traditional stone buildings. The public benefits in this case do not provide a clear and convincing justification to outweigh the identified harm. In addition, by virtue of the identified heritage harm, which provides a strong reason for refusing the proposed development, the presumption in favour of sustainable development has been considered in this recommendation.

Therefore, the proposed development is considered to be contrary to Policy SS10 of the Local Plan, Policy BE1 of the Neighbourhood Plan and the guidance contained within the NPPF.

The above conclusion has consideration of Paragraph 212 of the NPPF which identifies that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

This conclusion has taken account of the statutory duty under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

5. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to provide a good level of amenity for future residents and will be assessed in terms of the impact of noise, nuisance, visual intrusion, overlooking and privacy, light and air pollution, provision of useable amenity space, and an adequate internal living space.

Internal Living Space

Policy DE3 of the Local Plan requires that new residential units provide adequate internal floor space in order to achieve a pleasant and healthy environment. The Neighbourhood Plan is largely silent on the matter of amenity. Paragraph 135 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 sets out the minimum floor space standards for new dwellings and apartments. The proposed residential units feature the following approximate floor areas:

Unit Number	Number of Bedrooms	Number of Bed Spaces	Number of Storeys	Total Floorspace (sq.m)	NDSS Requirement (sq.m)	Complies?
1	2	4	1	80.7	70	Yes
2	2	4	1	88.6	70	Yes
3	1	2	1	58.5	50	Yes
4	1	2	1	59.2	50	Yes
5	2	4	1	78.0	70	Yes
6	2	4	1	78.1	70	Yes
7	2	4	1	78.1	70	Yes
8	4	5	2	118.9	97	Yes
9	4	7	3	125.0	121	Yes
10	4	7	3	125.0	121	Yes
11	2	4	2	78.6	79	No
12	2	4	2	78.6	79	No
13	3	5	2	96.5	93	Yes
14	3	5	2	95.0	93	Yes
15	3	5	2	95.0	93	Yes
16	2	4	1	76.0	70	Yes
17	2	4	1	76.0	70	Yes
18	2	4	1	73.1	70	Yes
19	2	4	1	76.0	70	Yes
20	2	4	1	76.0	70	Yes
21	2	4	1	73.1	70	Yes
22	3	6	1	130.0	95	Yes
23	2	4	1	73.1	70	Yes
24	2	3	2	80.0	70	Yes
25	2	3	2	80.0	70	Yes
26	2	4	2*	79.4	70	Yes
27	2	4	2*	79.4	70	Yes
28	2	4	2*	79.4	70	Yes

* - These residential units are three storeys in height, however the ground floor is used as an integral garage and therefore is not included within the NDSS calculation.

The majority (26no.) of the units comply with the minimum floor space requirements apart from units 11 and 12 which very marginally fall below such. Whilst the floor areas of these units are very marginally below the recommended floor area, the units are considered to have a usable layout for all day to day needs, adequate light and outlook and private outside amenity spaces. Therefore, whilst the floor area is slightly below standards, the quality of the internal environment is considered to be satisfactory. It

should also be noted that units 24 and 25 both have a substandard single bedroom.

All other units across the site are considered to provide a good quality internal environment for future occupiers with habitable rooms served by adequate light and outlook and layouts set out in a functional manner. Therefore, the proposed residential accommodation is considered to comply with this criterion of Policy DE3 of the Local Plan.

External Amenity Space

Policy DE3 of the Local Plan states that new dwellings should provide 55 square metres of outdoor amenity space and flatted development should provide 10 square metres of outdoor amenity space, which can be provided individually or communally.

The revised proposed layout (ref: 172-003J (Site Layout)) is annotated with the outdoor amenity spaces for each residential unit, in some instances this is sought communally for elements of the flatted development. The annotations which state the size of the outdoor amenity spaces include paved areas that are for access purposes only and are not useable for any other purpose. It is noted that Units 26 and 27 have unusually shaped outdoor amenity spaces to meet the policy aspiration. Limited information has been provided to establish the levels of the outdoor amenity spaces, some contour lines have been provided on the proposed layout which confirms that these spaces would be sloping, the useability of such is questioned.

It is considered that the proposal would provide the future occupiers with an adequate amount of external amenity space, but the usability of such is unknown.

Neighbour Amenity

Objectors have raised concerns regarding privacy/overlooking, noise, loss of light and the proposed development having a negative impact on residential amenity.

The proposed submission is supported by proposed sectional drawings. The northern parcel of the application site is surrounded to the northern and western flanks by existing residential development on St Mary's Road, whereas to the south is the southern parcel of the application site. The northern parcel's northern flank is screened by existing vegetation. The southern parcel of the application site is surrounded to the eastern, southern and western flanks by existing neighbouring properties either on Springdale Close or St Mary's Road, whereas the northern flank would look upon the northern parcel of the application site.

The proposed flatted development block that contains Units 16-25 would be some 18 metres from the frontages of Nos.2 and 4 Springdale Close, these properties as well as some nearby others on Springdale Close are bungalows, it is considered that the proposed two and a half storey built form (some 9.4 metres in height) would be dominant and overbearing on this property. The submitted information fails to demonstrate or provide certainty that the proposal would provide an acceptable relationship to adjacent neighbouring properties on Springdale Close.

It is considered that the northern parcel of the application site would not have a detrimental impact on adjacent existing neighbouring properties given the siting, scale and design of the proposed built form, existing vegetation and subject to suitable

proposed vegetation and boundary treatments. Consideration is also given to 'Orchard House' which sits east of the southern parcel of the application site, and is elevated from the public highway. It is considered that Unit 14 is unlikely to result in a detrimental impact upon the occupiers of the property given its siting, orientation and separation distance. However, Units 26 and 27 are some 12.5 metres to 13.5 metres from the western elevation of Orchard House, this elevation is served by several openings. The proposed layout states the eaves height of Orchard House is +68.37, and Units 26-28 have a finished ridge height of +67.01, therefore the proposed built form would be +1.36m lower than the eaves/flat roof extension of Orchard House. It is uncertain whether there would be intervisibility issues between the second floor of Units 26 and 27 given that the proposed sections are unscalable, but there might be intervisibility issues the eastern (rear) elevations of Units 26 and 27 onto the western elevation of Orchard House is between 12-5-13.5 metres away.

It is considered that the proposal would result in a layout that may result in overlooking/intervisibility issues between future occupiers and Orchard House. The proposal would also result in an overbearing and overtly dominant for existing properties on Springdale Close. It is considered that the proposal fails to accord with Policy DE3 of the Local Plan.

Should planning permission be granted, planning conditions should be employed to secure a Construction Method Statement prior to the commencement of the development; a suitable scheme of boundary treatments; and where necessary and reasonable the removal of permitted development rights.

6. Impact on Highway Safety

Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code and d) 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 through a vision-led approach. Paragraph 116 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood

Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to include improvements to the safety of pedestrians and cyclists.

The application site is located on the northern and southern flanks of St Mary's Road, which is an adopted public highway. St Marys Road varies in width between 2.8 metres to 4.5 metres with limited street lighting and no footway provision. There are bus stops situated within 50 metres of the application on Springdale Close and additional bus stops are located 100 metres north-west of the site on St Marys Road. These bus stops are served by an approximate hourly frequency to Brixham, Summercombe, South Bay and Higher Ranscombe.

Objectors have raised concerns regarding traffic and access, as well as pedestrian accessibility and permeability.

The applicant used the TRICS database to undertake a comparative trip generation exercise between the extant and proposed uses on the site. The comparative trip generation has identified that the proposed development will likely generate one additional trip in the AM peak and four additional trips in the PM peak period. The Local Highway Authority considered these findings to be acceptable and that the minor increase in trip generation would result in a negligible impact on the operation and safety of the local highway network.

Visibility Splays

The application site is currently accessed via two access points from St Marys Road. The proposal seeks to retain the location of the two access points, but upgrade such to provide two priority-controlled junction arrangements. This section of St Mary's Road has a 30mph speed limit, a speed survey was conducted in September 2020 which identified 85th percentile speeds of 20.1mph and 19.3mph eastbound and westbound respectively. With regards to the visibility splay calculator contained within Chapter 7 of *Manual for Streets*, these speeds would result in a 'Y' distance requirement of 22.6 metres and 21.4 metres respectively. The applicant has demonstrated visibility splays of 2.4 metres x 25 metres and 2.4 metres x 24 metres can be achieved, the Local Highway Authority consider this to be acceptable.

Pedestrian and Cycle Connectivity

The proposal outlines that pedestrian and cycle access will be achieved via footways provided either side of the proposed access points. The proposed footway to the west of the northern access point onto St Mary's Road will connect to the extent of St Mary's Road that routes in a north to south alignment from Upton Manor Road. The proposed footway to the west of the southern access point will connect to formalised footway provision on the eastern extent of Springdale Close.

The applicant submitted an updated Stage 1 Road Safety Audit (May 2024, Revision C) and the Local Highway Authority have concluded that no issues within the scope of the Road Safety Audit were identified.

Swept Path Analysis

The application has been supported by a swept path analysis that demonstrates a large refuse vehicle can manoeuvre within the application site.

Car and Cycle Parking Provision

Appendix F of the Local Plan requires two car parking spaces (of which one should provide electric vehicle charging infrastructure) and two cycle parking spaces should be provided per dwelling. Appendix F of the Local Plan requires one car parking space (of which 20% should provide electric vehicle charging infrastructure) and one cycle parking space should be provided per flat. The proposal is for 28no. residential units, of which 17no. flats and 11no. dwellinghouses are proposed. This calculates a total requirement of 39no. car parking spaces across the application site (of which 14 car parking spaces should provide electric vehicle charging infrastructure, 1no. per dwellinghouse and 20% of the 17no. flats (20% = 3.4)) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 44no. car parking spaces will be provided across the site. The submitted layout indicates a total of 14no. car parking spaces with electric vehicle charging infrastructure across the site. The submitted layout also includes communal areas of cycle storage for Units 1-7, Units 16-23 and Units 24-25 and individual cycle storage for the other units.

The Local Highway Authority and the Police Designing-Out Crime Officer have both raised concerns regarding the elements of proposed tandem parking. These concerns revolve around the parking arrangement leading to an overspill of car parking occurring on the local highway network due to residents not wishing to park in the garage.

The adopted Highways Standing Advice outlines that where properties have shared or adjoining parking spaces, sufficient access/egress for vehicles and waste/cycle storage should be provided as 6.4 metres wide (3.2 metres for each property), an illustrative diagram of such is contained within Appendix 3 of the Standing Advice. The Standing Advice also confirms that a 3.2 metre wide parking space is required when the parking space is adjacent to a solid obstruction. The proposed parking provision has a couple of pinch points, at least 3no. parking spaces do not provide individuals with sufficient space to access/egress their vehicles without conflicting with either built form or the neighbouring vehicles. For example, the 3no. parking spaces adjacent to Unit 15 are substandard in size, whilst they provide 6 metres in length, they propose a width of 2.4 metres but the eastern edge of the space would abut the side elevation of Unit 15 and the subsequent boundary treatment to enclose Unit 15's outdoor amenity space, the width of such spaces should be 3.2 metres. It is unclear whether the undercroft parking area would be fully functional as limited details have been provided with regard to if columns are needed to support the above structure and if so where such would be placed.

It is considered that the proposed development would provide the requisite quantum of parking spaces that meet the required standards. As such, the proposal is considered to comply to Policies TA2 and TA3 of the Local Plan, the adopted Highways Standing Advice and Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

Bin Storage

Policy DE3 of the Local Plan requires the satisfactory provision for the storage of containers for waste and recycling. Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage, recycling,

treatment and removal of waste likely to be generated and with particular reference to residential developments, they should provide adequate space within the curtilage for waste and accessible kerbside recycle bins and boxes.

Building Regulations H6 which stipulates that “*Storage areas for waste containers and chutes should be sited so that the distance householders are required to carry refuse does not usually exceed 30m (excluding any vertical distance). Containers should be within 25m of the waste collection point specified by the waste collection authority*”. It states that the distance from the external door to the bin storage location should be no more than 30 metres and the bin storage location to the nominated collection point should be no more than 25 metres.

The submitted layout (ref: 172-005 B (Waste Management)) indicates areas of bin storage for the proposed development. The Local Highway Authority initially raised concerns regarding the drag distance for collections based on Building Regulations, this matter has been resolved.

SWISCo have confirmed that they would not collect refuse and recycling until a formal indemnity is in place once the road had been adopted by the Local Highway Authority. SWISCo have also requested waste management contributions in line with the Planning Contributions and Affordable Housing Supplementary Planning Document (2022), which would be the cost of bin, recycling boxes, food waste caddy and recycling information at £90 per dwelling and contributions towards waste collection vehicles at £72 per dwelling. Table 4.12. of the Supplementary Planning Document equates to a contribution of $£90 \times 28 = £2,520$ and $£72 \times 28 = £2,016$.

The proposed layout would secure acceptable waste storage and collection facilities that would accord with adopted waste storage requirements, in compliance with Policies DE3 and W1 of the Local Plan.

The applicant has submitted a lighting design and location plan to illustrate how the internal (and connection to external) footways/carriageways will be lit, in the interest of highway and pedestrian safety. The Local Highway Authority considered it to be acceptable.

Sustainable Travel Contributions

The Local Highway Authority have confirmed that they would seek the necessary S278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Section 4.3 of Planning Contributions and Affordable Housing Supplementary Planning Document (2022) seeks additional Sustainable Transport contributions for major schemes, referencing Table 4.2. of the Supplementary Planning Document this equates to a contribution of $£1,290 \times 28 = £36,120$.

Section 38 Agreement

The applicant has submitted a Highways Adoption Plan (ref: 172-012A (Highway Adoption)), for the northern parcel of the application site, the Local Highway Authority are satisfied with the adoption of the on-site turning head as this will be suitable for refuse collection. However, the southern parcel of the application site, in particular the on-site turning head has not been offered for adoption, and the applicant is proposing

this is a shared private drive. The applicant must be aware that SWISCo will not drive on unadopted highways for refuse collections, the SWISCo Manager has stated subject to the road being built to adoptable standards, and an indemnity agreement and risk assessment being undertaken, the Waste Authority may drive onto an unadopted highway if such is considered acceptable.

It is important to note that the Torbay Highways Design Guide (Adopted February 2024) states that shared private drives that are not adoptable are only permitted where fewer than five properties are served. This is further supported by Policy BH8 of the Neighbourhood Plan which requires new developments to comply with relevant adopted standards.

Concluding Remarks

The proposal is considered to comply with Policies DE3, TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan and the guidance contained within the NPPF.

The Committee should note that whilst the Council can require the estate roads to be constructed to an acceptable (adoptable) standard, it cannot secure the adoption of estate roads through the planning process. Its policy is to encourage adoption, as far as it can. If planning permission is granted then a planning condition is required which secures the construction of the estate roads to acceptable (adoptable) standards and (if not adopted) secures their retention and future maintenance for the lifetime of the development.

7. Impact on Trees

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

There is a group Tree Preservation Order (1999.015 G1) north of the application site. Objectors have raised concerns regarding the impact on trees. The application was originally supported by a tree constraints plan and an Arboricultural Impact Assessment, and such has been updated in line with the revisions to the scheme.

SWISCo's Senior Tree Officer has been consulted on the application and confirms that the proposal proposes the loss of G2 which is a low-quality group of sycamore on the roadside boundary, whilst G1 and G3 are shown as retained. The Officer has confirmed that G1 is inaccessible to construction activity and not at risk from operational pressures and G3 is shown within tree protective fence.

The Officer has confirmed that ornamental tree species is proposed for the southern boundary in a loose, scattered arrangement, which will not create any obvious shading conflicts in the long term. The proposed trees in the northern section of the site continue the ornamental theme. The Officer has stated that opportunities to incorporate narrow columnar or fastigate trees into the verge is a missed opportunity

to provide natural screening to help soften the massing of the building in the street scene.

The Officer has also confirmed that the overall reliance on non-native and smaller ornamental trees in order to work with the site constraints will not lead to any future public amenity provision or enhancement of the local landscape. The site is constrained by the overall scale and layout of the development with associated infrastructure further reducing opportunities for structural planting.

The Officer recommends that should planning permission be granted, the Cotoneaster cornubia should be relocated to ensure no future conflict with utilities and this could be reflected within a revised landscaping scheme. The Officer also recommends securing soft landscaping in accordance with the Evolve Tree Consultancy Arboricultural Impact Plan & Landscaping.

Subject to the aforementioned planning conditions should planning permission be granted, the proposal is considered to comply with Policy C4 of the Local Plan.

8. Impact on Ecology and Biodiversity

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy SS8, particularly criterion 1, of the Local Plans states sites, species and habitats protected under European, or equivalent legislation will be protected from development. Development around the edge of the built up area will be required to protect and manage wildlife and habitats, including corridors between them, in accordance with Policy NC1 of the Local Plan and particular attention must be paid to Greater Horseshoe Bat flightpaths. Policy E8 of the Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms to Policy NC1 of the Local Plan. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 193 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity.

The site is close to the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC) and is within the Sustainance Zone for such. The application is supported by an Ecological Assessment (June 2023) and a Biodiversity Net Gain Report (June 2023). However, following initial comments from Devon County Council's Ecologist, a Bat Survey Addendum (August 2023) was produced. Objectors have raised concerns regarding the impact on wildlife.

South Hams SAC Sustainance Zone

The development site lies within the South Hams SAC Sustainance Zone for greater horseshoe bats (GHBs). The survey work found that there was no suitable habitat for foraging, and no linear commuting features present on site for the GHB. The site is dominated by hardstanding and the surrounding area is predominantly urbanised. Devon County Council's Ecologist concluded that the proposed development would

not lead to the loss, damage, or disturbance to GHB foraging habitat within a sustenance zone. Nor would it lead to the loss, damage or disturbance to a pinch point or an existing mitigation feature. This is due to the location of the development, in an area unfavourable to GHBS, with no suitable foraging habitat or linear habitats. In line with the South Hams SAC Habitats Regulations Assessment Guidance document (DCC et al.,2019), there is unlikely to be a likely significant effect on the South Hams SAC. Therefore, an Appropriate Assessment is not deemed to be required and no mitigation is required.

South Hams SAC Berry Head Recreation Zone

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwellings. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The Planning contributions and Affordable Housing SPD (2022) requires S106 contributions towards mitigating the recreational impact of development upon the South Hams Special Area of Conservation arising from recreational impacts on limestone grassland between Berry Head and Sharkham Point. These are sought as a “site deliverability matter”, and are especially relevant given the proximity of the proposal to the SAC.

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required. Given the recommendation, a legal agreement to secure the mitigation of £3,780 has not been furthered with the applicant, however the lack of mitigation secured is contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

Lyme Bay and Torbay SAC

On advice received by Natural England (July 2022), recreational impacts from development on the marine SAC can be screened out unless there is a direct link between the application and increased recreational use on the SAC. The reasons for this are: at present the SAC seacaves are recorded as being in Favourable condition.

There is no evidence currently available to conclude that recreational activities are damaging the SAC features, or that recreational activities are attributable to the housing numbers identified in the Local Plan. Devon County Council's Ecologist has stated that individual planning applications that have a clear link to increased recreational use of the coast will need to be subject to project-level HRA, and that a bespoke package of measures will need to be secured to address the specific impacts of the proposed project. If the evidence relating to (i) the accessibility of the seacaves; (ii) the possible damage to the seacaves; (iii) monitoring of the types of activity, the location of activities, and the levels of access; and (iv) understanding where individuals are originating from, becomes available then that evidence, depending on the findings, will become a material consideration in the determination of planning applications for housing developments and future Local Plan reviews.

Biodiversity Net Gain

The submission is accompanied by the statutory Biodiversity Net Gain Metric, which demonstrates that the proposal does not result in a net loss in biodiversity, but at the very least provides a gain in line with national and local planning policy. Devon County Council's Ecologist is satisfied with such.

As a further matter in England, Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021) for major developments. This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application, the application was received and validated prior to BNG becoming mandatory in England and therefore the development is deemed exempt from delivering 10% gain in biodiversity, it would default to providing a (1%) gain.

Concluding Remarks

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so an Appropriate Assessment is required, the proposal is therefore contrary to Policy NC1 of the Local Plan and Policy E8 of the Neighbourhood Plan.

9. 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 is accompanied by a Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage and sewage. Due to the ground conditions encountered during the site investigation infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system.

The Council's Drainage Engineer has reviewed the Flood Risk Assessment and drainage strategy and has confirmed that the proposed discharge rate of 1.0l/sec complies with the requirements of the Torbay Critical Drainage Area.

The developer has submitted a drawing showing the proposed drainage strategy together with hydraulic calculations for the surface water drainage design. The drainage strategy drawing identifies manhole cover levels and invert levels, pipe diameters and pipe lengths, and has also identified the actual impermeable area discharging to each pipe length within the hydraulic model. The Council's Drainage Engineer has confirmed that the surface water drainage would be constructed in accordance with the drainage strategy and that they have no objections on drainage grounds should planning permission be granted. The proposal is considered to comply with Policies ER1 and ER2 of the Local Plan.

10. Affordable Housing Contributions

Paragraph 65 of the NPPF states that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). The NPPF goes on to state that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount [Footnote 30].

Footnote 30 of the NPPF states: *Equivalent to the existing gross floorspace of the existing buildings. This does not apply to vacant buildings which have been abandoned, or to major development on land within or released from the Green Belt, for which the 'Golden Rules' requirements set out in paragraphs 156-157 of this Framework should apply.*

The Planning Contributions and Affordable Housing Supplementary Planning Document (2022) have applied the NPPF threshold as a material consideration, despite the starting point being Policy H2 of the Local Plan. The current proposal is major in nature, as the proposed number of residential units is over 10no. residential units, and therefore it triggers the requirement for affordable housing contributions in Policy H2 of the Local Plan.

The proposal falls within the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15no. dwellings or more. For a net increase of 20+ dwellings, it would have an affordable housing target of 20% which is delivered on-site, commuted sums would only be accepted where this would achieve more effective provision of affordable housing or bring significant regeneration benefits.

The proposal seeks to provide 6no. affordable residential units, in the form of 2no. x 1-bed apartments and 4no. x 2-bed apartments. This would present a 21.4% affordable housing provision onsite. Objectors have raised concerns regarding the lack of affordable housing.

In the absence of a legal agreement to secure the affordable housing provision, it is considered that such would constitute a further reason for refusal. The proposal fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Local Plan and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (2022).

11. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy BH5 of the Neighbourhood Plan outlines that major housing developments should adequately take into account the safety and security of the users of the facilities and the neighbouring residents.

The Police Designing Out Crime Officer was consulted and commented upon the application. The proposal does not include a scheme of designing-out crime measures. If approved, a planning condition is recommended to secure such prior to the occupation of the development.

12. Low Carbon Development and Energy

Paragraph 166 of the NPPF states that Local Planning Authorities should expect new development to:

- a) Comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and
- b) Take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

Policy SS14 of the Local Plan seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials.

Policy ES1 of the Local Plan states that the Local Plan will seek to ensure that carbon emissions associated with energy use from new and existing buildings (space heating, cooling, lighting and other energy consumption) are limited. All major development proposals should make it clear how low-carbon design has been achieved, and how the following sequential energy hierarchy has been applied in doing so. Proposals should identify ways in which the development will maximise opportunities to achieve the following:

1. Conserve energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling;
2. Use energy efficiently within the fabric of the building;
3. Incorporate the use of decentralised heat, cooling and power systems; and
4. Use on-site or near-site renewable technologies to achieve further reductions in carbon emissions.

Objectors have raised concerns regarding the impact on climate change, air pollution, marine pollution and construction impacts. The applicant has submitted an Energy Statement (July 2023) and completed the Torbay Sustainability Checklist for Major Development.

The Statement outlines that the proposal reduces energy demand through the siting and design, ensuring that the majority of units are positioned to maximise solar gain and minimise the need for artificial lighting and heating. The Statement outlines that the layout encourages natural ventilation and cooling, with the incorporation of large

openings, cross-ventilation strategies, and the use of external louvered shading devices to regulate internal temperatures. The proposal would be constructed in full accordance with the relevant Building Regulation, specifically Approved Document L which defines the minimum U-Values for all elements and air tightness targets. The proposal will include the following features:

- Heating: Individual ASHP units.
- Underfloor heating with 35°C max operating temperature
- 100% low energy lighting
- Multi-point extract systems(continuous), Appendix Q certified
- MVHR system (continuous), Appendix Q certified
- Air permeability with MVHR: 3 m³/m²/hr @ 50Pa
- Wall U-value: 0.16 W/m²/K
- Corridor communal walls U-value: 0.25 W/m²/K
- Corridors: Heated
- Party walls between flats fully insulated
- Roof U-value: 0.11 W/m²/K
- Doors U-value: 1.4 W/m²/K
- Windows U-value: 1.5 W/m²/K
- Floor U-value: 0.10 W/m²/K
- Thermal bridging: Accredited construction
- Window G-value: Mixture of 0.42 and 0.46
- Rooflight G-value: 0.33

The Council's Senior Structural Engineer has been consulted on this application and has stated that the applicant is invited to provide a qualified/competent consultant's carbon calculation to demonstrate how new build might be more favourable than repurposing, such has not been provided.

Sustainability

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

The Economic Role

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

Once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

In terms of the economic element of sustainable development, the balance is considered to be positive.

The Social Role

The proposal is likely to have an adverse impact on the occupiers of neighbouring properties on Springdale Close.

There would be a detrimental impact on local services i.e. schools, Doctors surgeries etc, however this can be mitigated via S106 contributions.

However, the principal social benefit of the proposed development would be the provision of additional housing including affordable housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance.

The Environmental Role

With respect to the environmental role of sustainable development, the development of the site within the South Devon National Landscape would fail to conserve or enhance the natural beauty of the National Landscape. Great weight should be given to harmful impact on the South Devon National Landscape.

The proposed development would cause clear harm to a number of identified non-designated heritage assets and the Grade II listed building (1, 2 and 3 St Mary's Road).

Insufficient information has been provided to establish whether the proposed development would provide a biodiversity net gain.

It is concluded that the adverse environmental impacts of the development weigh against the development.

Sustainability Conclusion

Having regard to the above assessment the proposed development is not 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

S106:

The following are to be included in Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable is recommended that authority to progress and complete the legal agreement be delegated to officers.

Ecology

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy NC1 of the Local Plan and as identified as a necessary mitigation.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022). For 28 dwellings this would equate to an obligation of £3,780.00.

Affordable Housing

Policy H2 of the Local Plan states that developments of 20+ residential units on brownfield sites should provide 20% affordable housing. The provision of affordable housing is to be provided on-site, through 6no. residential units, which equates to 21.4%.

The proposal provides details of the affordable housing provision, mix of unit types and sizes. Should the development be approved, a 20% level of affordable housing should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) An Affordable Housing Scheme to be submitted for the agreement of the Council.
- 3) Occupancy to accord with Policy BH2 of the Neighbourhood Plan.

Sustainable Transport

In accordance with Policy SS7 of the Local Plan and the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) (to open market housing only) Sustainable Transport obligations should be secured.

This equates to a contribution of £1,290 x 22 = £28,380, as the 6no. affordable housing units would be discounted due to site deliverability matters. However, as for the 22no. units such cannot be sought due to the units being CIL liable.

Public Open Space, Sport and Recreation

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities

- Equipped play facilities for young people
- Greenspace/Open spaces
- Allotments/sustainable food production

However, such contributions cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Employment

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure loss of employment for use classes B2, B8 or E(g) uses, however such cannot be sought on the 22no. open market units as such are CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Education

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

NHS Devon

The site is allocated in the Development Plan for 25no. units and as such the development in this area is anticipated and therefore the demand on the GP surgeries was considered at the time of allocation.

Lifelong Learning Obligations

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 22no. open market units being CIL liable and the 6no. affordable units would be ineligible due to site deliverability matters.

Waste and Recycling

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be secured to provide waste and recycling facilities for properties that will be served by the Local Authority waste collection provider.

CIL:

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm.

The estimated CIL liability is £166,378.41. This figure is indexed linked, and the final figure will be calculated on the day of the decision.

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

CIL is a “Local Finance Consideration” relevant to determining applications. However, in the officer’s assessment, it is not a determining factor (either way) in the planning balance assessment below.

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:

In the absence of a legal agreement to secure the mitigation, it is deemed that this development could have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland.

Planning Balance

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise. As concluded within this report there is substantial conflict with the Development Plan, namely Policies DE1, DE3, H1, H2, NC1, SDB1, SDB3, SS3, SS7, SS8, and SS10 of the Local Plan, and Policies BE1, BH5, BH8, E1 and E2 of the Neighbourhood Plan.

As the proposal is not in accordance with the Development Plan, consideration needs to be given as to whether material considerations indicate that the application should be approved.

The Government published the most recent Housing Delivery Test in December 2023. Torbay’s result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay’s most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of benefits, the proposal of 28no. residential units, would make a moderate contribution to local housing supply. This would be consistent with national guidance that seeks to significantly boost the supply of homes. The proposal includes 6no. affordable housing units which boosts the public benefit. In addition, social, economic and environmental benefits associated with building and occupying homes weigh in favour of the development, and there is also some minor benefit from the discounted CIL payment. The fact that the site is allocated for housing, and would therefore provide housing if an acceptable scheme comes forward, is material.

The proposed development would present acceptable internal and external residential environments that principally accord with development plan expectations and National Space Standards. This compliance weighs neutrally in the decision making. However, the development will present harm to adjacent neighbours, as identified within this report, which weighs negatively against the development.

However, the NPPF gives great weight to conserving and enhancing the landscape and scenic beauty of areas of outstanding natural beauty, as they have the highest status of protection in relation to such issues. The NPPF confirms that development within such areas should be sensitively located and designed to avoid or minimise adverse impacts on the designated area.

Weight must also be afforded the duties within the Countryside and Rights of Way Act 2000, S85, in exercising or performing any functions in relation to, or so as to affect, land in a National Landscape in England, the Council must seek to further the purpose of conserving and enhancing the natural beauty of the National Landscape.

Additionally, the NPPF gives great weight to a designated heritage asset's conservation, irrespective of the amount of harm. The NPPF confirms that the significance of a non-designated heritage asset should be taken into account when determining planning applications, as such a balanced judgement is required. Weight must also be afforded to the statutory duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, for the local planning authority, when making a decision on any decision on a planning application for development that affects a listed building or its setting, to pay special regard to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.

Furthermore, this report has set out a number of adverse material considerations that lie behind the conflict with the Development Plan, such are detailed within the reasons for refusal.

Housing need is itself an important factor but must be balanced with other considerations to inform whether development is sustainable development in the round. It is concluded that other material considerations do not justify the grant of planning permission.

Finally, the presumption in favour of sustainable development has been considered in this recommendation. The identified harm to the South Devon National Landscape, provides a strong reason for refusing the proposed development. Furthermore, the identified harm to the setting of the Grade II designated heritage asset, provides a strong reason for refusing the proposed development. The adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

Conclusions and Reasons for Decision

In reaching a planning balance view, it is recognised that the Presumption in Favour of Sustainable Development at Paragraph 11 of the NPPF, as revised in December 2024 must be applied. Substantial weight has been given to delivering an allocated housing site, and the provision of affordable housing.

However, based on the consideration of matters detailed within this report, it is concluded that the proposal would fail to conserve and enhance the South Devon National Landscape, due to the demolition of the non-designated heritage assets which would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape. The NPPF guides that when considering the impact of proposed development on the significance of a designated protected area (National Landscape), great weight should be given to conserving and enhancing the landscape and scenic beauty of such. It is concluded that the public benefits of the proposal do not outweigh the adverse impacts that would result to the South Devon National Landscape. Furthermore, it is concluded that the proposed

development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II listed building) and the public benefits do not outweigh the adverse impacts that result on the setting of the listed building. These matters are considered to constitute "strong reasons" to refuse the application under Paragraph 11(d)(i) of the Framework.

It is further assessed that scale, design and harm to the character of the area conflict with particular policies of the Framework that Paragraph 11(d)(ii) directs decision makers to have particular regard to when assessing whether adverse impacts of development would significantly and demonstrably outweigh the benefits.

For these reasons the application is recommended for refusal, as detailed below.

Officer Recommendation

That planning permission is refused, subject to the reasons detailed below. The final drafting of reasons for refusal and addressing any further material considerations that may come to light to be delegated to the Divisional Director for Planning, Housing and Climate Emergency.

Reason(s) for Refusal

1. The proposed development, by reason of the demolition of the non-designated heritage assets including the lack of convincing justification for such, would result in permanent harm to the historic character of the area and the rich time depth of the South Devon National Landscape, which would fail to conserve and enhance the landscape and scenic beauty of this part of the South Devon National Landscape. The proposal is therefore contrary to Policies DE1, SS3, SS8, SS10, SDB1, SDB3 and H1 of the Adopted Torbay Local Plan, Policy E1 of the Adopted Brixham Peninsula Neighbourhood Plan, Policy LAN/P1 of the South Devon AONB Management Plan, and the guidance contained within the NPPF, notably Paragraphs 11, 187 and 189.
2. The total demolition and clearance of the application site would cause substantial harm to the existing non-designated heritage assets that has not been adequately justified. The proposed total demolition and clearance appears to lack convincing justification. The proposal fails to provide a heritage-led regeneration scheme and incorporate the existing non-designated heritage assets which offer demonstrable heritage value. The proposed development would result in less than substantial harm to the setting of 1, 2 and 3 St Mary's Road (Grade II) and this is not outweighed by the public benefits of the proposed development. The proposed development is contrary to Policy SS10 of the Local Plan, Policy BE1 of the Neighbourhood Plan and the guidance contained within the NPPF, namely Paragraphs 213, 214 and 215.
3. Given the scale and design of the proposal, it is considered the proposal would fail to relate to the surrounding built environment in terms of scale, height and massing. The proposed scale and design of the proposal is incongruous and dominant within the street scene. As such it would be inappropriate and out of character with the context of the site and surrounding area and fail to respect the local character and area as a gateway to the South Devon National Landscape. The proposal is considered to be contrary to Policies DE1 of the Adopted Local Plan 2012-2030,

Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 139.

4. The proposal, by reason of its siting, scale and design would have an unacceptable impact upon the occupiers of Nos.2 and 4 Springdale Close, in terms of the proposed built form being in close proximity to these neighbouring properties, which would result in an overbearing, and overtly dominant environment for the occupiers of such. Therefore, the proposal fails to accord with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained within the National Planning Policy Framework, in particular Paragraph 135.
5. The proposal, in the absence of a signed Section 106 Legal Agreement, fails to secure the necessary mechanism to deliver site acceptability mitigation regarding ecology, and affordable housing, contrary to Policies H2, NC1, SS7 and SS8 of the Adopted Torbay Local Plan 2012-2030, Policy E8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030 and the Adopted Planning Contribution and Affordable Housing Supplementary Planning Document (December 2022).

Informative(s)

Positive and Proactive Working

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, in determining this application, Torbay Council has worked with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to withdraw the application. However, the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Relevant Policies

BE1 – Heritage Assets and Their Setting
BH3 – Delivery of New Homes
BH4 – Housing Development – Brownfield (Previously Developed) and Greenfield (Not Previously Developed) Sites
BH5 – Good Design and the Town and Village Design Statements
BH6 – Roofscape and Dormer Management
BH8 – Access to New Dwellings
C4 – Trees, Hedgerows and Natural Landscape Features
DE1 – Design
DE3 – Development Amenity
E1 – Landscape Beauty and Protected Areas
E2 – Settlement Boundaries
E8 – Internationally and Nationally Important Ecological Sites
ER1 – Flood Risk
ES1 – Energy
H1 – Applications for New Homes
H2 – Affordable Housing
NC1 – Biodiversity and Geodiversity
SDB1 – Brixham Peninsula
SDB3 – Brixham Urban Fringe and Area of Outstanding Natural Beauty
SS3 – Presumption In Favour Of Sustainable Development
SS8 – Natural Environment
SS11 – Sustainable Communities
SS14 – Low Carbon Development and Adaptation to Climate Change
T1 – Linking of New Developments to Travel Improvements
TA1 – Transport and Accessibility
TA2 – Development Access
TA3 – Parking Requirements
W1 – Waste Hierarchy

Application Site Address	Land Off Pilgrim Close, Brixham, TQ5 9UE
Proposal	Outline application for the erection up to 20 dwellings, together with associated infrastructure, landscaping and access works (all matters reserved apart from access).
Application Number	P/2024/0562
Applicant	Northern Trust Land Limited
Agent	Tetlow King Planning
Date Application Valid	12/09/2024
Decision Due date	12/12/2024
Extension of Time Date	07/02/2025
Recommendation	Approval subject to: <ol style="list-style-type: none"> 1. Completion of a Section 106 agreement. 2. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency. 3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	Major Development
Planning Case Officer	Emily Elliott

Location Plan



Site Details

The application site measures approximately 0.69 hectares of land and is located to the south of Wall Park Road, and the south west of Pilgrim Close. The site is at the northeastern edge of the built-up area of Brixham.

The site comprises of two fields that are laid to grass, the site is divided by a fence line. Both fields are broadly rectangular in shape.

The site is bound on the northern boundary by a close boarded fence, the eastern and southern boundaries by an existing stone wall and the western boundary by a hedgerow. The topography of the site has a gentle gradient towards the west and for the most part is level.

The site sits adjacent to residential development to the north, east and south (Wall Park Road, Pilgrim Close, Regard Close, Leader Close) and to the west is Haycock Lane (unadopted highway) and Brixham AFC.

In terms of context the site sits within the South Devon National Landscape (formerly called the South Devon Area of Outstanding Natural Beauty) and is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshow Bat colony at Berry Head). In terms of the Development Plan, the site is within a Mineral Safeguarding Area, the Brixham Peninsula Strategic Delivery Area and is within the Torbay-wide Critical Drainage Area, however the Adopted Brixham Peninsula Neighbourhood Plan places the application site outside of the settlement boundary. There are no further site-specific designations however the site is identified within the Brixham Peninsula Neighbourhood Plan as part of a wider site (H3 – R1: Wall Park Holiday Park) which was a rejected housing site for information.

Note: For the purposes of this report the term National Landscape and Area of Outstanding Natural Beauty (AONB) are both used and should be considered interchangeable. This reflects policies as written, retained wording towards AONBs within the Development Plan, and comments made prior to the renaming of AONBs as National Landscapes that occurred during the period of this application.

Description of Development

The application seeks outline planning permission for up to 20no. dwellings including affordable housing (25%), with all matters reserved apart from access. Matters of layout, scale, appearance and landscaping are therefore reserved for future consideration with only indicative detail on these matters submitted as part of the current outline application.

The proposed access is for a single vehicular access from Pilgrim Close in the north east corner of the application site. The proposed development will provide associated pedestrian/cycle connections that link to existing routes in the neighbouring developments and beyond. The proposed access width is 5.5 metres wide with 2 metre wide footways to either side. The proposal also includes a gated pedestrian/cycle connection onto Haycock Lane.

In accordance with the description of development 75% of dwellings would be open market housing and 25% of dwellings would be affordable housing. This is consequently a fixed matter that would, for 20no. dwellings, present 15no. open market dwellings and 5no. affordable dwellings.

In terms of the broader outline proposals the submitted indicative layout presents a potential layout that seeks to demonstrate the amount of development could be achieved, and further detail is outlined within a Design and Access Statement. Outline detail presented includes the following key parameters:

- The housing is to be located throughout the site, shown to be offered through a mix of detached, semi-detached and short terraces.
- The illustrative detail offers a variety of residential house types and sizes, providing dwellings from 2-bedroom through to 4-bedrooms.
- The scale of the development is suggested as two storeys, with a maximum height of 9 metres.
- The layout of the development is to be presented off Pilgrim Close.

- The parking is to be largely on-plot with driveways, and with electric charging facilities throughout.
- The architectural detailing is suggested to be complementary to the surrounding area in terms of similar materials, colours and tones.
- The surface water drainage is to be managed on site through a series of private soakaways and permeable paving to manage runoff from the domestic catchment, and a separate highway soakaway to manage runoff from the adopted highway.
- The existing trees and hedgerows will be retained and maintained where possible and ecological mitigation is proposed for the existing badger set with a 10 metre exclusion zone for habitat protection.

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”); and
- The Adopted Brixham Peninsula Neighbourhood Plan (“The Neighbourhood Plan”)

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Planning Contributions and Affordable Housing Supplementary Planning Document (SPD);
- Published Standing Advice;
- South Devon Area of Outstanding Natural Beauty Management Plan 2019 – 2024
- Countryside and Wildlife Act (Section 85): A relevant authority must seek to further the purpose of conserving and enhancing the natural beauty of the area of outstanding natural beauty; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Relevant Planning History

P/2024/0461: Outline application for a detached self-build dwelling with associated parking (Access only). Pending consideration.

P/2023/1025: Construction of dwelling and garage within property grounds. Permission with legal agreement 14/08/2024.

P/2019/0594: Construction of three dwellings with associated access and highway improvements. Permission with legal agreement 05/08/2021.

P/2011/0934: Incorporation of 1 acre of land behind house into boundary of house extending garden. Refused 17/11/2011.

Pre-Application History

The proposal has been subject to a pre-application enquiry (ref: DE/2023/0155).

Summary of Representations

9 letters of objection have been received.

Note: Full responses are available to view on the public access system (<https://publicaccess.torbay.gov.uk/view/>).

Key issues as follows:

- Traffic and access
- Noise
- Loss of light
- Privacy/overlooking
- Drainage including sewage
- Impact on local area
- Not in keeping with the local area
- Overdevelopment
- Trees and wildlife
- Impact on health care services
- Impact on education services
- Impact on Greater Horseshoe Bats

Summary of Consultation Responses

Note: Full responses are available to view on the Council's public access system (<https://publicaccess.torbay.gov.uk/view/>).

Brixham Town Council: No objection.

Devon County Council's Archaeologist & Historic Environment Manager (response dated 16/10/2024): No objection subject to planning conditions.

The proposal is sited in an area of archaeological potential. The Devon and Torbay HER records finds of prehistoric and Romano-British date in the wider area, indicating reasonable potential for widespread settlement activity. The local name 'Wall' is believed to indicate the past observation of archaeological evidence.

As such, groundworks for the construction of the proposed development have the potential to expose and destroy archaeological and artefactual deposits associated with early settlement activity. The impact of development upon the archaeological resource here should be mitigated by a programme of archaeological work that

should investigate, record and analyse the archaeological evidence that will otherwise be destroyed by the proposed development.

Recommends planning conditions to secure a Written Scheme of Investigation and a Post Investigation Assessment.

Devon County Council's Principal Ecologist (updated response dated 17/10/2024): No objections subject to planning conditions.

Other Protected Species

Badgers

The consultant ecologist has provided the following clarification:

“To summarise, we have no evidence of a sett within the offsite area, which to emphasise is offsite and not owned by the client – badger foraging and paths are not protected in law unless there is no alternative foraging within a reasonable distance which is not the case in this instance, as significant foraging exits to the east and northeast. The 10m buffer is purely precautionary as we have absolutely no evidence that a sett is located in the scrub – one foraging visit over a period of 14 days is by no means indicative of a sett. It is more indicative of a lone badger very occasionally visiting the site.”

On balance, the above is accepted. An update badger survey will be conditioned.

Condition: No more than one month prior to the commencement of any site works, a repeat survey for the presence of badgers on the site and surrounding suitable habitat, with associated mitigation/compensation measures, shall be submitted to and approved in writing by the local planning authority

Devon County Council's Principal Ecologist (response dated 17/10/2024): Further clarification required.

Phase 1 Walkover Survey

The LPA notes that this survey was undertaken over 12 months from the date of submission of this application, however this is not considered to be a significant limitation given the scale of the proposed development and the ecological value of the habitats on Site.

South Hams SAC – Greater Horseshoe Bats

The application area is located within the sustenance zone for Greater Horseshoe bats associated with the South Hams SAC.

Given the lack of suitable habitat present onsite, and the high levels of artificial illumination the site currently experiences, it is not deemed that the proposals will lead to the loss, damage or disturbance to potential commuting routes or foraging habitat for Greater Horseshoe bats. Nor will the proposals lead to loss, damage or disturbance to a Pinch Point or Mitigation Feature.

Whilst the western onsite hedgerow does provide suitable bat commuting/foraging habitat, it is not considered that this hedgerow is used by GHBs associated with the South Hams SAC.

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

Therefore, in line with the South Hams SAC HRA guidance document (DCC et al 2019), there is unlikely to be a likely significant effect on the SAC and detailed HRA is not required.

Condition: At no times shall any external lighting be installed or used in association with the development hereby approved, unless otherwise agreed in writing by the Local Planning Authority.

South Hams SAC – Recreational Impacts

The development falls within the SAC Recreation Zone for Berry Head Country Park, where the potential for recreational pressure due to new developments may affect the wildlife interests of the Berry Head component of the South Hams SAC. Qualifying features include calcareous grassland and sea cliffs (with their associated species).

In the absence of mitigation, it is deemed that this development could, in combination with other plans and projects, have a Likely Significant Effect on the South Hams SAC due to recreational impacts on the calcareous grassland and so Appropriate Assessment is needed.

The HRA developed and agreed with Natural England for the Torbay Local Plan concluded that as long as new developments provide the contributions as described above to deliver the mitigation measures outlined in the Footprint Ecology report, development in the 8km primary zone of influence will have no adverse effect upon the integrity of the European site and the conservation objectives would be sustained

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

Non-statutory designated sites – County Wildlife Sites, Ancient Woodlands

No impact.

European Protected Species

Bat flight lines / foraging

The consultant ecologist deems that the site offers some features suitable for commuting and foraging bats, but these features will be retained and therefore no bat activity surveys have been carried out – this conclusion is deemed valid given the

lack of vegetation onsite and the high level of disturbance this site currently experiences.

Potential impacts of the development would be associated with lighting during both the construction and operational phases on habitats to the west of the development area.

Condition: No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority. Reason: In the interests of nocturnal biodiversity.

Bat roosts – buildings / trees

No trees or buildings within the redline boundary provide features for roosting bats.

Alternative roosting provision will be installed into new dwelling to provide enhancements for wildlife.

Condition: Details of bat/bird boxes to be incorporated into the new dwellings will be submitted to and agreed with the LPA.

Other Protected Species

Nesting Birds

Alternative nesting provision should be installed into new dwelling to provide enhancements for wildlife.

Condition: Details of bat/bird boxes to be incorporated into the new dwellings will be submitted to and agreed with the LPA.

Badgers

It is noted that this application is outline and the masterplan provide is illustrative, but the Illustrative Masterplan drawing appears to show the 10m buffer from the middle of the dense offsite scrub, rather than the edge as required by the ecology report. Compliance with ecological constraints will need to be evidenced fully in a future RM application.

Clarification is required how badgers are to navigate across the site – no buffers for commuting have been established within this outline application. If there is a badger sett within the dense scrub offsite, the current constraints on this outline consent do not appear to allow for continued usage of that sett by badgers, as close bordered fencing across the site will mean commuting to and from the sett is prevented – therefore it may be that a sett closure and NE licence is required.

Clarification is also required from the consultant ecologist on the justification behind a 10m buffer zone - A license is usually required for any work that involves digging or breaking ground within 30m of a badger sett, and given the location of the sett has not been confirmed, clarification and justification is required on why a precautionary approach (i.e. a 30m buffer) has not been proposed in this instance.

Further conditions may be required on receipt of requested further information.

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

Invasive Non-native Species

These species will be removed and disposed of responsibly. Details will be provided within a conditioned CEMP

Overall enhancement / net gain (as per NPPF)

Statutory Biodiversity Net Gain will be required for this application.

The baseline of the site is deemed to be correct. This is an outline application with landscaping a reserved matter, so a fully complete metric cannot be submitted at this stage.

The proposal (albeit outline) shows a 93.56% gain in hedgerow units and an overall loss of habitat units (62%), therefore the purchase of offsite habitat units is required. There is no requirement to agree terms with any BNG providers at this stage, but full details will need to be provided to the LPA prior to commencement of any groundworks.

It is appreciated that this application is outline and final landscaping of the site is not yet known, however please can confirmation be provided from the applicant that all retained and created habitats (apart from vegetated gardens) will be outside of homeownership and managed by a management company. For example, the Illustrative Masterplan appears to show the retained hedgerow to the west of the site as the boundary of private gardens – it needs to be confirmed that all retained and new habitats will be futureproofed and able to be appropriately managed.

Condition: Details of reserved matters will include a fully complete Biodiversity Net Gain Metric reflective of the site landscape plans

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

Natural England: No response received.

Torbay Council's Principal Policy and Project Planner (response dated 14/10/2024): No objection.

The land at Pilgrim Close is within the South Devon National Landscape (AONB) but is surrounded by the Wall Park development (i.e. Pilgrim Close) and makes a natural infilling of that development. Although encompassed by the National Landscape, it does not urbanise existing open countryside areas within the National Landscape .

On that basis I would not regard it as Major Development under paragraphs 182-183 of the NPPF. Brixham has a very pressing need to identify additional housing land within the Town Council boundary, and other sites (including within the National Landscape) have significant environmental constraints, and/or spill into the more rural parts of the National Landscape. The site was identified in the 2021 HELAA as being potentially suitable for development, having relatively minor constraints. As such it would make a much needed addition to the area's housing supply.

On that basis, I support the application from a policy perspective, subject to ecological, access, design etc. matters being satisfactorily addressed. A key issue will be impact on the South Hams SAC. A recreation impact on the Berry Head Grassland should be sought as a site-deliverability matter.

The proposal appears to be CIL liable at £70 per sq. m, as it is within Charging Zone 2. The application would be liable for 25% affordable housing (5 dwellings) under Local Plan Policy H2, which would be subject to a local occupancy condition.

Since I am supporting the proposal, it is not necessary to consider in detail whether the Presumption in Favour of Sustainable Development in any detail; although it is applicable.

The Highway Authority (SWISCo/WSP) (updated response dated 15/01/2025):
No objection.

Pedestrian and Cycle Access

The previous Highways response found the 'potential' pedestrian and cycle access onto Haycock Lane as unsuitable for an Outline with Access application. An emergency access was also recommended.

The applicant has since submitted Drawing No. 230108 L 02 02 Rev E which shows a *'3.7m wide opening in site boundary to allow pedestrian, cycle, and emergency vehicle access only. Collapsible bollard or similar physical measure to prohibit unauthorized use'*.

The Highway Authority are now satisfied with these details.

Public Transport Access

The previous Highways response (dated December 2024) stated the technical reasons for requesting bus stop contributions. The Policy reasons have been set out below.

The request contributions for:

- £15,000 for bus stop enhancements kessle kerbs (raised kerbs for mobility impaired users), narrow waiting shelters, and possibly real time information boards.

The direct need is for:

- To cater for potential increased bus travel opportunities for all types of trips by all possible ages, abilities and genders of future residents and their visitors.
- The applicant's submission risks the delivery of a car dominant development.

- The proposed development site is geographically located higher/above the town centre of Brixham, and therefore mobility impaired users that are unable to walk or cycle may see the current poor quality bus stop infrastructure as a barrier to travel sustainably (i.e. no raised kerbs, live info boards, shelters).
- Improvements to the nearest bus stop is essential and would not only cater for existing levels of bus trips, but also will stimulate and encourage new passengers in line with local and national policy and the declared Climate Emergency.

Supporting Policy includes:

- Draft Devon & Torbay Local Transport Plan (expected publication Spring 2025) : Section – Transport strategy for Torbay , Unlocking Development: *‘Ensure suitable access to and/or improvements to local bus stop facilities’.*
- Torbay Local Plan - Policy TA2 Development Access: *‘3. Contain high quality provision for sustainable modes of transport, proportional to the scale and type of development’;*
‘4. Enhance public and/or community transport, cycling and pedestrian infrastructure, proportional to the scale and type of development’;
- NPPF 2024, Considering development proposals:
115. In assessing sites that may be allocated for development in plans, or specific applications for development, it should be ensured that: a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users;

117. Within this context, applications for development should: a) give priority first to pedestrian and cycle movements, both within the scheme and with neighbouring areas; and second – so far as possible – to facilitating access to high quality public transport, with layouts that maximise the catchment area for bus or other public transport services, and appropriate facilities that encourage public transport use; b) address the needs of people with disabilities and reduced mobility in relation to all modes of transport;

Vehicle Access

It is noted that the vehicle access is via Pilgrim Close which is not currently adopted. Under the Torbay Highways Design Guide for New Developments, a development of the proposed size must be served by an adoptable highway. Therefore, a planning condition has been requested at the rear of this response.

Onsite Highway Layout

The previous Highways responses (dated December 2024) raised a number of concerns with the proposed on-site layout. As this is an Outline with Access application, these matters are to be dealt with at the RM stage.

Conclusion

The Highway Authority does not wish to raise an objection subject to the inclusion of the recommended planning conditions, informatives and obligations.

Recommended Conditions:

Prior to any works above slab level, a detailed plan showing the 3.7m width pedestrian, cycle and emergency access in accordance with the indicative details shown on Drawing No 230108 L 02 02 Rev E must be submitted to the Planning Authority.

Reason: To ensure suitable access arrangement as per NPPF paragraph 117a,b,c,d.

Prior to any works above slab level, the highway layout must be designed in accordance with the standards contained in the Torbay Highways Design Guide for New Developments.

Reason: To ensure the construction of a satisfactory and safe development as per NPPF 115 & 117.

No part of the hereby approved development shall be occupied until the site is accessed by Highway Maintained at Public Expense

Reason: To ensure safe and suitable access for future occupiers as per NPPF 115 & 117.

Prior to any works above slab level, the cycle parking provision for the hereby approved development shall be located in locations that as convenient to access as car parking.

Reason: To support the delivery of a sustainable development as per NPPF para 117a.

The Highway Authority (SWISCo/WSP) (response dated 13/12/2024): Holding objection.

Highway Safety

The Highway Authority noted the Transport Statement omitted a serious collision involving two vehicles on Wall Park Road at Haycock Lane in June 2023. It was requested that the applicant investigate the causation factors within this collision.

The Applicant has submitted a collision report, investigating the collision which identifies that the serious severity collision involved a car and an e-scooter, the cause of which was attributed to driver error.

Pedestrian and Cycle Access

The Highway Authority previously requested that an active travel connection from the site to Haycock Lane, and onto the surrounding pedestrian network on Wall Park Road is provided. Haycock Lane would provide a direct link for pedestrian/cyclists routing into Brixham, falls on a clear desire line, and thus encourage sustainable trips and reduces the car dominance of the site. It was also previously noted that the site red line boundary appeared to include part of an access track to the rear of properties, north west to the proposed site which should be clarified.

The submitted Drawing No. 230108 L 02 02 Rev D states at icon (13) that the access is 'potential'. Potential is not suitable for a planning application of 'Outline with

Access'. The Highway Authority must know whether the access can be provided or not at this stage of planning.

The 'potential' access design appears to show a gated pedestrian / cycle connection south of Plot 13 into Haycock Lane. The details of which is not provided, but the Cover Letter explains this will be gated. Firstly, the lack of details in terms of the 'gate' design means the Highway Authority are unable to determine whether the gate design is in-line with the DfT's Inclusive Mobility Design Guide and LTN1/20, as the design must be suitable for pedestrians and cycles of all ages and abilities.

For reference, ideally a removable bollard should be provided instead of the gate and the access constructed to 3.7m width for emergency access.

In regard to the red line boundary overlapping an access track situated to the rear of properties on the northwest of the proposed site, the Applicant's Cover Letter states that a neighbouring fence was incorrectly located over the Applicant's land. More information on the rectification is required, particularly as it appears the access track on the neighbouring land is very well established and any change to that should be highlighted including its new alignment. The updated masterplan drawing (230108 L 02 02 D) still shows the overlap. This should be clarified.

Public Transport Access

It was previously commented that use of 2011 Census Journey to Work data only represents bus journeys for work purposes, therefore relying on this data to demonstrate a low use of bus would not be sufficient.

The applicant has since submitted an updated assessment utilising TEMPro data to suggest in the AM and PM peak hours (2 hours only), there will be an increase of 2 bus users, and therefore they are unwilling to provide a contribution towards improving the local bus stops on Wall Park Road. It is noted that using this method, the number of bus users across the full day has not been provided.

This approach continues to follow a predict and provide approach, which inevitably leads to car dominant developments. It remains the view of the Highway Authority that improvements to the nearest bus stop is essential and would not only cater for existing levels of bus trips, but also will stimulate and encourage new passengers in line with local and national policy and the declared Climate Emergency. At a minimum, the applicant should set a vision towards delivering a sustainable development.

The proposed development site is geographically located higher/above the town centre of Brixham, and therefore mobility impaired users that are unable to walk or cycle may see the current poor quality bus stop infrastructure as a barrier to travel sustainably (i.e. no raised kessle kerbs, live info boards, shelters).

Therefore, the Applicant must provide bus stop enhancements to cater for potential increased bus travel opportunities for all types of trips by all possible ages, abilities and genders of future residents and their visitors (i.e. kessle kerbs, real time information boards, shelters). The Highway Authority will not accept a car dominant

development, and the applicant must be aware of NPPF (2024) paras 109, 110, 115 a/b/c, 117a,b.

Car Parking

Within the previous response, the applicant was reminded that Torbay Council is unable to adopt the highway on the east of the site with the current parking arrangement, as the footway was required to be located in front of the parking bays rather than at the rear for adoption by Torbay Council.

The updated masterplan (230108 L 02 02 D) now includes a footway across the front of the parking bays on the east of the site, which would now be suitable for adoption (carriageway and footways, subject to layout checks at the RM 'Layout' stage. The detailed layout is to be determined at the Reserved Matters stage.

Refuse / Servicing / Emergency Access / Adoption

A new vehicle tracking drawing (1524 01-ATR-1001 A) shows a Phoenix 2-23W refuse vehicle manoeuvring within the site and having to reverse. The Highway Authority note the Torbay Council Waste Management Team has comment on the application (dated 05.12.2024) and raised an objection.

The Highway Authority note the layout does not include a turning head and the southern point, and therefore is not in-line with a 'Minor Access Road Design' or 'Home Zone Design' street types as per the Torbay Highways Design Guide for New Developments.

The Torbay Highways Design Guide for New Developments states that for 5+ dwellings, the access road will need to be designed in-line with adoptable standards. The above issue means this current layout cannot be adopted. Due to these reasons, the Highway Authority would object to the currently proposed layout.

Additionally, the layout shown for the carriageway for the cul-de-sac serving properties 5 & 6 is not shown to adoptable standard. With the 'Potential' active travel access to Haycock Lane, it would be prudent to ensure this is adoptable or a Deed Of Dedication may be required.

Cycle Parking

The Transport Statement states that two cycle parking spaces will be provided for each dwelling, in line with Torbay parking requirements. This will be detailed at the Reserved Matters stage.

Should the application be approved, the applicant must be aware that cycle parking will need to be provided in easily accessible locations, at the dwelling frontage. This is in order to encourage sustainable travel and reduce the car dominance as per Manual for Streets standards.

Conclusion

The additional information provided by the Applicant following Highway Authority comments have addressed some concerns but there remains a number of areas where there has been the submission of insufficient information.

On this basis, the Highway Authority wishes to raise an objection as the proposals are currently contrary to NPPF paras (2024) paras 109, 110, 115 a/b/c, 117a/b/d, DfT Inclusive Mobility Design Guide, DfT Decarbonisation Plan and Gear Change, Torbay Local Plan Policy TA1 & TA2.

To be clear, the Highway Authority would be in a position to raise no objection once the 'potential' access to Haycock Lane is confirmed, and suitable sustainable transport contributions for bus stop improvements are agreed. It should also be noted that the internal layout currently shown is contrary to the Torbay Highways Design Guide for New Developments and therefore should also be revised, however it is noted the application is Outline With Access.

The Highway Authority (SWISCo/WSP) (response dated 04/10/2024): Holding objection.

The proposals include extending the existing cul-de-sac section of Pilgrim Close to provide a vehicle, pedestrian and cycle access. No other access points are provided.

The proposals include the provision of 46 car parking spaces, and 40 cycle parking spaces (2 per dwelling). No offsite improvements are proposed.

Traffic Impact

Trip Generation

Within the Transport Statement, the Highway Authority are satisfied that the level of vehicle trip generation will not have a severe impact on the operation of junctions on local highway network.

Highway Safety

As noted within the pre-app response, the applicant should ensure the most recent collision data has been analysed at the time of full planning submission. The Highway Authority note that a serious collision involving two vehicles occurred on Wall Park Road at Haycock Lane in June 2023 which is not identified within the Transport Statement. The applicant should investigate the causation factors within this collision.

Design Considerations

Pedestrian and Cycle Access

During pre-app, it was recommended that the applicant ensures continuity for pedestrians into the site and that connectivity should be improved to the west of the site by providing a link for cyclists and pedestrians to the Haycock Lane access road which serves the football club and allotment.

The updated illustrative site masterplan drawing 230108 L 02 02 Rev C now shows a footway on both sides of the site access, thus improving continuation of the Pilgrim Close southern footway.

No connection from the site has been proposed onto Haycock Lane. As previously requested, it is essential to connect the site to the surrounding pedestrian network.

Haycock Lane would provide a direct link onto Wall Park Road for pedestrian/cyclists routing into Brixham, and thus encourage sustainable trips. It is noted that the site red line boundary appears to include part of an access track to the rear of properties north west to the proposed site. This arrangement should be clarified.

Cycle Parking

The Transport Statement states that two cycle parking spaces will be provided for each dwelling, in line with Torbay parking requirements. This will be detailed at the Reserved Matters stage.

Should the application be approved, the applicant must be aware that cycle parking will need to be provided in easily accessible locations, preferably at the dwelling frontage. This is in order to encourage sustainable travel and reduce the car dominance.

Public Transport Access

The nearest bus stop to the site is Wall Park Holiday Centre on Wall Park Road, which is 250 meters away from the site and easily accessible within a 3-minute walk. Currently no improvements are proposed as the Transport Statement states the current infrastructure will remain appropriate for the estimated increase in patronage (1 additional trip in both the AM and PM peak). However, the multimodal trip generation approach used to derive this figure has been taken from 2011 Census Journey to Work data. The applicant should be aware that Torbay aims to see an increase in sustainable modes for all trip purposes, therefore Journey to Work data gives only one perspective with bus trips for leisure and recreational purposes not considered. Furthermore, improvements to the current bus infrastructure are not intended to only cater for existing levels of bus trips, but also to encourage new passengers who wouldn't normally choose the mode by making the option more desirable.

Therefore, as noted in the pre-app response, the applicant must consider bus stop enhancements in order to encourage more public transport trips for all possible future residents (i.e. kessle kerbs, real time information boards, shelters).

Vehicular Access

As noted within the pre-app response, the Highway Authority has reviewed the proposed development with the understanding that the existing access road (Pilgrim Close) has been adopted under a Section 38 Agreement at the time the proposed site will be built. The vehicular access is proposed from Pilgrim Close which will be extended into the site and will provide 5.5m width of carriageway consistent with the existing Pilgrim Way.

The Highway Authority are in principle satisfied with this arrangement, and request the design is delivered in line with the Torbay 'Highways Design Guide for New Developments' at the Reserved Matters stage.

Car Parking

The Transport Statement states that parking will be provided in line with Policy TA3 of the Torbay Local Plan and that one space per dwelling will be provided with an electric vehicle charge point. The illustrative masterplan drawing 230108 L 02 02 C

shows 46 parking bays throughout the site, however EV dedicated bays are not demonstrated. The type of EV charger and location must be provided at the Reserved Matters stage.

The applicant is reminded that Torbay Council is unable to adopt the highway to the east of the site with the current parking arrangement. The footway is required to be located in front of the parking bays rather than at the rear for adoption by Torbay Council.

Refuse / Servicing / Emergency Access

The Transport Statement and supporting documents do not include vehicle tracking drawings or refuse strategy as this is to be considered at the Reserved Matters application. This is not suitable as a turning head is required at the southern side of the site which may impact the number of dwellings provided. The applicant is reminded to demonstrate how a Torbay / SWISCO refuse vehicle would enter the site and exit in a forward gear without needing to reverse an excessive distance.

Planning Obligation

The Local Highway Authority will seek the necessary 278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD (<https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>) and Table 4.3. For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Construction Traffic Management Plan (CTMP)

Should the anticipated planning application be permitted, the Highway Authority will request a Construction Traffic Management Plan is provided by way of planning condition.

Conclusion

The Highway Authority have set out a number of comments in relation to the designs which must be resolved. Based on the current insufficient information provided, the Highway Authority wishes to raise an objection as per NPPF para 116 a/b/c/d.

Torbay Council's Drainage Engineer (updated response dated 11/12/2024):

I can confirm that the points raised within my consultation response dated 30th September 2024 have now been answered within the latest information.

As a result, I have no objections on drainage grounds to outline planning permission being granted based on the latest submitted flood risk assessment (reference 1524 Revision C dated 10th October 2024).

As this is an outline planning application with the final layout yet to be fixed, a final detailed drainage design that responds to any subsequent revised layout must be submitted as part of any reserved matters.

Torbay Council's Drainage Engineer (original response dated 30/09/2024): More information required.

1. The developer has submitted a site specific flood risk assessment which includes a drainage strategy for the development.
2. A site investigation has been undertaken which included a number of trial holes and infiltration tests that have demonstrated that the use of infiltration drainage will be suitable for the development.
3. The results of the infiltration testing have been included within the submitted document. The lowest infiltration rate quoted for trial pit SA203 is 1.33×10^{-4} however when checking the infiltration calculation sheets the lowest value is actually 1.06×10^{-4} . This value should be used within the design of soakaway PSA03, permeable paving PP5-7 and PP11-12.
4. Within the design submitted for soakaway PSA03, permeable paving PP5-7 and PP11-12 the developer has used a value of 1.60×10^{-4} . This value is incorrect as identified in item 3 above.

Before planning permission can be granted the applicant must address the issues identified above.

South West Water (updated response dated 10/12/2024): No further comment to make.

South West Water (original response dated 04/10/2024): No objection.

Surface Water Services

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Discharge to ground (infiltration)

Having reviewed the applicant's current information as to proposed surface water disposal for its development, please note the method proposed to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy. It is noted the applicant proposes to provide soakaways in the western part of the site where infiltration is effective.

Discharge to highway drain, or another private drainage system – permission granted

Having reviewed the applicant’s current information as to proposed surface water disposal for its development, please note that method proposed to discharge into a private drainage system is acceptable and meets with the Run-off Destination Hierarchy.

It is noted the applicant proposes to drain to an attenuation tank in the eastern part of the site where infiltration is less effective.

For Highway run off please contact the Highway Authority to agree disposal method South West Water response relates to surface water discharge to our network, where the discharge is from buildings and yards belonging to buildings. Where the applicant has highlighted that the surface water does not connect to South West Water network, we are not commenting on this as it is not our responsibility.

South West Water has no duty to accept land drainage runoff, flows from natural watercourses or groundwater to the public sewer system, and this is not permitted to discharge to the South West Water network. The applicant should make alternative arrangements to deal with this separately during the development and once the construction work is complete.

Environment Agency: No response received.

Strategy and Project Management Officer (response dated 20/09/2024): No objection.

The Strategic Housing Service conditionally supports the proposal, subject to:

- On-site provision of 5 affordable homes (25%) in accordance with Policy H2 of the Torbay Local Plan, with a tenure mix of 2 x social rent, 1 x affordable rent, and 2 x shared ownership.
- An affordable housing mix that accords with the recommended mix set out below, with all affordable homes complying with Nationally Described Space Standards and Building Regulations Part M(4)(2) in respect of accessible housing.

For a policy compliant scheme, the following affordable housing mix is recommended:

	Social rent		Affordable rent		Shared ownership		TOTAL	
	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)	Number	(% of total AH)
2-bed (4-person) houses	0	0%	1	20%	1	20%	2	40%
3-bed (5-person) houses	1	20%	0	0%	1	20%	2	40%
4-bed (7-person) houses	1	20%	0	0%	0	0%	1	20%
TOTAL	2	40%	1	20%	2	40%	5	100%

S.106 Provision and Requirements

In respect of the detailed obligations required to make the scheme compliant, these must be captured within a Section 106 agreement securing the following:

- An affordable housing mix as set out above, with obligations to be agreed in writing with the Council prior to start on site;
- All affordable homes to meet Nationally Described Space Standards and Building Regulations Part M(4)(2), in respect of accessible housing;
- The developer to have agreed in writing with the Head of Strategic Housing prior to start on site, the approved purchaser of the Registered Provider (RP) that will be transferred the completed affordable homes, and to use all reasonable endeavours to get into contract for delivery with that RP within 3 months of start on site;
- If the original approved RP withdraws from the purchase, to sell to a second (and subsequent, as necessary) RP, approved in writing by the Council;
- The on-site affordable homes to be transferred to the approved Registered Provider on a nil-grant basis, and prior to the transfer, sale or occupation of any open market dwellings, with nomination rights granted to the Council in perpetuity;
- The affordable and open market homes to be delivered tenure blind, such that there is no visual or quality difference between the tenures of homes on-site.

As a whole the scheme would provide 8 x 2-beds (40%), 9 x 3-beds (45%), and 2 x 3-beds (15%). The Strategic Housing Service considers this an acceptable overall housing mix in this location.

SWISCO's Senior Tree Officer (response dated 08/10/2024): No objection subject to planning conditions.

The application area is bordered by young trees on the north-western side which do not present any constraints to the site. Managed hedges are present on the south-eastern boundary which do not present any constraints.

Trees on the south-west boundary present constraints to the development area and form natural screening to the sporting facilities. The trees have been identified as part of the BS5837 tree survey and include a range of locally native species of variable quality.

The proposed site layout is broadly acceptable. However, Plot 6 is located within immediate proximity to the tree protection fencing without any scope for working area. An incursion into the root protection area will be required and should be reflected in the Tree Protection Plan with a revised fencing arrangement and temporary ground protection.

The proposed development should include a soft landscape design which introduces a range of tree and hedges which reflect the context and layout of the site. Opportunities to reinforce the boundary with the sports facilities and provide natural screening could be explored.

No objection, subject to planning conditions to secure a revised Tree Protection Plan (including ground protection for G2) and soft landscaping scheme.

SWISCO's Green Infrastructure Manager (response dated 14/10/2024): No objection.

Reference to Section 4.6 Open Space, Sports and Recreation of the Planning Contributions SPD 2022 (https://www.torbay.gov.uk/media/19102/planning-contributions-spd_2022.pdf) table 4.9 and 4.10 identify the framework for s106 requests. In particular, the cost of open space per dwelling as per table 4.

The proposed development is to provide 20 dwellings. It is understood that 25% are affordable housing but have been included within the calculation as there is likely to be increased pressure on existing resources irrespective of housing allocation.

Sq. footage/metreage/no beds	No of Dwellings	Costs as per table 4.9 (£)
2 (37-59m2)*	8	£8,744.00
3 (60-59m2)*	9	£18,729.00
4 (80-108m2)*	3	£11,178.00
	Total	£38,651.00

*estimated

Please note the amount shown incorporates all elements of shown in the SPD and further detailed discussion may be required to disaggregate the contributions between the relevant sub – categories of open space and recreation etc.

This should be proportionately reduced to take account of any on-site provision in negotiation with and the Green Infrastructure Team.

SWISCO’s Recycling Support Coordinator (updated response dated 05/12/2024): Objection.

In response to this consultation request, I OBJECT to this development, and I would like to request further information.

The plan that was provided states the distances required for householders and recycling and waste collectors may move recycling and waste containers for collection. However, the developer seems to have misunderstood the requirements of Building Regulations H6, which specifies that there must be no more than 30meters for the householder to carry waste from their dwelling to the storage point for containers and that householders must not carry the containers any more than 25 meters from the storage location to the collection point as specified by the Waste Collection Authority.

In Torbay, the collection point for all properties is the closest point on the adopted highway network and householders are responsible for bringing the recycling and waste to the collection point and taking them back to the storage point after collection. Although there are some circumstances where we will consider entering into an indemnity arrangement and collect on unadopted highway, the developer has not

presented enough information to understand the storage location and collection point for each individual property. Indemnity arrangements are only entered into by SWISCo if the unadopted highway that we need to drive on to has been built to adoptable standards (e.g. surfacing; drainage etc).

I would like to request contributions for this development.

SWISCO's Recycling Support Coordinator (response dated 14/10/2024): Objection.

The developer has not provided an adequate turning head for collection vehicles and no vehicle tracking has been provided to demonstrate that are vehicles are able to collect and exit in a forward gear. I would like to request waste management contributions.

Police Designing Out Crime Officer (response dated 24/09/2024): No objection subject to a planning condition.

It is appreciated the majority of this will be submitted as a reserved matters application in a later date if planning permission is granted however, to assist from a designing out crime, fear of crime and anti-social behaviour perspective please find my advice and recommendations below.

As the security element of the building regulations, namely Approved Document Q (ADQ), sits outside the decision making process for the planning authority the following is to inform the applicant:-

ADQ creates security requirements in relation to all new dwellings. All doors that provide entry into a building, including garage doors where there is a connecting door to the dwelling, and all ground floor, basement and other easily accessible windows, including roof lights, must be shown to have been manufactured to a design that has been tested to an acceptable security standard i.e. PAS 24.

As such it is recommended that all external doors and easily accessible windows are sourced from a Secured by Design (SBD) member-company List of Member Companies (Alphabetical). The requirements of SBD are that doors Accredited Product Search for Doors and windows Accredited Product Search for Windows are not only tested to meet PAS 24 (2022) standard by the product manufacturer, but independent third-party certification from a UKAS accredited independent third-party certification authority is also in place, thus exceeding the requirements of ADQ and reducing much time and effort in establishing provenance of non SBD approved products.

It is noted that hedging maybe used as a rear boundary treatment where this is the case it is important to ensure these attain a minimum height of 1.8m, they also must be robust enough to prevent and deter unauthorised access to the rear of the properties. It is also important that the plants being used for the hedging do not go through any drastic seasonal change which could undermine the security of the boundary. Given it can take some time for the hedging to grow and thicken to be an

appropriate boundary treatment, it should be supported by a temporary solution, such as wooden fencing for example.

Where hedging is not being used as a rear boundary treatment, either fencing or walls must be robust and attain a minimum height of 1.8 m. If greater surveillance is required, the solid boundary treatment could be reduced to 1.5m with a trellis topping of 0.3m or 0.6m. Where gates are installed for access into private rear gardens these should be the same height of the adjoining boundary treatment, robustly constructed and be lockable from both sides by means of a key for example.

Where shared rear access footpaths are being proposed such as those between plots 2 to 3 and 17 to 18, these should also be gated with access controlled for the associated residents only. The gates must be placed at the entrance to the footpath as near to the front of the building line as possible to prevent unnecessary recesses. Where vegetation and trees are proposed to be placed next to parking bays, they can provide cover for suspects to interfere with vehicles. Encroaching or uncontrolled undergrowth can hinder natural surveillance, restrict access for the car user, and can impact on the fall of light from nearby columns (if relevant). Shrubs should be selected to have a mature growth height no higher than 1 metre, trees should have no foliage, shoots or lower branches below 2m allowing a 1metre clear field of vision.

It is welcomed that there will be a good level of natural surveillance on to the areas identified as public open space and the communal vehicle parking bays from active frontages.

Should planning permission be granted I would respectfully request the following condition is in place:

All rear boundary treatments are robust and attain a height of 1.8m. Where access gates are provided for entry into the rear gardens these must also attain a height of 1.8m and be lockable from both sides by means of a key or similar.

The reason for this request is in the interest of designing out crime in line with the Torbay Local Plan DE1 point 4.

Torbay Council's Senior Environmental Health Officer (response dated 19/09/2024): No objection subject to a planning condition.

No objections, recommend a condition requiring a construction management plan.

Active Travel England (response dated 17/09/2024): No comment to make as it does not meet the statutory thresholds for its consideration.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Visual Impact (including the impact upon the National Landscape), Layout and Design

3. Residential Amenity
4. Highways, Movement and Parking
5. Ecology, Biodiversity and Trees
6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change
8. Other Material Considerations

1. Principle of Development

The land is a greenfield site, adjacent to the built-up area of Brixham, which is presently laid to grass. The site is not designated as open countryside under Policy C1 of the Local Plan. The application site is within the designated South Devon National Landscape. It is not allocated for housing or employment within the Local Plan and is identified as a rejected housing site within the Neighbourhood Plan.

It should be noted that, along with other parcels of land in the area ('Wall Park Extension' and 'Berry Head Road', collectively comprising 15ha of greenfield land), the site was considered for allocation for housing as part of the making of the Neighbourhood Plan. These parcels of land were assessed collectively and, as set out in the Brixham Peninsula Neighbourhood Plan 'Housing Site Assessment' document, were rejected for the following reasons:

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

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

Policy E2 of the Neighbourhood Plan defines the settlement boundaries in the Neighbourhood Plan area. The supporting Policy Map confirms that the application site is located outside the settlement boundary. Policy E2 goes on further to state that development outside settlement boundaries will need to meet the criteria of Policy C1 of the Local Plan. However, the Local Plan does not designate the land as open countryside as per Policy C1. Similarly, Policy BH4 of the Neighbourhood Plan states that development that extends settlements onto adjoining greenfield sites will be considered in the context of Policy C1 of the Local Plan.

Policy C1 of the Local Plan sets out the forms of development that may be permitted subject to no adverse impacts of rural landscape character, wildlife habitats, green corridors, historic features and mitigation to minimise harm to the environment. These are:

1. New homes for which there is a proven agricultural need, or self-build affordable housing where acceptable under Policy H3;
2. Development for forestry, horticulture or agriculture;
3. Touring caravans and tents;
4. Tourist facilities appropriate to the rural area;
5. Development associated with outdoor sport and recreation appropriate in a rural area;
6. Sensitive conversion, alteration and extension of existing buildings;
7. Essential improvements to the highway network; and
8. Appropriate renewable energy development.

It is important to note that the site is somewhat anomalous in that, while it is outside of (but adjacent to) the settlement boundary in terms of the Neighbourhood Plan, it is not designated as being within the Countryside Area in terms of the Local Plan. This reflects the site's unusual situation of being greenfield land that, following the construction of residential development (Bloor Homes) on the allocated site to the east, is now surrounded on three flanks (north, east, and south) by residential development, with Brixham Football Club adjacent to its fourth flank (west). While the site previously had some level of attachment to the surrounding countryside prior to the adjacent Bloor Homes development, the site now comprises an enclave within adjacent development with a clear sense of separation and visual distinction from the surrounding countryside. It is therefore considered that the proposal does not amount to development in the open countryside, would not be away from existing settlements, would not result in the loss of open countryside, would not lead to the creation of urban sprawl, and would not encourage the merging of urban areas with surrounding settlements. In this regard it is relevant that the site is not designated as being within a Settlement Gap as described in Policy E3 of the Neighbourhood Plan. The proposal might more reasonably be considered as a form of infill development on land that, although being an open field, is privately owned and not a local green space, and is largely surrounded by residential development that forms the eastern edge of this part of Brixham. It is therefore considered that the proposal does not present any conflict with the considerations set out in Policy C1 of the Local Plan or Policies E2 and BH4 of the Neighbourhood Plan.

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well-connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location.

In terms of wider policy guidance on the principle of development, Policies SS2 and SS8 of the Local Plan are relevant. Policy SS2 of the Local Plan frames the growth agenda for Torbay in terms of stating that all major development outside of the established built-up area should be within the identified Future Growth Areas and furthers that major development outside of these areas will only be permitted where the site has been identified by the relevant Neighbourhood Plan or a subsequent development plan document. It is important to note that part of the application site was granted outline planning permission in 2021 for 3no. dwellings, however this permission expired in August 2024.

Policy SS8 of the Local Plan states within the Area of Outstanding Natural Beauty the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Development will only be permitted in exceptional circumstances where it can be demonstrated to be in the public interest. The policy goes on to advise that planning applications should include an assessment of need for the development, economic impacts, alternative means and locations of provision, the impacts of the proposal on the environment, landscape and recreation, and the extent to which impacts could be moderated.

Policy SDB1 of the Local Plan advises that Brixham is expected to provide 660 new homes over the plan period but that this should be done without prejudicing the integrity of the Area of Outstanding Natural Beauty and Special Areas of Conservation, and provided that the interests of priority species, such as the Greater Horseshoe Bat and Cirl Buntings, can be safeguarded.

Policy SDB3 of the Local Plan confirms that the Area of Outstanding Natural Beauty around Brixham, including Berry Head National Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes.

Policy E1 of the Neighbourhood Plan states that the natural beauty, landscape character, tranquillity and biodiversity of the Brixham Peninsula will be preserved and enhanced, and new development will need to respect these qualities and wherever possible enhance them.

Turning to national guidance contained within the NPPF there is clear guidance regarding valued landscapes (which includes National Landscapes). Paragraph 187 of the NPPF includes guidance that planning policies and decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Paragraph 189 of the NPPF guides that great weight should be given to conserving and enhancing landscape and scenic beauty in such areas and furthers that the scale and extent of development within all these designated areas should be limited. Paragraph 190 of the NPPF confirms that when considering applications for development in protected areas, including National Landscapes, permission should be refused for major development [see Footnote 67] other than in exceptional circumstances, and where it can be demonstrated that the development

is in the public interest. Consideration of such applications should include an assessment of:

- a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy;
- b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and
- c) any detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

Footnote 67: For the purposes of paragraphs 190 and 191, whether a proposal is 'major development' is a matter for the decision maker, taking into account its nature, scale and setting, and whether it could have a significant adverse impact on the purposes for which the area has been designated or defined.

The application sits within the South Devon National Landscape. Whilst technically, the application is a major planning application as defined in the Town and Country Planning (Development Management Procedure) (England) Order 2015, consideration must be given as to whether the proposed development would be considered major development within the National Landscape. The proposal is for up to 20no. residential units, the parcel is within the built up area and the site is bounded by residential development. It is considered that the proposal does not constitute "major development" in the Area of Outstanding Natural Beauty as defined in Footnote 67 of the NPPF due to the reasons stated above.

Presumption in Favour of Sustainable Development.

Torbay's wider housing shortfall means that the NPPF's presumption in favour of sustainable development must be applied to housing applications.

Applying the Presumption in Favour of Sustainable Development, as outlined within Paragraph 11(d) of the NPPF, means granting permission unless:

(i) the application of policies in the NPPF that protect areas or assets of particular importance (this includes the policies relating to National Landscapes) provides a strong reason for refusing the development proposed; or

(ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Development Plan which are most important for determining the proposal are out-of-date. The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply. It is considered that neither limb within Paragraph 11(d) applies and therefore the presumption in favour of sustainable development applies and the tilted balance is engaged.

Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF.

Conclusion on the principle of development:

In terms of the principle of development, the development is considered acceptable in principle.

This position is however subject to wider policy considerations that are relevant to the development proposal and consideration of relevant material considerations, the forthcoming sections of the report will discuss these matters.

2. Visual Impact (Including Impact on the National Landscape), Layout and Design

Whilst the proposal only seeks detailed consent for the proposed access, being in outline with all other matters reserved for future consideration, the submitted information does include an indicative proposed site layout and indicative detail on the likely character and appearance of the development proposed in outline. In terms of the consideration of this application it is necessary to determine on the likely visual impact and impact upon the South Devon National Landscape, and to determine whether the submitted detail provides sufficient comfort that the amount of development (up to 20 dwellings) could be appropriately achieved in terms of its layout, design, and character.

The NPPF states (Paragraph 131) that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve and furthers that good design is a key aspect of sustainable development. Paragraph 139 of the NPPF confirms that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design, taking into account any local design guidance and supplementary planning documents such as design guides and codes.

Policy DE1 of the Local Plan states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials and whether they positively enhance the built environment. Policy BH5 of the Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area. Policy BH6 of the Neighbourhood Plan provides design guidance in relation to roofscape and dormer management.

Visual Impact (Including Impact on the National Landscape).

Policy SS8 of the Local Plan states that within the AONB, the conservation of the landscape and scenic beauty, biodiversity and geodiversity will be given great weight and afforded the highest status of protection. Policy SDB3 of the Local Plan furthers that the AONB around Brixham, including Berry Head National Nature Reserve, St. Mary's Bay and the wider Brixham urban coastal fringe, will be conserved and

enhanced to protect its intrinsic landscape and biodiversity value, and for recreational and tourism purposes.

Policy C1 of the Local Plan states that in the open countryside, away from existing settlements, and in rural areas surrounding the three towns of Torbay, development will be resisted where this would lead to the loss of open countryside or creation of urban sprawl, or where it would encourage the merging of urban areas and surrounding settlements to the detriment of their special rural character and setting. Policy E1 of the Brixham Peninsula Neighbourhood Plan offers a similar policy landscape, as does national guidance contained within the NPPF.

Although the site is two fields laid to grass within the National Landscape, adjacent urban development has rendered the site an enclave surrounded by residential development on its northwest, northeast and southeast boundaries, with Brixham AFC on its southwest boundary. Previously, the application site may have had more of a sense of connectedness with the surrounding rural landscape, however now there is a physical separation and visual distinction between the site and the rural landscape further to the east and south. While the site does naturally have a sense of openness and spaciousness in its current undeveloped form, there are no public vantage points from which the site appears as an intrinsic part of the wider National Landscape, noting that the site is also partially screened from public views by the established hedgerow that would be retained along the southwestern boundary. It is therefore considered that the proposal would not result in a loss of open countryside or create urban sprawl.

The proposal would be laid out in a relatively spacious arrangement that would accord with the character and urban grain of the surrounding residential areas.

The application is accompanied by a Landscape Visual Impact Assessment (LVIA). In terms of the applicant's submission, the LVIA concludes:

“... an undeveloped gap in the developed area which surrounds it and physically and contextually breaks its connection with the open coastal plateau landscape to the east and south which relates more closely to defined landscape characteristics and the special qualities of the South Devon National Landscape. The presence of a significant amount of development within the designated area around the site means that the proposals do not affect any of the area's special qualities or distinctive characteristics, and cannot be considered to extend built form into it. They relate to the scale, character, and grain of adjacent development and providing they are accompanied by a strong landscape structure that enhances and creates links to the green infrastructure of the Berry Head area as well as providing recreational links for residents, they cannot therefore be considered to cause loss, damage or detriment to the AONB's natural beauty, its special qualities or its distinctive characteristics or to the perception of its natural beauty.”

The conclusion of the LVIA is considered acceptable. On balance, the impact of the proposal on the landscape character and scenic beauty of the National Landscape is considered acceptable, noting that the proposal would offer some public benefit in the form of the delivery of up to 20no. dwellings, including 25% (5no.) being affordable dwellings.

Based on the indicative information provided, the proposed development is, for the reasons above, considered to demonstrate the potential to provide a satisfactory form of development in terms of layout, in accordance with Policies SS2, SS3, H1 and DE1 of the Local Plan, Policies BH5 of the Neighbourhood Plan and the guidance contained within the NPPF.

Layout and Design

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed places” offers key guidance on this. Guidance within Part 12 of the NPPF broadly offers that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve, that good design is a key aspect of sustainable development, and it being integral that developments function well and add to the overall quality of an area, are visually attractive, are sympathetic to local character, establish or maintain a strong sense of place, and create safe, inclusive and accessible environments. The NPPF also guides that development that is not well-designed should be refused, especially where it fails to reflect local design policies and government guidance on design (Paragraph 139).

Similar design expectations are engrained within the Development Plan through Policies SS11 and DE1 of the Local Plan, and Policies BH5 and BH6 of the Neighbourhood Plan.

The submitted information on the layout and general design characteristics are indicative only and seek to demonstrate that the amount of development can be provided satisfactorily. This is the key consideration at this stage.

The indicative layout presents a density of development which appears to be acceptable. Commentary supporting the application details a hierarchy of roads with a primary route feeding off to a secondary route, with properties generally fronting the roads. The concept of a street hierarchy is supported, with principal active elevations fronting the public realm. A mix of building types is suggested, and this is supported in terms of delivering detached, semi-detached, and terraced properties. In terms of scale, the proposal suggests two storey dwellings, which appears a suitable response to the context. In terms of appearance, the indicative concept seeks to reflect the variety in the townscape and to have simple and contemporary aesthetic that references the local vernacular. The appearance and materials should seek to respond positively to the existing and surrounding context and duly reflect the National Landscape context within which it sits. The extent of public open space is supported, as is the retention of features, such as trees and hedges, where possible. National guidance support street trees and the indicative layout does to a degree offer trees within the public realm and plot frontages.

The proposals, as an outline package, are considered to provide sufficient comfort that the amount of development could be achieved on the site, in terms of delivering a good residential standard in terms of buildings, parking, external amenity space etc.

However, notwithstanding the above it is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters are evolved and informed by such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development, should outline consent be granted.

To conclude in terms of layout and design it is considered that the proposed detailed access arrangement and indicative layout, sufficiently demonstrates that the proposed development is likely to be achievable within an acceptable layout and design through an appropriate design process. The proposal is therefore on balance considered to be in accordance with Policies SS11, H1 and DE1 of the Local Plan, Policy BH5 of the Neighbourhood Plan, and the guidance contained within the NPPF.

3. Residential Amenity

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 and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience (Paragraph 135). The Local Plan contains policy guidance aligned with the aspirations of the NPPF, principally through policies SS11, H1 and DE3, towards ensuring that residential development produces high-quality living environments that present a good level of amenity for future users and neighbouring occupiers. Policy DE3 also identifies size standards for self-contained units, which reflect national space standards.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts which are recommended as planning conditions. Such management would similarly protect the amenity of future occupiers that may move into the development during the construction phase.

In terms of the development itself the residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance for existing occupiers in the area.

In terms of location, although the site sits outside of the settlement boundary for Brixham, the fringe location, which is adjacent to established residential areas, will present a largely sustainable location for future occupiers. The development will abut and link to the existing suburban network of adopted roads and public footpaths, offering permeable routes to the wider urban area, and to the associated facilities and services found within Brixham. There is a bus stop in close proximity to the site offering access to a local service. There are local shops (Great Rea Road), allotments (Wall Park Road) and facilities (Higher Ranscombe Road – swimming pool) within walking distance. In terms of location of future occupier amenity alone the site would present a suitable, sustainable, location.

In terms of wider matters as the layout, scale, appearance and landscaping of the proposed development are reserved for future consideration at reserved matters stage considerations of amenity fixed solely on whether the indicative detail presents sufficient comfort that the amount of development could be delivered within an acceptable form without undue impact upon adjacent amenity or the amenity of future occupiers within the development. Impacts will be scrutinised at reserved matters stage when there is a detailed form of development presented.

In terms of the level of amenity afforded future occupiers of the development itself the indicative proposals are limited to an indicative layout plan, with no indicative housing types or internal layouts submitted. Information to scrutinise is therefore limited. In terms of general outlooks and natural levels of light the layout presents a relatively open and well-spaced development that is likely to offer good levels of both. Privacy levels are also likely to be adequate considering the likely relationships and distances between proposed and existing properties. Internal size standards cannot be scrutinised in any great detail, but the footprints appear to present dwellings that would achieve or exceed national space standards. It cannot be scrutinised whether bedroom standards would be met but the reserved matters stage would provide the opportunity to scrutinise the internal living environments. External amenity spaces are largely generous within the indicative layout and comply with the Local Plan policy expectation of no less than 55 square metres. In terms of other expected ancillary features cycle parking facilities should be delivered in terms of 2no. spaces for dwellings, this level of detail is not indicated on the indicative plans.

In terms of ancillary elements that influence residential quality parking, cycle parking and waste storage are key domestic elements to consider. The indicative plans show 2no. parking spaces per dwelling, which is the policy expectation within the Development Plan. These are indicatively shown as being largely delivered on each plot, however there are some courtyard areas to provide low key shared parking. Electric parking facilities should be delivered for every dwelling, and this is suggested to be clarified by a planning condition for future reserved matters to include. Cycle parking facilities are not shown and would need to be evolved within a future reserved matters application, to deliver 2no. cycle spaces per dwelling. This is suggested to be secured by planning condition, similar to the final parking provision. Considering the likely form of dwellings cycle parking could readily be delivered within ancillary structures on-plot and hence the lack of indicative planning is not considered unacceptable in terms of consideration of this outline application. In terms of waste storage, like cycle parking, there appears to be the opportunity to deliver storage facilities within gardens. Where plots do not have natural collection areas to the frontage it would be expected that future reserved matters detail did include collection day point detail within the layout where needed. Within the indicative layout this may apply to a number of plots. Such detail would seek to ensure suitable 'drag' distances and collection areas that would minimise potential obstruction to footpaths or unsuitable use of landscaped areas.

In terms of existing adjacent occupiers, considering the indicative detail presented it is expected that the amenity of occupiers on Wall Park Road, Pilgrim Close, Regard Close and Leader Close would not be unduly impacted due to the likely separation distances. In terms of the future occupiers, the indicative layout demonstrates acceptable separation distances in terms of front-to-front and front-to-side. On the

information available the indicative layout presents dwellings that are unlikely to cause undue loss of light, outlook, or privacy for adjacent occupiers. As the proposals are currently indicative, any grant of consent would not fix the final form of development and the future reserved matters would present the point in time to scrutinise the relationship and likely impacts in detail, when the final layout and form, and hence distances to neighbours, levels etc will be proposed.

Again, it is noted that the proposals have not been subject to or engaged with the design review process, which is supported within national guidance, and it would appear beneficial that any future reserved matters took advantage of such a key design planning tool, certainly when considering the sites context within a National Landscape, in order to aid delivery of an adequately positive development at reserved matters stage.

In summary, the proposal demonstrates the potential to provide a satisfactory form of development in terms of protecting the amenities of adjacent occupiers, but greater scrutiny on this will be undertaken at reserved matters stage. On the information available the development is also considered to evidence scope to deliver the amount of development proposed in a form that could accord with Policies SS11, DE1 and DE3 of the Local Plan, and the guidance contained within the NPPF.

4. Highways, Movement and Parking

In terms of national guidance, Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and d) 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 through a vision-led approach. Paragraph 116 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

Policy DE3 of the Local Plan specifies that new development proposals should have satisfactory provision for off-road motor vehicle parking, bicycles and storage of containers for waste and recycling. Policy TA1 of the Local Plan sets out promoting improvements to road safety. Policy TA2 of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 of the Local Plan details that the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. Policy BH8 of the Neighbourhood Plan states that all new development should comply with the relevant adopted standards. Policy T1 of the Neighbourhood Plan advises that all developments should include safe walking and cycling access and that all development should seek to minimise commuting distances and seek to

include improvements to the safety of pedestrians and cyclists.

In terms of access, the application seeks detailed approval for a new vehicular access off Pilgrim Close. The access presents a 5.5 metre carriageway into the site with 2 metre wide footways to both sides of the carriageway.

The proposed access is considered acceptable and are considered to provide a suitable and safe access for the amount of development proposed, having the support of the local highway authority.

In terms of trip generation, the Highway Authority are satisfied that the trip generation of the proposed development will not have a severe impact on the operation of the local highway network. The Highway Authority have confirmed that Pilgrim Close has been adopted under a Section 38 agreement and that the proposed access road will be consistent with Pilgrim Close and therefore the Highway Authority are in principle satisfied with this arrangement, subject to it being in line with the Council's Highways Design Guide for New Developments, such will be secured by planning condition.

In terms of broad movement patterns and opportunities, the site sits at the edge of the existing Brixham settlement boundary and any development would directly connect to the adopted highway network serving the existing suburbs and wider town. The development would hence benefit from safe walking and cycling routes utilising the public network to local services, and the wider town centre, which is roughly a 5 minute cycle or 15 minute walk. In terms of other non-car modes options, the site would be close to local bus routes, the nearest bus stop to the site is Wall Park Holiday Centre on Wall Park Road, which is 250 meters away from the site and easily accessible within a 3-minute walk. The site is hence relatively sustainable in terms of travel and movement options. The applicant has revised the proposed layout which shows a *'3.7m wide opening in site boundary to allow pedestrian, cycle, and emergency vehicle access only. Collapsible bollard or similar physical measure to prohibit unauthorized use'*. The Highway Authority are now satisfied with these details.

In terms of the development itself, as the application seeks to reserve all matters other than access the internal network of roads and walking and cycling permeability will ultimately be determined through a future reserved matters application should planning permission be granted. This would include, via a planning condition, for all roads and footpaths to be built to an adoptable standard and for maintenance and management regimes to be agreed should the road not be put up for adoption by any future developer. These matters are required to ensure that road safety and occupier amenity through the life of the development are not compromised.

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 (Paragraph 116), the proposal is considered acceptable on highway and movements grounds, and in accordance with the Policies TA1 and TA2 of the Local Plan, Policy T1 of the Neighbourhood Plan and the guidance contained within the NPPF.

5. Ecology, Biodiversity and Trees

Policy SS8 of the Local Plan states that all development should have regard to its environmental setting and should positively contribute to the conservation and enhancement of the natural assets and setting of the Bay. 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 E8 of the Neighbourhood Plan states that internationally important sites and species will be protected. Development affecting internationally protected site and species will only be approved where it can be demonstrated there is no likely significant effect, either alone or in combination with other plans or projects and regard has been given to the NPPF and conforms to Policy NC1 of the Local Plan. Guidance within the NPPF provides similar guidance to the above and notably Paragraph 187 guides that when determining planning applications, local planning authorities should apply principles that include opportunities to improve biodiversity in and around developments should be integrated as part of the design, especially where this can secure measurable net gains for biodiversity.

In terms of the ecology, the site comprises of two fields that are laid to grass. The fields are bound by a close boarded fence to the north, an existing stone wall to the east and south, and a hedgerow to the west. In terms of ecological context, the site sits within the Sustenance Zone associated with the Greater Horseshoe Bat Roost at Berry Head that forms part of the South Hams Special Area of Conservation (SAC) and is within the Zone of Influence for recreational pressures upon the associated Calcareous Grasslands at Berry Head.

The application is supported by a Preliminary Ecology Appraisal, the Devon Biodiversity Net Gain Statement, the Statutory Biodiversity Metric, a Biodiversity Impact Assessment, and associated Biodiversity Net Gain maps. The application has been reviewed by Devon County Council ecologist acting on behalf of the Local Authority.

With regard to the potential impact upon Greater Horseshoe Bats associated with the South Hams SAC, Devon County Council's Ecologist has confirmed that given the lack of suitable habitat present onsite, and the high levels of artificial illumination the site currently experiences, it is not deemed that the proposals will lead to the loss, damage or disturbance to potential commuting routes or foraging habitat for Greater Horseshoe bats, nor will the proposals lead to loss, damage or disturbance to a Pinch Point or Mitigation Feature. The Ecologist concludes that the proposed development is unlikely to have a likely significant effect on the SAC and therefore a HRA is not required.

Policy NC1 of the Local Plan states all development which creates recreational pressure upon the Annex I habitats (European dry heath, semi-natural grasslands and scrubland facies on calcareous substrates) at the Berry Head to Sharkham Point Component of the South Hams SAC must pay a contribution towards mitigating the impact of increased visitor pressure. This mitigation has been costed at £135 per new dwelling. Providing that the proposed development provides a monetary contribution via s.106 legal agreement/unilateral undertaking equivalent to £135 per new unit, the resultant increases in recreational pressure can be mitigated and the development

will not have an adverse effect upon the integrity of the European site. The HRA developed and agreed with Natural England for the Local Plan concluded that as long as new developments provide the contributions as described above to deliver the required mitigation measures, there will be no adverse effect upon the integrity of the European site as a result of increased recreational pressures impacting the Annex I habitats, and the conservation objectives would be sustained.

The local financial contributions section of this report states the anticipated contribution.

In terms of foraging and commuting bats and other protected species, Devon County Council's Principal Ecologist is content that adequate management and mitigation can be secured by planning conditions to frame the construction and operational phases of the development.

As a further matter in England Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021). This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. In terms of this application the site is BNG liable and therefore not exempt.

Devon County Council's Ecologist has confirmed that the proposal (albeit outline) shows a 93.56% gain in hedgerow units and an overall loss of habitat units (62%), therefore the purchase of offsite habitat units is required. There is no requirement to agree terms with any BNG providers at this stage, but full details will need to be provided to the Local Planning Authority prior to commencement of any groundworks. The statutory requirement for BNG is secured via the statutory pre-commencement BNG condition. An informative must be included on the decision notice.

In-line with advice from Natural England and Devon County Council's Ecologist, the proposal is considered acceptable on ecological and biodiversity grounds for the reasons stated above, in-line with the aspirations of Policies NC1 and SS8 of the Local Plan, Policy E8 of the Neighbourhood Plan, and the advice contained within the NPPF.

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

The application site is not subject to any statutory tree designations and the application has been supported by a Tree Survey (Doug Pratt Tree Consultancy, April 2023). The application site is bordered by young trees on the north-western boundary and managed hedges are present on the south-eastern boundary, which do not present any constraints. There are existing trees on the south-west boundary, which present constraints to the development area and form natural screening to the sporting facilities.

SWISCo's Senior Tree Officer has been consulted on the application and has confirmed that the proposed indicative site layout is broadly acceptable. Landscaping is a reserved matter that will be subject to future consideration, however the Officer considers that the application site can provide a suitable soft landscaped design. The proposal is considered to comply with Policy C4 of the Local Plan.

6. Flood Risk and Drainage

National guidance contained within the NPPF cites that when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere (Paragraph 181).

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 ER2 of the Local Plan includes reference that development proposals should seek to minimise the generation of increased run-off, having regard to the drainage hierarchy, whereby surface water will discharge following the hierarchy of i) an adequate infiltration system (for example swales, soakaways, infiltration basins, filter drains, rain gardens), or where that is not reasonably practicable; ii) a main river or water course, or where that is not reasonably practicable; iii) a surface water sewer or highway drain, or in the last resort where none of the above are reasonably practicable; iv) to a combined (foul and surface water) sewer, where discharge is controlled to be at greenfield discharge rates.

The site is within Flood Zone 1, which is the lowest level of flood risk, however it does sit within the Torbay-wide Critical Drainage Area, as designated by the Environment Agency. Guidance relating to the Critical Drainage Area states that all new development should play its part in reducing current rainfall runoff rates, and that surface water runoff from future development must be managed to ensure that an overall reduction in flood risk is achieved.

The application is supported by drainage information that seeks to demonstrate that the amount of development proposed could be managed without increasing the risk of flooding within the site, or to land or buildings adjacent. Ultimately as the application is made in outline the layout and exact extent of buildings and hardstand is not known or fixed at this stage, it is acceptable to seek a demonstration that the likely form of development can be adequately managed. Should planning permission be granted, a planning condition should be employed to secure that any future reserved matters includes a detailed drainage solution.

The application is supported by a site specific flood risk assessment which includes a drainage strategy for the proposed development. A site investigation has been undertaken which included a number of trial holes and infiltration tests to demonstrate that the use of infiltration drainage will be suitable. The Council's Drainage Engineer has been consulted. The submitted detail, following the receipt of further information, has successfully shown that the proposed drainage strategy for the submitted indicative layout would adequately manage surface water and present no risk of

flooding from the critical 1 in 100-year storm event plus 50% for climate change and 10% for urban creep.

Based on the above there is no objection to outline planning permission being granted for the development on drainage and flood risk grounds. A planning condition is recommended to require the developer to submit a final drainage design for approval once the reserved matters sets the detailed design parameters. The proposal is, for the reasons above, considered to be in accordance with Policies ER1, ER2, SS2 and SS7 of the Local Plan, and guidance contained within the NPPF.

7. Low Carbon Development and Climate Change

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. Policy ES1 of the Local Plan seeks to ensure that carbon emissions associated with existing buildings (heating, cooling, lighting and energy consumption) are limited.

National guidance in the NPPF contains similar goals and is clear that the planning system should support a transition to net zero by 2050, taking full account of all climate impacts including overheating, water scarcity, storm and flood risks, and coastal change (Paragraph 161). The NPPF guides that the need to mitigate and adapt to climate change should be considered when assessing planning applications, taking account of the full range of potential climate change impacts (Paragraph 162). Paragraph 166 of the NPPF states that new developments should be planned to reduce greenhouse gas emissions, and take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption.

The application is supported by the Council's Sustainability Checklist and a Sustainability and Energy Statement. The Statement illustrates how the proposed development could be designed using the Energy Hierarchy principles including the use of air source heat pumps, low energy lighting and on-site renewables. However, the report does not make specific calculations of carbon reduction or specific commitments to any identified design solutions.

The Statement does not acknowledge the Council's commitment to become carbon-neutral by 2030, which is a material planning consideration, or the current Building Regulations. It does not acknowledge the Future Homes standards to be introduced in 2025.

The Council's Climate Strategy and Project Officer has commented upon the scheme and has recommended that a planning condition is employed to secure such commitments at reserved matters stage. Therefore, a planning condition is recommended to secure, in any reserved matters application relating to the proposal's layout, scale and appearance, the above details of energy efficiency measures and sustainable construction.

Subject to the recommended planning condition, the proposal is considered to have the potential to deliver on the low-carbon aspirations of the Development Plan, and the Council's Carbon-zero commitment.

8. Other Material Considerations

Housing Supply (including affordable housing)

The Council cannot currently demonstrate a 3- or 5-year housing land supply, as sought by Government. The five-year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

Considering the housing supply position, it is advised that in determining the application, the presumption in favour of sustainable development at Paragraph 11 of the NPPF must be applied. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Paragraph 11). Were Members of a different judgment and were to consider the proposal to conflict with the Development Plan it should be noted that the absence of a 3- or 5-year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Minerals Safeguarding Area

The application site is within a wider Minerals Safeguarding Area (MSA) for interbedded limestone and mudstone, designated as a known location of this specific mineral resources and to ensure these resources are not needlessly sterilised by non-mineral development.

It is presented within the application that there are several constraints that would make mineral extraction within the application site unfeasible. Such constraints include the size and location of the application site, accessibility for machinery and the noise implications upon existing adjacent neighbouring occupiers.

When considering the designation and the sites context within the National Landscape the benefits of housing are likely to outweigh the harm in terms of mineral safeguarding, and is not considered a matter in itself that would outweigh the benefits of housing supply.

Health and Wellbeing

Policy SC1 of the Local Plan requires development to contribute to the health and well-being of the community helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal. In particular, Policy SC1.3 seeks improvement to access to medical treatment services including healthcare clusters.

The NHS Trust was consulted on this application and has responded that health care services in the vicinity are under pressure. The proposed development would potentially impact on the Trust's ability to provide safe, accessible and sustainable service delivery to current and new residents. The proposal does not include the provisions of facilities to address this impact, given the increase the physical capacity of GP surgeries to mitigate additional demand, contributions are, therefore, sought to mitigate this direct impact and the amount sought is £12,419.00. This can be secured through a Section 106 agreement to accord with Policy SC1.3 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

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

The construction phase would likely deliver direct and indirect jobs. In addition, once the dwellings are occupied there would be an increase in the level of disposable income from the occupants some which would likely to be spent in the local area and an increase in the demand for local goods and services. Council tax revenue is also a cited benefit as are the S106 obligations, although it should be noted that such obligations are to mitigate the impact of development upon certain services or infrastructure.

On balance, in terms of the economic impacts of the development weigh in favour of the development.

The Social Role

The principle social benefit of the proposed development would be the provision of additional housing including affordable housing. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance, with the benefit heightened by the inclusion of 25% of the units being Affordable units.

The edge of settlement location presents access the services and facilities within the built-up area of Brixham, which is a positive element for future occupiers.

Public greenspace is to be provided, which is considered a social benefit of the scheme to the future occupiers and wider public.

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

The Environmental role

With respect to the environmental role of sustainable development the development is supported by drainage, landscaping, and ecological measures to mitigate impact, as detailed in this report. The scheme is also BNG liable. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

Sustainability Conclusion

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

Statement on Human Rights and Equalities Issues

Human Rights Act - The development has been assessed against the provisions of the 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 Legal Agreement

The following are to be included in Heads of Terms for a legal agreement, which should be completed prior to any planning consent being issued. Triggers and instalments in relation to the proposed financial contributions would be agreed as part of the detailed negotiation of the legal agreement. If Members consider that the application is acceptable, it is recommended that authority to progress and complete the legal agreement is delegated to officers.

Ecology

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy SDB1 of the Local Plan and as identified as a necessary mitigation within the completed HRA/AA.

£135 per new dwelling in the Brixham Peninsula towards management/reduction of impacts on the Berry Head grassland, in accordance with the Planning Contributions

and Affordable Housing Supplementary Planning Document (December 2022). For 77 dwellings this would equate to an obligation of £2,700.00.

Affordable Housing

For the proposal, which is a greenfield site and between 15-29 dwellings, Policy H2 of the Local Plan identifies that 25% affordable housing should be provided on site. For a scheme of 20 dwellings this equates to an affordable housing provision of 5 units to provide a policy compliant development. Policy BH1 of the Brixham Peninsula Neighbourhood Plan re-states this ratio.

The proposal is to deliver 25% affordable housing on site, which equates to 5 units. The proposal details that the design information regarding affordable housing provision, mix of unit types and sizes, is to be submitted for consideration at the Reserved Matters Stage to address local need.

Should the development be approved, the proposed level of affordable housing (25%) should be secured within an accompanying legal agreement to include;

- 1) An affordable housing tenure split set out in accordance with Policy H2.
- 2) Provision for Adapted Housing (Policy H6) at 5% of the total dwellings.
- 3) An Affordable Housing Scheme to be submitted for the agreement of the Council as part of the reserved matters application.
- 4) Occupancy to accord with Policy BH2 of the Brixham Peninsula Neighbourhood Plan.

Sustainable Transport

In accordance with Policy SS7 of the Local Plan and the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) (to open market housing only) Sustainable Transport obligations should be secured.

As the 5no. affordable housing units would be discounted due to site deliverability matters. However, as for the 15no. open market units, such cannot be sought due to the units being CIL liable.

Public Open Space, Sport and Recreation

In accordance with the Council's Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022), residential developments are expected to provide public open space as part of their layouts to match the types of open space likely to be needed by residents, and enable a good level of access to sport, leisure and recreation facilities.

The breadth of facilities to support development are identified as:

- Playing Pitches
- Other Sport and Recreation Facilities
- Equipped play facilities for young people
- Greenspace/Open spaces
- Allotments/sustainable food production

However, such contributions cannot be sought due to 15no. open market units being CIL liable and the 5no. affordable units would be ineligible due to site deliverability matters.

Education

Obligations in-line with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure increased school capacity within Brixham, based on the provision of open market housing, however such cannot be sought due to 15no. open market units being CIL liable and the 5no. affordable units would be ineligible due to site deliverability matters.

Lifelong Learning Obligations

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure library improvements within the area. This contribution is not sought as 15no. open market units being CIL liable and the 5no. affordable units would be ineligible due to site deliverability matters.

Waste and Recycling

Obligations in-line with the Planning Contributions and Affordable Housing Supplementary Planning Document (December 2022) should be sought to secure waste and recycling facilities for properties that will be served by the Local Authority waste collection provider. This contribution is not sought as 15no. open market units being CIL liable and the 5no. affordable units would be ineligible due to site deliverability matters.

NHS Devon

The site is not allocated in the Development Plan and as such development in this area would be additional to what the NHS is expecting.

Increase the physical capacity of GP surgeries to mitigate additional demand: £12,419.00.

CIL

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm.

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

CIL is a "Local Finance Consideration" relevant to determining applications. However, in the officer's assessment, it is not a determining factor (either way) in the planning balance assessment below.

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 will not have significant effects on the South Hams SAC or Lyme Bay and Torbay SAC and does not require a formal HRA.

Planning Balance

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

The impacts of the scheme are not unacceptable, subject to the planning conditions and obligations detailed below, and bearing in mind that a number of elements, including the layout, scale, appearance and landscaping for the development will need to be the subject of reserved matters applications.

Conclusions and Reason for Decision

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

In terms of material considerations, the provision of 20 dwellings, including the provision of 5 affordable units is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded housing supply is not insignificant where the most recent Housing Delivery Test (December 2023) for Torbay was published as 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required), and Torbay's most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post construction in terms of local household spend within the local economy. The stated biodiversity net gain also weighs positively within the planning balance, as would be the provision of public greenspace within the scheme.

When considering the planning balance, it must also be noted that the NPPF guides that great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and National Landscapes which have the highest status of protection in relation to these issues (Paragraph 189).

It is also relevant that The Levelling Up and Regeneration Act has amended Section 85 of the Countryside and Wildlife Act and replaces a "duty of regard" with a stipulation that authorities "*must seek to further the purpose of conserving and enhancing the natural beauty*" of the AONB. This offers a clearer duty towards conserving and enhancing.

In-line with the above conclusions and the assessment within this report, the proposals are considered to be in principle accordance with the provisions of the

Development Plan and to demonstrate that an acceptable scheme could be accommodated on the site. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay.

Due to the level of accord with the Development Plan and in the absence of material considerations that weigh sufficiently against the proposal, the Officer recommendation is one of approval, subject to suitable planning conditions, and securing a Section 106 Agreement to secure the identified heads of terms in line with adopted policy.

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

The NPPF guides that decisions should apply a presumption in favour of sustainable development and for decision making that means approving development proposals that accord with an up-to-date development plan without delay. For housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, the NPPF guides to granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (20 dwellings and 25% affordable), when assessed against the policies in the NPPF when taken as a whole. Subject to the recommended planning conditions and planning obligations, there are no impacts on protected areas or assets of particular importance to provide a clear reason for refusal.

Officer Recommendation

Approval: subject to;

1. Completion of a Section 106 agreement.
2. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Proposed Conditions

1. Standard Time Condition

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

That the development to which this permission relates must be begun not later than two years from the date of the final approval of the reserved matters, or in the case

of approval on different dates, the final approval of the last such matter to be approved.

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

2. Reserved Matters

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

- (i) Appearance;
- (ii) Landscaping;
- (iii) Layout; and
- (iv) Scale.

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

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

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

3. Construction Method Statement

No development, including demolition, shall take place until a Construction/Demolition Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan should include, but not be limited to:

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

The approved Construction/Demolition Management Plan shall be adhered to throughout the construction period.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction and demolition works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of highway safety in accordance with Policies TA1, TA2 and DE3 of the Torbay Local Plan 2012-2030.

These details are required prior to commencement of development to secure suitable parameters for the construction and demolition phase.

4. Parking Provision

The reserved matters for 'layout' shall include details for the parking of vehicles for all dwellings. The approved parking facilities shall be provided in full for each dwelling prior to its first occupation and shall be maintained for the purposes of parking at all times thereafter.

Reason: To ensure adequate parking is provided to support an adequate residential environment, protect the amenities of the area and maintain highway safety, in accordance with Policy TA3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

5. Electric Charging Points

The Reserved Matters application/s for 'layout' shall be accompanied by a scheme for the insertion of one electrical vehicle charging point per dwelling to be located within the site. Details to be submitted shall include design, location, specification and a timescale for insertion prior to occupation of the dwellings hereby approved. The development shall then proceed in accordance with these approved details and the approved electrical vehicle charging points shall be thereafter be available for use, maintained and retained for the lifetime of the development.

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

6. Bicycle Storage

The Reserved Matters application/s for 'layout' shall be accompanied by a scheme for the storage of bicycles. The bicycle storage shall be provided prior to the first occupation of the dwellings hereby approved and once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: To ensure adequate bicycle storage facilities are provided to serve the development in accordance with Policy TA3 of the Torbay Local Plan 2012-2030.

7. Waste Storage

The Reserved Matters application/s for 'layout' shall be accompanied by a scheme for the storage of refuse and recycling awaiting collection. The waste storage shall be provided prior to the first occupation of the dwellings hereby approved and once

provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policies W1 and DE1 of the Torbay Local Plan 2012-2030.

8. Lighting

The Reserved Matters application/s for 'landscaping' and/or 'layout' shall be accompanied by a Lighting Strategy. The lighting strategy shall detail measures to minimise impacts from lighting associated with pre-construction, construction and operational activities, and demonstrate how the current best practice (BCT/ILP, 2018) guidance has been implemented. This shall include details such as the following: artificial lighting associated with public realm lighting, car headlights associated with traffic movements through the development and internal and external lighting associated with the residential development. The purpose of this lighting strategy is to ensure the retained boundaries of the site function as dark corridors and bat flight lines (0.5 lux and warm light).

Lighting within the site shall thereafter be installed in full accordance with the approved details and retained as such thereafter.

Reason: In the interests of biodiversity and to ensure the site's identified bat flight lines continue to function as dark corridors and bat flight lines (0.5 lux and warm light) and roosting features are unaffected by light spill in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

9. Tree Protection Plan

The Reserved Matters application/s for 'landscaping' and/or 'layout' shall be accompanied by an annotated tree protection plan following the recommendations contained within BS 5837:2012 identifying measures (fencing and/or ground protection measures) to protect the trees to be retained. The plan shall include proposed tree protection measures during site preparation (including clearance and level changes), during construction and landscaping operations. The plan should include the design of fencing proposed and take into account the control of potentially harmful operations such as the position of service runs, storage, handling and mixing of materials on site, burning, and movement of people and machinery. Works shall then proceed in accordance with the approved documents.

Reason: To ensure that the trees are protected from potentially damaging activities in accordance with Policies NC1 and C4 of the Torbay Local Plan 2012-2030.

10. Landscaping

The Reserved Matters application/s for 'landscaping' shall be accompanied by full details of the hard and soft landscape works, including an implementation and management plan.

Details of soft landscape works shall include retention of any existing trees and hedges; finished levels/contours; planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate. The hard landscape works shall include means of enclosure; boundary and surface treatments and vehicle and pedestrian/cyclist circulation.

All planting, seeding, turfing or hard surfacing comprised in the approved landscaping scheme shall be carried out by the end of the first planting and seeding seasons following the first occupation of the dwellings hereby approved or completion of the development, whichever is the sooner. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

The approved landscaping scheme shall be carried out in its entirety and shall accord with the approved details and timetable. Any boundary treatments or means of enclosure shall be carried out and installed prior to the first occupation of the new dwellings 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, and the guidance contained in the National Planning Policy Framework.

11. Surface Water Drainage

As part of any reserved matters application a scheme for the treatment of surface water that demonstrates that the risk of flooding would not be increased, which is in line with the design parameters outlined within the submitted and approved Flood Risk Assessment (ref: '1524 C', received 21st November 2024), shall be submitted to and approved in writing by the Local Planning Authority.

The approved scheme shall be implemented in full prior to the first occupation of the development and shall then be subsequently maintained at all times thereafter.

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

12. Construction Environmental Management Plan

The Reserved Matters application/s for 'landscaping' shall be accompanied by a Construction Environmental Management Plan (CEMP: Biodiversity). The CEMP (Biodiversity) shall be prepared in accordance with specifications in BS42020; clause 10.2 and shall include the following:

- a) Risk assessment of potentially damaging construction activities.
- b) Identification of 'biodiversity protection zones'.

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

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

Reason: In the interests of protected species and residential amenity and in accordance with Policies NC1 and DE3 of the Torbay Local Plan 2012-2030.

13. Landscape and Ecological Management Plan

The Reserved Matters application/s for 'landscaping' shall be accompanied by a Landscape and Ecological Management Plan (LEMP). The content of the LEMP shall be prepared in accordance with the specifications in BS42020; clause 11.1 and shall include the following

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

The plan shall also set out how contingencies and remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The development shall be carried out in accordance with the approved LEMP.

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

14. Ecological Enhancements

The Reserved Matters application/s for 'landscaping' and/or 'layout' and/or 'Appearance' shall be accompanied by details of ecological enhancement measures that are contained in the Preliminary Ecological Appraisal (ref: PEA_LandOffPilgrimClose_NorthernTrust_November2023, received 15.08.2024).

The agreed ecological enhancement measures shall then be installed prior to first occupation of the dwellings hereby approved and shall be retained thereafter.

Reason: To ensure ecological enhancement measures in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

15. Bird Nesting and Vegetation Clearance

No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be undertaken until a statement of the reasons for non-avoidance has been submitted to and approved in writing by the Local Planning Authority. The works shall not be undertaken except in the presence of a suitably qualified ecologist. If breeding birds are found or suspected to be present on the part of the site the subject of such works, the works will not be permitted until the ecologist is satisfied that such breeding is complete.

Reason: To prevent harm to nesting birds in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the National Planning Policy Framework.

16. Energy – Low Carbon

A detailed energy and sustainability statement shall be submitted with each reserved matters application pertaining to layout, scale and appearance. The statement shall identify the specific details that will be incorporated into the site including how the proposed development:

1. Conserves energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling,
2. Uses energy efficiently within the fabric of the building ,
3. Uses on-site renewable technologies to achieve 20% reduction in carbon emissions,
4. Minimises water consumption and run-off,
5. Uses construction methods and materials to reduce carbon release,
6. Minimises waste.

The Statement shall be accompanied by detailed plans and elevations that demonstrate the incorporation of these details into the design of the development. The approved details shall be implemented in full prior to the occupation of the respective part of the development and retained for the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In the interests of sustainable development and in accordance with Policy SS14 of the Torbay Local Plan 2012-2030.

17. Affordable Housing

As part of any application for reserved matters relating to site layout and scale of development, a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority. The submitted details shall include information about the siting, size, and tenure type of the affordable units and of the adaptable units. The development shall be undertaken in accordance with the approved details.

Reason: In accordance with Policy H2 of the Adopted Torbay Local Plan 2012-2030.

18. Highways Standards

Construction of the internal roads and footpaths within the development approved pursuant to any reserved matters for layout and appearance shall be in accordance with the Torbay Highways Design Guide for new developments in operation at the time of construction. Roads serving each phase of development shall be completed to adoptable standards prior to the first use of each phase and made available for public use and always maintained as such thereafter.

Reason: To secure an acceptable residential environment and to ensure highway safety is not impaired, in accordance with Policies SS11, TA1, TA2 and DE1 of the Adopted Torbay Local Plan 2012-2030.

19. Adoptable Streets

No development relating to the creation of the roads shall be commenced until either the roads are subject to a completed agreement under Section 38 Highways Act 1980 or full engineering, drainage, street lighting and constructional details of the streets proposed for adoption have been submitted to and approved in writing by the Local Planning Authority. Unless the roads are subject to a completed agreement under Section 38 Highways Act 1980 the development shall, thereafter, be constructed in accordance with the approved details, unless otherwise agreed in writing with the Local Planning Authority.

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies DE1, SS11, TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030.

Informative: The applicant is advised to obtain a technical approval for all estate street details from the local highway authority prior to the submission of such approved details to the local planning authority.

20. Management and Maintenance of Roads

Unless the roads are subject to a completed agreement under Section 38 Highways Act 1980 no works shall be carried out for the formation or construction of any road

unless the Local Planning Authority has approved a Road Maintenance Plan for that road including the arrangements for either adoption by the highway authority or the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road and refuse collection throughout the lifetime of the development.

Where it is proposed that the estate roads shall be privately maintained no works shall be carried out above ground level until a Private Road Management Scheme has been submitted to and approved in writing by the local planning authority and which shall provide for;

- a. Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").
- b. How the company and the future management and maintenance of the road and refuse collection is to be financed including initial capital investment with subsequent funding.
- c. The rights for and obligations on the Management Company to manage and maintain the road and collect refuse
- d. Arrangements for the management and collection of refuse and waste from the dwellings.
- e. A road management and maintenance and refuse collection schedule.
- f. How refuse and waste will be managed on site including the location of individual and communal refuse and waste collection facilities and the locations where refuse and waste is to be transferred off-site.
- g. Confirmation from the relevant waste collection company that they have agreed to collect the refuse and waste from the development in accordance with the approved details.

The development shall be carried out in accordance with the Road Maintenance Plan and the Private Road Access Scheme which shall thereafter be fully complied with and implemented.

No dwelling shall be occupied unless it connects directly to a road (including a footway and carriageway) which is:

- a. Adopted by the highway authority as a highway maintainable at the public expense or
- b. Subject to an agreement with the highway authority under Section 38 of the Highways Act 1980 for the adoption of the road; or
- c. Subject to a Private Road Management Scheme where the Management Body has been established and is responsible for the management and maintenance of the road and the collection of waste and refuse from the date of occupation of the dwelling.

Any roads (including carriageways and footways) which do not form part of the highway maintainable at the public expense shall be permanently maintained to an adoptable standard and retained and made available for public use or the lifetime of the development.

Reason: In the interest of highway safety; to ensure a satisfactory appearance to the highways infrastructure serving the approved development; and to safeguard the visual amenities of the locality and users of the highway in accordance with Policies DE1, SS11, TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030.

21. Written Scheme of Investigation

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

Reason: To ensure, in accordance with Policy SS10 of the Adopted Torbay Local Plan 2012 - 2030 and the guidance contained within the National Planning Policy Framework, that an appropriate record is made of archaeological evidence that may be affected by the development. This needs to be a pre-commencement condition to ensure that archaeological recording can take place prior to any destructive operations taking place on site.

22. Post Investigation Assessment

The development shall not be occupied until (i) the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation and (ii) that the provision made for analysis, publication and dissemination of results, and archive deposition, has been confirmed in writing to, and approved by, the Local Planning Authority.

Reason: To comply with Paragraph 218 of the National Planning Policy Framework, which requires the developer to record and advance understanding of the significance of heritage assets, and to ensure that the information gathered becomes publicly accessible.

23. Contamination

Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

Reason: To ensure there is no risk of land contamination in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030 and the advice contained within the National Planning Policy Framework.

24. Designing Out Crime

Prior to the first use of the development hereby approved, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained within the National Planning Policy Framework.

25. Active Travel/Emergency Access Link

The development hereby approved shall not be occupied until the '3.7m wide opening in site boundary to allow pedestrian, cycle, and emergency vehicle access only' as shown on the approved plan (ref: '230108 L 02 02 E (Illustrative)', received 14th January 2025) has been provided in full.

All reserved matters applications for 'Layout' and 'Landscaping' shall include the approved '3.7m wide opening in site boundary to allow pedestrian, cycle, and emergency vehicle access only'. A collapsible bollard or similar physical measure shall be installed within the opening to prohibit unauthorised use, the details of which shall be submitted with the reserved matters application pertaining to 'Layout' and 'Landscaping'.

The approved opening and collapsible bollard or similar physical measure shall be implemented in full prior to the first occupation of the development hereby approved and shall be kept open, and made available for the free use of the public as a permissible route. The approved opening and collapsible bollard or similar physical measure shall be permanently managed and maintained at all times thereafter in accordance with the approved details.

Reason: To ensure adequate access is provided to the development and for developments in the area in a timely manner in the interests of highway safety further to Policies TA1 and TA2 of the Adopted Torbay Local Plan 2012-2030.

Informative(s)

Positive and Proactive

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, where possible, relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval for the reasons stated.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for the development of land in England is

deemed to have been granted subject to the condition “(the biodiversity gain condition”) that development may not begin unless:

- a. a Biodiversity Gain Plan has been submitted to the planning authority, and
- b. the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information available this permission is considered to be one which will require the approval of a biodiversity gain plan before development is begun because none of the statutory exemptions or transitional arrangements are considered to apply.

Relevant Policies

Development Plan Relevant Policies

- C1 - Countryside and the Rural Economy
- C4 - Trees, Hedgerows and Natural Landscape
- DE1 - Design
- DE3 - Development Amenity
- ER1 - Flood Risk
- ER2 - Water Management
- ES1 - Energy
- H1 - Applications for New Homes
- NC1 - Biodiversity and Geodiversity
- SC1 - Healthy Bay
- SDB1 - Brixham Peninsula
- SDB3 - Brixham Urban Fringe and Area of Outstanding Natural Beauty
- SS2 - Future Growth Areas
- SS3 - Presumption in Favour of Sustainable Development
- SS8 - Natural Environment
- SS11 - Sustainable Communities Strategy
- SS13 - Five Year Housing Land Supply
- SS14 - Low Carbon Development and Adaption to Climate Change
- TA1 - Transport and Accessibility
- TA2 - Development Access
- TA3 - Parking Requirements

- BH2 - Occupation of New Affordable Homes
- BH4 – Housing Development – Brownfield (Previously Developed) and Greenfield (Not Previously Developed) Sites
- BH5 - Good Design and the Town and Village Design Statements
- BH6 - Roofscape and Dormer Management
- BH8 - Access to New Dwellings
- E1 - Landscape Beauty and Protected Areas
- E2 - Settlement Boundaries

E8 - Internationally and Nationally Important Ecological Sites and Species
T1 - Linking of New Developments to Travel Improvements

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Application Site Address	Thurlow House 35 Thurlow Road Torquay TQ1 3EF
Proposal	Remodelling of existing building including demolition of existing extensions, increase in ridge height, proposed extensions and alterations to allow for change from office use to residential and formation of 7no. apartments. Construction of new 'coach house' building within the ground to provide 4no. apartments. Associated external works including parking and landscaped grounds. (Part-retrospective).
Application Number	P/2024/0429
Applicant	McCarthy Contracting and Development Ltd
Agent	Kay Elliott Architects
Date Application Valid	01.08.2024
Decision Due date	31.10.2024
Extension of Time Date	17.02.2024
Recommendation	Approval subject to: 1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency. 2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	Major Development.
Planning Case Officer	Emily Elliott

Location Plan



Site Location Plan

1 : 1250

Site Details

The site is occupied by a detached Victorian Villa and its curtilage, it would have historically been used for residential purposes but has more recently been used as offices for the Ministry of Justice. The property was constructed in the 1870s and was then extended in the later part of the 20th century. The application site is approximately 0.2 hectares in size. The application site is surrounded by residential uses.

The site is located within the Upton Conservation Area. The Upton Conservation Area Appraisal (CAA) identifies the property as a key building within the conservation area. The site is also located within Flood Zone 1, which is a Critical Drainage Area. The site is located within the Torquay Community Investment Area.

Description of Development

This is a full planning application for the redevelopment of Thurlow House to form 11no. 2-bedroom apartments. This will include the remodelling of the existing building including the demolition of the existing extensions, increasing the ridge height, the construction of new

extensions and alterations to allow for a conversion from office to residential use through the formation of 7no. apartments.

The proposed development will also include the construction of a new 'coach house' building within the grounds to provide 4no. apartments.

The proposal includes associated external works including parking and landscaped grounds.

The vehicular access is maintained within the existing location which is accessed from Thurlow Road via a private access road. In terms of car parking the development provides 11no. spaces, which is located within the north eastern section of the application site.

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"); and
- The Adopted Torquay Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan")

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Published Standing Advice;
- Heritage setting, within a Conservation Area (Upton);
- Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990: Section 72; and
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report.

Relevant Planning History

P/1990/1790: Demolition Of Outbuilding And Wall. Approved 16/11/1990.

P/1990/1425: Alterations And Extension To Form New Single Storey Office Wing With Provision Of Car Parking On Roof Top. Approved 13/11/1990.

P/1984/2561: Extension To Form Workshop. Approved 25/10/1984.

P/1980/3144: Use Probation Day Centre And Offices. Approved 19/12/1980.

Summary of Representations

4 letters of support and 3 letters of objection have been received.

Note: Full responses are available to view on the public access system (<https://publicaccess.torbay.gov.uk/view/>).

Comments in support include:

- It provides houses.
- It provides/retains jobs.
- It removes an eyesore.

- Works and/or removal of existing trees.
- Impact on the local area.

Concerns include:

- Impact on the local area.
- Not in keeping with the local area.
- Emergency services access.
- Drainage.
- Noise.
- Overdevelopment.
- Privacy/overlooking.
- Traffic and access.
- Trees and wildlife.
- Loss of light.

Summary of Consultation Responses

Torquay Neighbourhood Forum (Comments dated 13/11/2024):

The provision of 11 apartments overall will make a valuable contribution towards meeting the housing needs of Torquay, and the Forum is pleased that the existing villa will be re-modelled.

We judge that increasing the height of the building will not affect the external appearance of the property to any significant extent. Removal of the ugly 20th century extensions and restoration of the original appearance of the villa will be beneficial, as will remodelling of the interior to remove offices and create internal living space. Construction of the new extension and new coach house, and creation of the courtyard garden will be beneficial. Overshadowing analysis shows that the new coach house has little impact on loss of light or overlooking of adjacent properties.

We have some concerns about the loss of the existing historic windows. Replacement with uPVC equivalents would have a detrimental impact on the character and appearance of the building. We also are concerned that car parking provision of one space per apartment only makes no allowance for visitors etc.

In summary, we have minor concerns about the heritage impact on the Ellacombe Conservation Area and the limited provision of parking spaces. Nevertheless, considered overall, the proposal is supported as we feel the benefit significantly outweighs the harm. The Forum recommends that this Application is approved.

Torbay Council's Principal Strategy & Project Management Officer (response dated 23/09/2024):

In principle I strongly support bringing the vacant villa property into use. The site scores well against the criteria in Local Plan Policy H1 and TS4 of the TNP and is a highly sustainable urban location. The council urgently needs to increase its delivery of new homes, especially on brownfield sites.

I understand that the building was last used as a probation office until around 2021, and may now be CIL liable. The proposal also raises conservation/ heritage, access and amenity issues. I note that comments have been made in relation to impact of the proposed coach house on neighbours' amenity. These are all detailed DM matters.

Securing a successful conversion that respects the character and appearance of the Upton Conservation Area is an important consideration. In the light of this, and potential CIL liability, I do not consider it necessary to seek loss of employment contributions in this instance.

Please let me know if I've missed anything, or if there are policy matters that you would like a more detailed consideration of; but in principle I support the application.

Torbay Council's Strategy & Project Management Officer (response dated 28/08/2024):

I don't think this development would be liable for affordable housing as it's below the Policy H2 threshold of 15+ for a brownfield site. It's quite possible I'm overlooking something; happy to discuss.

I appreciate there's Paragraph 66 of the NPPF which states that "Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership", however it then goes on to limit this by saying "*unless this would exceed the level of affordable housing required in the area*". My reading is that Policy H2 does not seek affordable housing for brownfield sites of fewer than 15 homes and so seeking 10% as affordable homeownership would indeed exceed the level of affordable housing required in terms of local planning policy, and so this requirement is disapplied.

Torbay Council's Climate Strategy & Project Officer (response dated 27/08/2024):

I have reviewed the submitted documents and have the following comments / recommendations;

- I welcome the early consideration of re-using the existing building and improving on its current thermal performance whilst bringing the proposed new building up to better standards of energy efficiency. Ensuring the principle of making the current building as energy efficient as possible is in line with Policy ES1 of the Torbay Local Plan.
- I welcome that the applicant states 'be lean, be clean and be green' principles for this application by improving the thermal performance of both the existing building and the new building through designs that incorporate low fabric air permeability, thermal insulation, low energy lighting (LED) and solar shading.
- I'd be interested to know from the applicant if they plan on meeting or exceeding part L of the Building regulations to better understand how they intend to ensure that the buildings are as energy efficient as possible, which will further limit the energy needs of the building and support a reduction in energy bills for future residents.
- The use of heat pumps as a source of heating is welcomed, however, we want to ensure that this proposal is committed to, therefore I would recommend a condition is placed that a detailed energy and sustainability report is submitted at the reserved matters stage(s).
- Within the submitted design and access statement and the sustainability checklist, the applicant has stated with the energy statement that to further maximise CO2 reductions, the potential for renewable energy sources will be assessed at the next design stage. I would suggest we get firmer commitment that this will happen. As outlined in energy hierarchy within policy ES1 of the Torbay Local Plan, we want to ensure that renewable energy sources are implemented to maximise carbon reductions. Therefore, I would recommend that a condition is put in place that requests a detailed energy and sustainability report is submitted at the reserved matters stage(s).

Torbay Council's Senior Environmental Health Officer (response dated 30/08/2024):

No objection subject to a planning condition for a Construction/Demolition Management Plan.

Active Travel England (response received 12/08/2024):

In relation to the above planning consultation, Active Travel England (ATE) has no comment to make as it does not meet the statutory thresholds for its consideration.

Devon & Somerset Fire and Rescue's Fire Safety Inspector (response 30/10/2024):

As the proposal will be subject to Building Regulations and the Regulatory Reform (Fire Safety) Order 2005, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority.

Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building Regulations, to include access requirements for Fire Service Vehicles (B5). These include Vehicle Access, including minimum road widths, turning facilities for fire service vehicles and maximum reversing distances of 20 meters.

In addition, the provision of appropriate water supplies for firefighting (Street Hydrants) including appropriate flow rates will need to be achieved. Information on this should be sourced from the National Guidance document on the provision of water for firefighting (3rd Edition; Jan 2007).

SWISCo’s Green Infrastructure Manager (response dated 27/08/2024):

Reference to Section 4.6 Open Space, Sports and Recreation of the Planning Contributions SPD 2022 (https://www.torbay.gov.uk/media/19102/planning-contributions-spd_2022.pdf) table 4.9 and 4.10 identify the framework for s106 requests. In particular, the cost of open space per dwelling as per table 4.9

The proposed development is to provide 20 dwellings. It is understood that 25% are affordable housing but have been included within the calculation as there is likely to be increased pressure on existing resources irrespective of housing allocation.

Sq footage/metreage/no beds	No of Dwellings	Costs as per table 4.9 (£)
2 (37-59m2)*	11	£12,023.00
3 (60-59m2)*		NA
4 (80-108m2)*		N/A
	Total	£12,023.00

*estimated

Please note the amount shown incorporates all elements of shown in the SPD and further detailed discussion may be required to disaggregate the contributions between the relevant sub – categories of open space and recreation etc.

This should be proportionately reduced to take account of any on-site provision in negotiation with and the Green Infrastructure Team.

FUTURE MANAGEMENT OF OPEN SPACE

Without prejudice SWISCo would be seeking to take on the management of any open space provision for a period of 25 years.

A review of the proposed management of open space identified a requirement for grass cutting/non-residential bin emptying/playground inspection/bench repair/non-highway path repairs. The annual cost of the works can be provided and will be plus RPI for 25 years.

SWISCo’s Senior Tree Officer (updated response dated 08/01/2025):

I have reviewed the updated information which is much more comprehensive and satisfies my initial concerns. I'm happy to raise no objections of arboricultural grounds based on the

updated submissions and the use of planning conditions within any grant of planning permission which might be issued.

The Tree Protection Plan (Drawing 06084.TPP 04.11.2024) should be secured for implementation through a planning condition. This plan also relates to the Arboricultural Method Statement (Aspect Ref: 06084 AMS Rev A) which relates to the tree protection plan. Both of which should be read and delivered in conjunction with each other and are mutually supporting in terms of managing the site.

The Arboricultural Statement addresses the investigation of works to underground infrastructure already undertaken, providing a method for evaluating any damage to protected trees which may have been caused.

The statement raises a number of questions around root pruning to mitigate damage to trees from the ground works. I am happy with the methodology and approach but will require the findings and any evidence to be submitted to the LPA for our consideration. The granting of planning permission referencing this statement will provide a de facto permission to undertake any root pruning as might be required. Please can this be secured by a planning condition with any grant of planning permission. Let me know if you need any help with a condition for this element which isn't something I've had to address before.

SWISCo's Senior Tree Officer (previous response dated 16/12/2024):

No arboricultural support based on the overdevelopment of the site and pressure placed on protected trees by structures and associated infrastructure.

A heavy reliance is placed on strict adherence to the Tree Protection Plan and an absence of detailed method statements which would be required prior to commencement. Works have already commenced with no regard to protected trees.

At the time of my site visit (24.9.24), extensive works were already underway on site. Tree protection measures were not evident and I was advised verbally that drainage works had been completed on the west side of the house.

A Tree Protection Plan has been prepared by Aspect Tree Consultancy (Aspect) Ref 06084.TPP 04.11.2024, based on the development proposals and phasing of works. Whilst I have no issues with the approach to the majority of the works (based on the tree protection plan), works have commenced and further arboricultural supervision etc has not been undertaken. This is a significant departure from the tree protection plan and supporting arboricultural method statements. Photo 1 in the Aspect Tree Protection Plan clearly indicates area of disturbance and recommends further investigation to determine if mitigation is required.

The proposed attenuation tank is within immediate proximity to high and moderate quality trees 418 & 419 which are protected trees. G428 is also impacted by this structure. The fencing is located at the limit of the root protection area and the Arboricultural Impact Assessment highlights the risks to retained trees as low if the method statements are followed. I am unhappy with the location of this structure as no method statement for its installation is provided to show this achievable without harming retained trees.

The foundations for the Coach House are impacting on the root protection area of protected tree 419 when BS5837 clearly states that there should be an overriding justification for construction within root protection areas. This case has not been made in my professional view.

In this case, tree removals are proposal. The proposed works will not have a significant impact on the setting of the Conservation Area.

The provision of a landscaping scheme to ensure boundary treatments and natural screening are maintained would be advisable in the interests of residential privacy and amenity provision.

I am uncertain as to how to advise the LPA on proceeding with this application. Works have commenced invalidating and conflicting with parts of the tree protection requirements which now cannot be secured by a planning condition (technical breach already occurring). The LPA will carefully need to consider how to regularise the works already undertaken into the planning submissions already submitted.

I am concerned that the cumulative impacts of the proposed development will have a negative impact on protected trees.

SWISCo's Senior Tree Officer (previous response dated 07/08/2024):

The application is supported by a BS5837 tree survey, but the Tree Constraints Plan is not available. I am unable to provide a technical assessment without this document.

The Tree Protection Plan also does not provide root protection area details. It also refers to Arboricultural Method Statements, but this technical detail is not provided. In this case, as the development is being proposed in close proximity to a range of trees (including those covered by a Tree Preservation Order), I will require the method statements to be provided in order to assess and be satisfied that any proposed works will not have a negative impact on any retained trees.

South West Water (response dated 07.08.2024):

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development (domestic roof and driveway run off only) Please note that discharging to the public combined sewerage network is not an acceptable proposed method of disposal, in the absence of clear evidence to demonstrate why the preferred methods listed within the Run-off Destination Hierarchy have been discounted by the applicant.

For Highway run off please contact the Highway Authority to agree disposal method.

Torbay Council's Principal Historic Environment Officer (updated response dated 13/12/2024):

Impact on Significance of Heritage Assets:

The following table accounts for the amended plans and identifies each major element of the proposals, the asset affected, the impact and identifies harm or enhancement:

Proposed Works	Overall Impact	Harm/Enhancement /Neutral	Commentary
<i>Demolition of late 20th century northern extension</i>	High to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the original appearance of the northern elevation of the main building which is the most visible from a public perspective
<i>Demolition of late 20th century southern extension</i>	Moderate to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the lower ground floor of the main building and would enhance the landscape setting of the asset.
<i>Alternations to roof of principal building to replace internal valley with mansard roof</i>	Moderate to NDHA, low to Upton Conservation Area	Harm	The change in the form of the roof for the principal building is considered to have a minor harmful impact on the character and appearance of the building as an NDHA. In addition, the introduction of an inset balcony within the roof slope on the south elevation is at odds with the established character of the building and is considered to be harmful. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Forming a new hipped mansard roof over original extension on northern elevation and further extension</i>	High to NDHA, low to Upton Conservation Area	Harm	Although this would replace the unsympathetic late 20th century extension, the proposed raising of the roof and increase in massing of the northern extension would permanently remove the original character and proportions of the original 'servants' extension – this coupled with the increase in massing and awkward junction with the main building, specifically the relationship with the line of the eaves and the reduction of the prominence of the chimney breast on the northern elevation, would be harmful addition to the building. It is recognised that the size of the proposed dormers have been reduced and stepped into the roof slope, this has reduced their visual impact. The use of a porch on the north elevation is still proposed, however, its 'grandness' has been reduced.

			The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Replacement of existing timber sash windows</i>	High to NDHA, moderate to Upton Conservation Area	Harm	The loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. UPVC windows are historically incorrect in their detailing and dilute the historic character of the property. The size of frame, joinery detail and method of opening would be both incongruous and conspicuous for the age and character of the building and would have an adverse impact on the special interest and significance of the conservation area.
Construction of coach house apartments	Low to NDHA, low to Upton Conservation Area	Harm	The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the principal building and the wider conservation area. The scale and massing of the coach house when viewed from the north remains subservient to the main building. The reduction in the footprint of the existing extension and the reinstatement of a garden area is considered to be a positive element of the proposed scheme. The use of balconies and the architectural treatment of the east elevation of the coach house appears at odds with its design approach, however, it is recognised that this would have a limited impact on the character or appearance of the conservation area, but would result in a minor level of harm to the significance of the main building through inappropriate development within its setting.

As can be seen from the above table, a number of harmful elements to the significance of both the main building as an NDHA and the Upton Conservation Area as a designated heritage asset has been identified.

With regards to the removal of the unsympathetic late 20th century extensions, this is considered to enhance the significance of the identified heritage assets, however, their proposed replacements have a number of issues which would result in varying degrees of harm.

The amended plans have addressed a small number of the concerns raised with the initial proposals; however, the proposed development is considered, on balance, to result in less than substantial harm to the building as an NDHA and the Upton Conservation Area.

Conclusions:

As a result of the above, it is clear that the proposed development would cause harm to an identified heritage asset and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

The level of harm identified should be assessed against the public benefits of the proposed development in the planning balance whilst being mindful of the great weight afforded to the conservation of heritage assets, paragraphs 216 and 219 of the NPPF and the special regard which should be paid to the preservation or enhancement of conservation areas.

Torbay Council’s Principal Historic Environment Officer (previous response dated 27/09/2024):

Significance of identified Heritage Assets:

Designated:

Upton Conservation Area

The site sits within the Upton Conservation Area and is identified as a key building.

The site makes a positive contribution to the character and appearance of the conservation area and demonstrates a number of its identified special characteristics including:

- The elements of design that characterise much of the development that took place between the early-to-late 19th century are well represented in the breadth of historic frontage and layout forms – the extent, scale and proportion of most such development remains significantly unaltered, including overall frontage detail, spatial arrangement, roof profiles, stacks and original pots
- There is a high proportion of surviving of period detail to the buildings –conservatories, glazed verandahs, original sash windows with glazing bars, ironwork features, panelled doors, etc;

The Upton Conservation Area Appraisal also identifies the loss of historic joinery, especially sash windows, as an issue which requires addressing within the conservation area.

Non-Designated Heritage Asset

The building has been identified as a key building within the Upton Conservation Area Appraisal. It can also be tested to be a potential non-designated heritage asset using Historic England’s established criteria:

Asset Type	Detached villa, historically residential use now in use as offices
Age	Late 19th century – believed to be constructed in the 1870s

Rarity	Detached villas in large gardens – mostly on higher ground with some extensive outward views are a characteristic of the area
Architectural and Artistic Interest	Late 19th century form and areas of retained detailing and materials, including fenestration, a good example of a design typical of this period and typology. Has undergone unsympathetic late 20th century extensions to the north and south elevations, however, original form is still clearly readable and as such has clear architectural value.
Group Value	Forms part of an informal group with other detached villas of a similar age in the area
Historic Interest	Demonstrates the speculative late 19th century development of this area and the expansion of Torquay as a result of its emergence as a fashionable destination in which to live and visit
Landmark Status	Sits on an elevated position within the area but only north elevation is readily visible from a public perspective due to surrounding built development and vegetation cover

Summary:

Although the building has undergone unsympathetic extension in the late 20th century the building has demonstrable architectural and historic value through its surviving form, detailing, fenestration and materials.

Additionally, the heritage value of the building and its contribution to the character of the local area could be further enhanced through its sensitive conversion back to residential use.

It can therefore be considered to be a non-designated heritage asset.

Impact on Significance of Heritage Assets:

The following table identifies each major element of the proposals, the asset affected, the impact and identifies harm or enhancement:

Proposed Works	Overall Impact	Harm/Enhancement /Neutral	Commentary
<i>Demolition of late 20th century northern extension</i>	High to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the original appearance of the northern elevation of the main building which is the most visible from a public perspective
<i>Demolition of late 20th century southern extension</i>	Moderate to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the lower ground floor of the main building and would enhance the landscape setting of the asset.
<i>Alternations to roof of principal building to replace internal valley with mansard roof</i>	Moderate to NDHA, low to Upton Conservation Area	Harm	The change in the form of the roof for the principal building is considered to have a minor harmful impact on the character and appearance of the building as an NDHA. In addition, the introduction of an inset balcony within the roof slope on the south

			elevation is at odds with the established character of the building and is considered to be harmful. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Forming a new hipped mansard roof over original extension on northern elevation and further extension</i>	High to NDHA, low to Upton Conservation Area	Harm	Although this would replace the unsympathetic late 20th century extension, the proposed raising of the roof and increase in massing of the northern extension would permanently remove the original character and proportions of the original 'servants' extension – this coupled with the increase in massing and awkward junction with the main building, specifically the relationship with the line of the eaves and the reduction of the prominence of the chimney breast on the northern elevation, would be harmful addition to the building. In addition, the proposed dormer and elaborate porch detail would result in an extension which would not be respectful or subservient to the character of the host building and would be detrimental to its significance and historical evolution. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Replacement of existing timber sash windows</i>	High to NDHA, moderate to Upton Conservation Area	Harm	The loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. UPVC windows are historically incorrect in their detailing and dilute the historic character of the property. The size of frame, joinery detail and method of opening would be both incongruous and conspicuous for the age and

			character of the building and would have an adverse impact on the special interest and significance of the conservation area.
<i>Construction of coach house apartments</i>	Low to NDHA, low to Upton Conservation Area	Harm	The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the principal building and the wider conservation area. The scale and massing of the coach house when viewed from the north remains subservient to the main building. The reduction in the footprint of the existing extension and the reinstatement of a garden area is considered to be a positive element of the proposed scheme. However, it is considered that the proposed fenestration and use of fibre cement cladding be reconsidered to raise the design quality of the proposed development. The layout of the proposed fenestration and the use of a plethora of window types results in a discordant appearance, especially to the east elevation. The use of simple profiled metal cladding or a natural stone on the lower ground floor elements and a simplified fenestration pattern, removing the Juliet balconies and potentially coupled with the use of metal window frames would result in a higher quality appearance. The proposed development in its current form would result in a low level of less than substantial harm to the significance of the main building.

As can be seen from the above table, a number of harmful elements to the significance of both the main building as an NDHA and the Upton Conservation Area as a designated heritage asset has been identified.

With regards to the removal of the unsympathetic late 20th century extensions, this is considered to enhance the significance of the identified heritage assets, however, their proposed replacements have a number of issues which would result in varying degrees of harm.

Overall, the proposed development is considered to result in a high level of less than substantial harm to the building as an NDHA and a low to moderate level of less than substantial harm to the Upton Conservation Area.

Conclusions:

As a result of the above, it is clear that the proposed development would cause clear harm to an identified heritage asset and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

The level of harm identified should be assessed against the public benefits of the proposed development in the planning balance whilst being mindful of the great weight afforded to the conservation of heritage assets and the special regard which should be paid to the preservation or enhancement of conservation areas.

Torbay Council's Drainage Engineer (Comments dated 15/08/2024):

I would like to make the following comments:

1. The site is located in Flood Zone 1 and the developer has submitted a flood risk assessment and drainage strategy, dated 13th June 2024, for the proposed development.
2. Due to the gradient of the site and insufficient room on the site for soakaways to be constructed infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system.
3. As the new buildings will require two separate discharge locations, it has been agreed that each location can discharge at a controlled rate of 1.0l/sec.
4. Within the flood risk assessment and drainage strategy document, details of the proposed surface water drainage system together with the hydraulic design for the surface water drainage system have been included.
5. The hydraulic design confirms that the drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

Providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design, I have no objections on drainage grounds to planning permission being granted for this development.

SWISCo's Waste (Strategy & Performance) Team Manager (updated response dated 21.10.2024):

This is a bit of a problem one, as Tor Dale does have a Toploader collection (recycling – glass and food), but the crew usually bring the bins to the adopted highway and leave them there after collection for the residents / property managers to take back up. This is for food and glass only.

If the building was converted to flats and another communal collection introduced at the end of the unadopted drive, this would create problems as it would double the amount of bins that have to be brought to the adopted highway for collection. As the unadopted highway is outside of the area of the Planning application we don't know who owns it to investigate improvements to the surface and cutting back of vegetation which prevents the larger toploader vehicle from accessing Tor Dale to collect food and glass. We would also look to put a formal indemnity agreement in place if access on the unadopted highway is facilitated and agreed by its owner.

The collection arrangements for Tor Dale are not ideal and we would look to try to improve access to this and any potential new development if there is an opportunity to do so, we would not add to our existing difficult collections.

SWISCo's Waste (Strategy & Performance) Team Manager (original response dated 27/08/2024):

In response to this consultation request I would OBJECT to this development.

The site is accessed by unadopted highway which meets with Thurlow Road. As stated in the Access and Design Statement, waste will be collected from the adopted highway from 1100litre bins. This will mean that the residents/developer or management company will need to arrange for all recycling and waste to be brought down to Thurlow Road where the access road meets the adopted highway network. The distance between the storage location and the quality of the surface of the access road are likely to make moving 1100L bins hazardous. There is also a lack of space where the access road meets the adopted highway network for the number of bins that the 12 dwellings will require for both recycling and waste. SWISCo would not drive up to the development to collect waste from the bin store identified in the plans.

I am concerned that the waste management plan for this development does not meet the requirements of Building Regulations Document H6 which specifies the maximum distance between the storage location and the collection point, and also the distance between each dwelling and the storage location for recycling and waste. I would be keen for the developer to demonstrate how the design meets these requirements.

The Access and Design Statement identifies that 2 x 1100 Litre bins will be provided. This would be adequate if only services for residual waste collection were provided, however recycling collections must also be provided to residents and this needs to be factored into the design. For recycling we do not use 1100L bins, I have attached the latest advice to developers which details which materials are collected for recycling and how this will be managed at developments with a communal recycling and waste arrangement.

Should the application be approved, I would like to request waste management contributions in line with the table below, I would request the higher rate due to the communal recycling and waste arrangement.

WSP on behalf of the Highway Authority (updated response dated 11/11/2024):

Analysis

- Swept Path Analysis: The applicant has updated the swept path analysis (Appendix B), dated Sept 2024, using a 4.75-meter-long private car for the forecourt parking area. This vehicle size is considered sufficient for assessing parking space accessibility. The Highway Authority is satisfied with the accessibility of the car parking spaces.
- Cycle Parking: The updated drawing, which includes an alternative bin and bike store layout, indicates a reduction in cycle parking from 14 spaces to 12. This still complies with Appendix F of the Adopted Local Plan. The applicant has also replaced the vertical storage with 6 Sheffield stands, in response to previous comments from the Highway Authority. These changes are acceptable.
- Tree Removal: The applicant has provided a tree protection plan (TPP) and Arboricultural Impact Assessment (AIA Statement) in response to concerns about removing trees under Tree Protection Orders (TPOs). According to the AIA statement dated May 2024, except for T412, the trees to be removed are of low quality, and the overall arboricultural impact is assessed as moderate to low. The Highway Authority does not wish to raise concerns based on the updated information.

- Waste Collection: As the access road and proposals do not adhere to the Torbay Highways Design Guide, and bin drag distances are excessive, the Highway Authority has recommended a planning condition to facilitate safe and suitable access for waste collection.

Conclusion

The Highway Authority does not wish to raise an objection to the proposal subject to the inclusion of the recommended condition.

Conditions:

No properties shall be occupied unless the local planning authority has approved a Road Maintenance Plan for that road including the arrangements for the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road to facilitate safe and suitable access for residents and visitors including refuse collection and emergency vehicle access throughout the lifetime of the development.

The access roads shall be privately maintained a Private Road Management Scheme has been submitted to and approved in writing by the local planning authority and which shall provide for;

- a) Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").
- b) How the company and the future management and maintenance of the road is to be financed including initial capital investment with subsequent funding.
- c) The rights for and obligations on the Management Company to manage and maintain the road
- d) Arrangements for the management and collection of refuse and waste from the dwellings.
- e) A road management and maintenance schedule.
- f) The ongoing maintenance and management of road maintenance and management of access where potholes or subsidence arise.

The development shall be carried out in accordance with the Road Maintenance Plan and the Private Road Access Scheme which shall thereafter be fully complied with and implemented.

No dwelling shall be occupied unless Subject to a Private Road Management Scheme where the Management Body has been established and is responsible for the management and maintenance of the road and the collection of waste and refuse from the date of occupation of the dwelling. The access Road which does not form part of the highway maintainable at the public expense shall be permanently maintained to a safe and suitable standard and retained and made available for public use for the lifetime of the development

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Adopted Torbay Local Plan 2012-2030.

WSP on behalf of the Highway Authority (original response dated 29/08/2024):

Site Description

The site is located in the Ellacombe ward of Torquay, approximately 1 km north of Torquay Town Centre and 0.8 km east of Torre train station. The site was formerly operated by the Ministry of Justice probation office. It is bordered by Thurlow Road to the north, Ash Hill Road from the south of the site to the west, and St Marychurch Road to the east.

The extant land use is Class E (Commercial, Business and Services), the building has GFA of 957sqm which has 22 designated car parking spaces.

The existing access to the site is gained via a private access road, accessible via Thurlow Road.

Thurlow Road is a 7m wide single carriageway residential street with footways on both sides. However, the southern footway is discontinuous due to private access roads and appears to face obstruction by parked vehicles. The road is subject to a 30mph speed limit.

Ash Hill Road borders the rear of the site, although there is no through access for any users. Ash Hill Road is a 3m wide road, serves as a shared carriageway for all users. It provides direct residential access to a limited number of properties.

Site History

There are no relevant recent planning applications which have been submitted for the site. No preapplication advice has been sought for this application.

Traffic Impact

Trip Generation

Section 5 of the TTPS submitted in support of the planning application contains a comparative trip generation assessment. This forecasts the trip generation arising from the proposed residential land use in the context of the extant use of the site. This is an acceptable methodology.

At peak times, the proposed apartments and single detached house will result in a net reduction in traffic from the site of 11 or 12 vehicles in each of the AM and PM peak hours respectively.

Due to the scale of the proposed development, and the extant use, the Local Highway Authority are satisfied that trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

Highway Safety

Section 2.8 of the TTPS includes a review of Personal Injury Accidents (PIAs) over the 5-year period from 2018 to 2022. The review indicates that no PIAs were recorded on Thurlow Road, Ash Hill, or other nearby streets in the vicinity of the site.

Design Considerations

Pedestrian and Cycle Access

Thurlow Road has footways on both sides of the carriageway for most of its length. According to the TTPS, there are no Public Rights of Way across the site, and the 11 proposed apartments will be accessed via the existing private access road from Thurlow Road. The existing private access has no dedicated pedestrian or cyclist provisions and thus access operates via a shared surface arrangement. The TTPS indicates that active travel permeability for the site will primarily be along Thurlow Road, leading towards either Lymington Road or St Marychurch Road, via the existing footways.

The TTPS indicates that a large area of Torquay is accessible within a 25-minute walk from the site, with the town centre reachable within 20 to 25 minutes on foot. It highlights that a wide range of local amenities and facilities, including schools, healthcare, and convenience stores, are within a 25-minute walking distance of the site.

Additionally, the TTPS establishes that most of Torquay is accessible within a 10-minute cycle from the site, while the wider area, including Paignton, can be reached within a 20- to 30-

minute cycle. Key local facilities, such as schools and healthcare, are located within a 5- to 10-minute cycling time.

Cycle Parking

According to Appendix F of The Torbay Local Plan (2012-2030), it is recommended that flats provide at minimum one cycle parking space per flat, and that these parking spaces are secure and covered and easy to use. Cycle parking for visitors should also be provided.

The Access Design Statement states that 14 cycle spaces are proposed in the north near the bin storage and site entrance, within a covered and secure cycle storage using vertical storage for efficiency. It is recommended that cycle parking is provided in the form of Sheffield Stands to improve accessibility for users of all ages and abilities. The Applicant should explore the ability to provide Sheffield Stands as opposed to vertical racks.

Public Transport Access

The Department for Transport Inclusive Mobility guide (2021) confirms that bus stops in residential areas should ideally be located within a 400 meters walkable distance.

The nearest bus stop to the site is Hatfield Cross on St Marychurch Road, located 280 meters away, 3-4 minute walk time. The bus stop includes bus shelter, seating arrangement and a bus layby provision. The southbound bus stop (Lynway Court) on St. Marychurch Road has flag and pole arrangement and no provision for bus layby. There is not a dedicated pedestrian connection to this bus stop. Potential improvements to these bus stop may include provision of bus shelter in the southbound bus stop, Kassel kerb in both bus stops and provision of dropped kerbs at the eastern end of Thurlow Road to enable crossing for pedestrians of all ages and abilities, including the mobility impaired, in line with paragraph 116 of the NPPF.

Another bus stop to the site is located on Lymington Road at a walking distance of 515m, a six minute walk time. The bus stops are located in both directions with bus shelters and a pedestrian crossing connection in between.

Vehicular Access

The application form states that there are no changes proposed to the vehicular access arrangements from the lane off Thurlow Road. Currently, vehicles access the site from Thurlow Road, entering the private access road to access the site. The Local Highway Authority request further information regarding the existing ownership / maintenance arrangements for the private access road.

In Section 4.2 of the Access Design Statement, the Applicant has included a vehicle routing plan that shows the proposed vehicular and pedestrian routes. The submitted documents do not provide details on junction sight lines or visibility splays in accordance with the requirements of Manual for Streets (MfS) for the 30 mph speed limit on Thurlow Road. However, given the extant use of the site and the demonstrated decrease in trip generation this is not required in this instance.

Torbay Council's Highway Design Guide for New Developments recommends that the design speed for shared private drives should be 10 mph. It also advises the inclusion of a turning area for refuse vehicles and passing bays.

Car Parking

According to Appendix F of The Torbay Local Plan (2012-2030), it is recommended to provide one parking space per flat, with 20% of the available spaces equipped with electric vehicle (EV) charging facilities. Additionally, visitor parking spaces are required.

The application form indicates that the site has 20 existing number of parking spaces. 11 of which are proposed to be retained.

The Access Design Statement indicates that three of the 11 proposed parking spaces (27%) will be used for EV charging with containment for future EV charging points installed to balance of spaces.

The TTPS mentions the provision of two EV charging points. It is advisable that a suitably worded condition be attached to any planning consent granted for the site outlining the requirement for EV charging provision.

The Applicant has conducted and submitted a swept path analysis (Appendix B of the TTPS) using a 4.6-meter-long private car for the forecourt parking area. However, this vehicle size is insufficient for accurately assessing the accessibility of the parking spaces. To ensure the proposed parking spaces can accommodate larger vehicles, the swept path analysis should, at a minimum, demonstrate the ability of a standard large car to access and egress the parking spaces.

Refuse / Servicing / Emergency Access

Torbay Council's waste storage guidance recommends that communal stores must be located no further than 25 meters from the nearest point of access for the refuse collection vehicle.

The Access Design Statement states that the Refuse collections will be undertaken at the kerbside on Thurlow Road, with a dedicated bin store located within the communal forecourt area for the apartments. The application form mentions that the external store provides two bins for general waste and two bins for recycling in accordance with Torbay guidance. The Highway authority is concerned that the bin stores appear to be greater than 80m away from the public highway, which exceeds the drag distance for collections based on Torbay Council's waste storage guidance. The Applicant is required to provide further information regarding how they intend for waste to be managed at the site.

The Applicant is advised that Torbay Waste Collection Services are not permitted to enter private land and thus would not enter the existing private access road.

It is recommended that the Torbay Waste Collection team reviews whether the Bin Stores proposed in the site are an adequate size to accommodate the waste from all units.

No details have been provided regarding how the site will be accessed by emergency services. The existing shared private access road has a carriageway width that varies between 3 and 6 meters.

According to the Manual for Streets (MfS), a minimum carriageway width of 3.7 meters between kerbs is required for a fire appliance to access the site. Additionally, the MfS recommends that a fire appliance should be able to access every dwelling within a 45-meter distance.

Ash Hill Road, located at the rear of the site, is also narrow, with a carriageway width of only three meters and is at a considerably lower gradient than the site itself. Therefore, emergency servicing to the rear of the site is unlikely to be feasible.

The applicant must demonstrate that a fire appliance can access all parts of the building in compliance with the Manual for Streets standards (MfS Section 6.7). The Planning Officer should also consider whether a Fire Statement or Strategy is required to address access to the rear of the building.

Trees

There are three trees located on the site which are subject to Tree Preservation Orders (TPO Reference: 2000.008). The Proposed Layout (Drawing Ref: 12001 Rev P11) appears to suggest the removal of the trees under TPO's, as well as several other trees, with only two new specimen trees proposed. The Applicant is required to clearly identify the proposals for tree removal within the site.

Travel Plan

The Applicant has included a section for Travel Plan Statement (TPS) as part of the wider TTPS. The TPS follows a "measures only" approach being secured by s106 legal agreement. The TPS will be owned by the Applicant, who will be responsible for the appointing of a Travel Plan Coordinator (TPC) from the senior sales team. The TPC will introduce the Travel Plan to new residents, manage its measures, and ensure it evolves over time. Responsibilities include liaising with stakeholders, promoting the Travel Plan, and organizing sustainable travel events.

The TPS includes a good set of objectives and a good set of measures including promotion of walking, cycling and public transport. Travel Information Pack (TIP) and TPS noticeboard are proposed to help provide information on active and sustainable transport options to the residents. The TPS will also encourage the use of Low and Zero Emission Vehicles by providing EV charging points.

The TPS highlights that the Applicant will fund the Travel Plan during the site build-out and initial occupation, covering costs for Travel Information Packs, the on-site Travel Noticeboard, and support of the TPC.

Given the limited number of dwellings proposed on the site, this approach to Travel Planning is considered acceptable. The TPS should consider undertaking Travel Surveys on the 1st, 3rd and 5th anniversary of first occupation to understand how travel patterns at the site are evolving.

Planning Obligation

The Local Highway Authority will seek the necessary 278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD (<https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>) and Table 4.3.

For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Construction Traffic Management Plan (CTMP)

A Construction Traffic Management Plan will be required for all phases of the construction, including demolition, excavation and construction of all elements of the building. This item could potentially be covered via a condition attached to any planning consent granted for the site.

Conclusion

The Local Highway Authority require the following items to be resolved before a positive recommendation can be made in respect to this planning application:

- Provide further information regarding the ownership / maintenance of the shared private access road;

- Provide swept path analysis that demonstrates accessibility of proposed car parking spaces using a large car;
- Provide an indicative refuse collection strategy;
- Provide further information regarding proposals for emergency access to the site;
- Explore the provision of cycle parking as Sheffield stands rather than vertical to ensure accessibility for all users; and
- Clarify the extent of trees to be lost.

Police Designing Out Crime Officer (response dated 14/08/2024):

From a designing out crime, fear of crime and anti-social behaviour perspective please find my advice and recommendations.

It is noted the section titled Secure By Design within the Design and Access Statement, within this section it refers to the Secured By Design Homes Guide 2019, this has now been replaced with newer guides that have been released, the current one is Secured By Design Home Guide 2024 and where this is being incorporated within the proposed development it is recommended that the practices and principles and standards are used from the latest guide. To assist, please find the link to the 2024 Homes Guide <https://www.securedbydesign.com/images/HOMES%20GUIDE%20May%202024.pdf>

I support the proposed measures detailed within the Secure By Design Section of the DAS, I would also recommend that the door providing entry into the bicycle store must be lockable, ideally incorporated within the suggested access control system. The door should have a self-closing mechanism to prevent it being inadvertently open and insecure. On the internal side of the door there must be a thumbturn lock or another emergency release mechanism. The bicycle stands within the bicycle storage should be certified to one of the following standards:

- Sold Secure SS104 Security Rating Silver, or
- Element (Wednesbury) STS 501 Security Rating TR2, or
- Element (Wednesbury) STS 503 Security Rating TR2, or
- Warringtonfire – STS 205 Issue 6:2021 Security Rating BR2, or
- Warringtonfire – STS 225 Issue 1:2021 Security Rating BR2 (S), or
- Loss Prevention Certification Board LPS 1175 Issue 8:2018 Security Rating B (B3)

The door to the bin store must also be lockable, ideally incorporated within the suggested access control system. The door should have a self-closing mechanism to prevent it being inadvertently open and insecure.

Devon County Council's Principal Ecologist (updated response dated 13/11/2024):

The nature of the further survey work undertaken on this site is deemed acceptable. Whilst no emergence survey was carried out, a detailed inspection of the areas of roof to be impacted by development has been carried out and has ruled out the presence of a maternity or hibernation roost. Given the results of the further November inspection, it is clear that the structure offers a very low potential for roosting bats and in the very unlikely event a bat roost was present onsite, I believe that it is only likely to be a low conservation status roost and the mitigation measures put forward by the consultant ecologist are sufficient to allow for a low impact class licence to be granted, should one be necessary.

Therefore, in this instance, I believe the bat survey data to be now acceptable.

Devon County Council's Principal Ecologist (previous response dated 29/10/2024):

Bat roosts – buildings / trees - The LPA agrees that the above precautionary methods are required and suitable.

As the building was ranked as low roosting potential, one emergence survey should have taken place (between April to October) in accordance with the current national best practice survey guidelines (Table 7.2).

The consultant ecologist has stated that the roof is too difficult to survey fully, however without the results of a bat emergence survey, or provision of a worst case scenario with regards to roosting bats for the purposes of planning, it is felt that the LPA cannot make a planning decision with regards to impacts to protected species and therefore cannot undertake its duty under the Conservation of Habitats and Species Regulations 2017.

Devon County Council's Principal Ecologist (original response dated 22/08/2024):

Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR - The nearest statutory protected Sites are over 1 km from the Site and unlikely to be affected by the proposed works. HRA is therefore not required.

Non-statutory designated sites – County Wildlife Sites, Ancient Woodlands - There are no non-statutory Sites within 1 km of the Site.

Priority habitats - Deciduous woodland is located 500 m north west of the Site. This would remain unaffected by the proposed works.

European Protected Species

Bat flight lines / foraging - In the immediate surrounding area there are some large mature gardens which could provide flight lines/foraging areas for the commoner species of bats - the LPA concurs. The lighting mitigation measures are considered to be suitable to ensure flight lines are not impacted.

Bat roosts – buildings / trees - The LPA notes that the trees were ranked as “low” potential rather than PRF-I in accordance with the new bat survey guidelines. The LPA agrees that the precautionary methods are required and suitable. However, as the building was ranked as low and there were constraints regarding viewing all aspects of the roof, it needs to be robustly justified why one emergence survey hasn't take place (April to October) in accordance with the current national best practice survey guidelines (Table 7.2). If this robust justification cannot be provided, then further emergence surveys of the building will be required prior to determination of this application. As the roof is being replaced, if bats are found to be present then a mitigation licence will be required. Further Conditions may be required on receipt of requested further information.

Great Crested Newt - The Site falls within a GCN consultation zone. The habitat on Site is not considered suitable, however.

Other Protected Species

Nesting birds / Schedule 1 birds - Some droppings, probably pigeon was found in the attic. These are likely to be roosting birds as there was not a lot of droppings which would suggest breeding. All the surrounding trees and shrubs on site will have potential for breeding birds. The dense laurel can provide a secure bird breeding feature - the LPA concurs. The mitigation measures are deemed sufficient and if any nesting birds are discovered using the areas to be affected, work should not proceed until breeding has finished and all fledglings have departed the nest. Planning conditions are proposed with regards to vegetation clearance and for the development to be carried out in accordance with the Bat Preliminary Roost Assessment.

Badgers - There was evidence of digging in the lawn as shown in photo 12, this could be badgers foraging. However, an extensive search through the neighbouring semi-native area could not find any sett holes, latrines or evidence of worn paths that were being used by

badgers, therefore, the digging on its own was not enough to indicate badgers but precautionary mitigation has been applied - The LPA concurs. The proposed mitigation measures were considered to be acceptable.

Priority Species

Hedgehog - There is suitable habitat on Site for hedgehogs. The mitigation in place for badgers should sufficiently mitigate for hedgehogs too.

Cirl buntings - The Site falls approximately 400 m outside of a cirl bunting consultation zone.

Overall enhancement / net gain

The User Guide for the small sites metric was updated in July 2024 and states the following:

You should not:

- *Record the creation of any other new habitats within private gardens*
- *Record enhancement of any habitat within private gardens. However, habitats which are recorded in the baseline and remain within a private garden may be recorded as retained.*

This means that the habitat created as part of this application must be included as 'private garden' in the metric and cannot be included as another habitat type. The small sites metric therefore needs to be updated to reflect this. Offsite provision of BNG units is therefore likely to be required.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact (including the impact upon heritage assets)
3. Residential Amenity
4. Highways, Movement and Parking
5. Ecology, Biodiversity and Trees
6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change
8. Designing Out Crime

1. Principle of Development

The proposal is for the redevelopment of Thurlow House to form 11no. 2-bedroom apartments. This will include the remodelling of the existing building to allow for a conversion from office to residential use through the formation of 7no. apartments, and the construction of a new 'coach house' building within the grounds to provide 4no. apartments.

Policy H1 of the Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with other policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well-connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location. As the application site is within the Torquay Town Centre Community Investment Area, Policy SS11 states that development proposals should provide a good standard of residential

accommodation and there should be resistance to changing the use of homes to houses of multiple occupation, therefore a planning condition is recommended to removal permitted development rights from C3 to C4.

Paragraph 124 of the NPPF promotes the effective use of land in meeting the need for homes and other uses. Paragraph 125 of the NPPF presents clear support for the principle of using land effectively to meet the need for homes and guides that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes. It also promotes support for the development of under-utilised land and buildings, especially where proposal would help to meet identified needs for housing.

Policy TS4 of the Neighbourhood Plan states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in the Plan. Policy TS1 of the Neighbourhood Plan states that development proposals should accord with policies contained in the Neighbourhood Plan, where relevant, unless material planning considerations indicate otherwise.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay's most recent housing land supply which was published in April 2023, stated that the Council has 2.17 years, which is a significant shortfall. The Housing Delivery Test requires that the presumption in favour of sustainable development be applied as per Paragraph 11 of the NPPF.

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.

Whilst government guidance pulls in somewhat different directions, there is a clearly stated government objective of boosting the supply of housing. Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF. Accordingly, the presumption in favour of sustainable development is applied to applications involving the provision of housing.

Under the presumption, permission should only be refused where either:

- (i) The application of policies in the Framework that protect designated heritage assets provides a strong reason for refusal (i.e. the “tilted balance” at Paragraph (d)i) or
- (ii) The impacts of approving a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination (i.e. the “tilted balance” at Paragraph 11(d)ii).

Development plan policies are taken into account when assessing whether the harm caused would “*significantly and demonstrably*” outweigh the benefit.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Development Plan which are most important for determining the proposal are out-of-date. The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply. It is considered that neither limb within Paragraph 11(d) applies and therefore the presumption in favour of sustainable development applies and the tilted balance is engaged.

Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF.

In terms of the principle of development, the development is considered acceptable in principle.

This position is however subject to wider policy considerations that are relevant to the development proposal and consideration of relevant material considerations, the forthcoming sections of the report will discuss these matters.

2. Design and Visual Impact (including Heritage Impacts)

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed places” offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state 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 139 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 [Footnote 54], taking into account any local design guidance and supplementary planning documents such as design guides and codes.*”. Similar design expectations are engrained within the Development Plan through Policies SS11, DE1 and DE4 of the Local Plan and Policy TH8 of the Neighbourhood Plan.

The application site is located within the Upton Conservation Area and is identified as a key building. The site is occupied by a detached Victorian villa and its curtilage, sited off a private access road from Thurlow Road. The original villa dates from the 1870s, the villa has late 19th century form and retains detailing and materials that are typical of the period and typology. The villa has undergone unsympathetic late 20th century extensions to the north and south elevations, however the original form is readable and has clear architectural value. The villa is part of an informal group that provides group value to the Upton Conservation Area. The application site has an elevated position, however it is mainly shielded from public vantage points due to surrounding built form and vegetation.

The proposal seeks to redevelop the former Ministry of Justice offices to convert the existing office accommodation into residential development. The proposals seek to form 11no. 2-bedroom apartments with associated landscaping and a parking provision.

The proposal involves the removal of late 20th century extensions and the construction of a new extension to the northern elevation. The proposed extension would have a smaller footprint than the previous northern extension, as well as having a hipped roofscape to match the villa. The hipped roofscape would also enable concealment of the lift over run. The existing hipped roof of the original villa would be adapted to form a mansard roof that would enable the roof space to be converted into residential development.

The removal of the lower ground floor extension to the southern section of the application site would permit the bay windows to be reinstated to the southern elevation of the original villa. The proposed coach house would be sited approximately 5 metres away from the original villa to provide a clear separation between the buildings. The proposed coach house would be two and a half storeys in height and would be a L-shape, with one wing being single storey. The proposed coach house would be finished in white render and vertical timber cladding; have a slate roof; and have aluminium windows, doors, rooflights and rainwater goods. The proposed coach house would also have a cast stone entrance door surround and metal balustrading.

The existing parking provision would be reduced to 11no. parking spaces and landscaping introduced to soften the appearance of the hard landscaping. The reduction in the existing parking provision is welcomed given the large expanse of hard surfacing.

The Council's Principal Historic Environment Officer has assessed the existing building through the tests Historic England provide on assessing whether a building has the potential to be a non-designated heritage asset. The Officer has concluded that although the villa has undergone unsympathetic late 20th century extensions, the villa remains to have demonstrable architectural and historic value through its surviving form, detailing, fenestration and materials, and therefore the property can be considered to be a non-designated heritage asset.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Development is also required to sustain and enhance undesignated heritage assets.

The application is supported by a Heritage Statement. The Upton Conservation Area Character Appraisal identifies the villa as a key building. The site is not in close proximity to any listed buildings.

The Council's Principal Historic Environment Officer has outlined that the site makes a positive contribution to the character and appearance of the Upton Conservation Area and demonstrates a number of its identified special characteristics including:

- The elements of design that characterise much of the development that took place between the early-to-late 19th century are well represented in the breadth of historic frontage and layout forms – the extent, scale and proportion of most such development remains significantly unaltered, including overall frontage detail, spatial arrangement, roof profiles, stacks and original pots.
- There is a high proportion of surviving of period detail to the buildings – conservatories, glazed verandahs, original sash windows with glazing bars, ironwork features, panelled doors, etc.

Letters of support state that the proposal would have a positive impact on the local area and remove an eyesore, whereas letters of objection outline concerns that the proposed development would have a negative impact on the local area, would constitute overdevelopment, and would not be in keeping with the local area.

It is also incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

Paragraph 202 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The NPPF outlines that the conservation of heritage assets should be given great weight in decision making (Paragraph 212 refers).

Explanatory notes 4.4.30 of Policy SS10 of the Local Plan states that 'Policy SS10 seeks to ensure that heritage assets are safeguarded for the future, and where possible enhanced both for their own merits and as part of regeneration projects. It is also sufficiently flexible to ensure that any harm to the significance of a historic asset can be weighed against the wider benefits of an application, for example social, economic and environmental enhancement'.

The proposal includes the demolition of the late 20th century extensions, the current impact of such is low on the Upton Conservation Area and high on Thurlow House as a non-designated heritage asset. The proposed demolition is considered to be an enhancement to both designated and non-designated heritage assets as confirmed by the Council's Principal Historic Environment Officer.

The proposal involves making alterations to the original villa roofscape to replace the internal valley with a mansard roof, as well as forming a new hipped mansard roof over the original and proposed extensions, it is considered such would result in low and moderate harm to the non-designated heritage assets and low harm to the Upton Conservation Area. The alterations to the original villa roofscape would have a minor harmful impact on the character and appearance of the villa. However, it is noted that a number of villas in the locality have had similar alterations. The proposed inset balcony within the roofscape would be at odds with the established character of the building and is considered to be harmful. It is noted that the loss of the original roof profile would also cause harm to one of the special characteristics of the Upton Conservation Area as identified within the associated Conservation Area Character Appraisal. The proposed new hipped mansard roof over the original and proposed extensions would seek an increase in roof height and increase the massing of the extension which would remove the original character and proportions of the original 'servants' extension. The proposed dormers have been reduced in size to limit their visual impact, as well as a reduction in the proposed porch on the northern elevation, both of which are an improvement to the original submission.

The Officer has also raised concerns regarding the replacement of the existing timber windows within the original villa, given the proposed uPVC replacements, the Officer has stated that such would result in high harm to the non-designated heritage asset and moderate harm to Upton Conservation Area, due to the loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. A planning condition is recommended to secure window and door details notwithstanding the submitted plans.

The Officer has also stated that the proposed coach house in terms of balconies and architectural treatment would result in low harm to both the non-designated heritage asset and the Upton Conservation Area. The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the original villa and the wider Upton Conservation Area. The scale and massing of the coach house when viewed from the north remains subservient to the Original villa. However, concerns have been raised regarding the design and massing of the coach house when viewing such from the outdoor amenity space and viewing the western elevation of the coach house. These concerns are limited to the views from within the curtilage of the application site.

The reduction in the footprint of the existing lower ground floor extension by its removal and the introduction of the coach house on a smaller footprint and the reinstatement of an external amenity area is considered to be a positive element of the proposed scheme.

Overall, the development would result in less than substantial harm to Thurlow House as a non-designated heritage asset and the Upton Conservation Area.

In such a circumstance where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, Paragraph 208 of the NPPF requires the harm be weighed against the public benefits of the proposal. Paragraph 214 of the NPPF requires local planning authorities to assess whether the benefits of the proposal, which would otherwise conflict with planning policies but would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. The main public benefit of the scheme would result from the provision 11no. apartments. In this instance the benefits that are offered by the development do outweigh the harm to the designated heritage asset, namely less than substantial harm to the Upton Conservation Area. This conclusion has regard to the duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

The less than substantial harm to the Upton Conservation Area and the public benefits of the proposal will be weighed up in the planning balance and conclusion sections of this report as required by Policy SS10.7 of the Local Plan and the NPPF.

Planning conditions are recommended to secure external material details, as well as window and door details.

3. Residential Amenity

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 and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience (Paragraph 135). The Local Plan contains policy guidance aligned with the aspirations of the NPPF, principally through Policies SS11, H1 and DE3, towards ensuring that residential development produces high-quality living environments that present a good level of amenity for future users and neighbouring occupiers. Policy DE3 also identifies size standards for self-contained units, which reflect the nationally described space standards.

In terms of location the application site is relatively close to Torquay Town Centre and the Higher Union Street, Torre Local Centre and is therefore considered a positive sustainable location for the future use and well suited to a residential occupancy, presenting good opportunities for future occupants in terms of access to services, facilities and sustainable transport options.

Quality of living accommodation for future occupiers

Policy DE3 sets out the minimum floor space standards for new residential units, which align with the nationally described space standards. The proposed residential units comply with the minimum floor space requirements.

The proposal seeks to provide 11no. x 2-bed apartments. All apartments are considered to provide an acceptable scale of living accommodation with floor areas exceeding the prescribed standards. In addition to the size of the space, the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. The proposal is considered to provide all apartments with adequate natural light levels and outlooks.

Policy DE3 of the Local Plan also seeks secure the provision of usable outdoor amenity space where apartments should deliver 10 square metres per unit either individually or communally. The Neighbourhood Plan is in alignment with this guidance as advised within Policy THW4, either as balconies or communal space. The scheme provides a communal greenspace that accumulatively exceeds the policy-guided minimum of 110 square metres, which provides an acceptable level of outdoor space for future occupants of the apartments. Some of the proposed apartments will also have their own balconies.

Adjacent neighbouring amenity

Policy DE3 of the Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers. Objectors have raised concerns regarding noise, loss of light and privacy/overlooking.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction Method Statement, this is recommended as a planning condition.

In terms of the finished development the residential use aligns with the residential uses nearby and the proposed use would not result in undue noise or general disturbance. The move from an office use to a residential use is likely to be positive.

The existing built form within the application site is within close proximity to several adjacent neighbours (33 Thurlow House – 12 metres; 35A Thurlow House – 10 metres; Darjeeling Furzehill Road – 6 metres; 59 Ash Hill Road – 12.5 metres). It should be noted that the existing built form which is closest to Darjeeling and 59 Ash Hill Road is a lower ground floor extension.

The former use of the site was offices for the Ministry of Justice, it is considered that the proposed residential use would not result in any detrimental impact on adjacent neighbours in terms of noise. The original proposal has been revised given concerns relating to intervisibility, overbearing and overshadowing impacts. The proposal was subsequently revised to reduce the height of the proposed coach house, as well as amending the internal configuration and fenestration of such to address the concerns raised.

The proposed coach house would be approximately 5.4 metres from the south western elevation of Darjeeling. This elevation of Darjeeling has 2no. openings, both openings serve habitable rooms but are considered secondary openings to these rooms. The applicant has provided a sun path analysis to understand the impact of the original and revised proposal would have on Darjeeling in terms of overshadowing. The proposed coach house has been reduced, as the original proposal would have resulted in a substantial amount of

overshadowing, the revision has made the level of overshadowing less. The overshadowing would happen in the early evening. Given that the 2no. openings are secondary openings, it is considered that this harm would not be detrimental to warrant a reason for refusal. The proposed openings on the eastern elevation of the coach house that faces Darjeeling have been revised. The first floor of the proposed coach house would be at a similar level to the ground floor of Darjeeling and would include an obscurely glazed window at first floor and the proposed roof lights at second floor would be high level to prevent any intervisibility/overlooking issues. A planning condition is recommended to secure obscure glazing to the proposed scheme where appropriate.

Nos.57 and 59 Ash Hill Road is to the south of the application site. It is considered that the proposed openings of the coach house would be at an oblique obscured view to No.57 Ash Hill Road. The coach house is a two and a half storey element with a single storey aspect. The proposed openings on the southern elevation that face towards Nos.57 and 59 Ash Hill Road are mainly on the ground floor which would prevent intervisibility between the application site and Nos.57 and 59 Ash Hill Road given the boundary treatments and existing vegetation. It should also be noted that No.57 Ash Hill Road has no openings on its northern elevation. There are also 2no. openings on the southern elevation, 1no. at first floor and 1no. at second floor, if suitable boundary treatments are installed, it is considered that these openings would not result in a detrimental level of intervisibility into the external amenity spaces of Nos.57 and 59 Ash Hill Road.

Given its siting, scale, and design, it is considered that the proposal would not result in any detrimental harm to the amenities of the occupants of neighbouring buildings in terms of their privacy, outlook, or access to natural light.

Having regard to the amenities provided within the proposal for future occupants and the future relationship of the development with adjacent plots and neighbouring occupants, the majority of the scheme broadly aligns with the aims and objectives of Policies SS11 and DE3 of the Local Plan, Policy THW4 of the Neighbourhood Plan and the guidance contained within the NPPF. It is not considered that the issues identified within this section relating to the quality of living accommodation for future occupiers are not detrimental enough to constitute a reason for refusal.

4. Highways, Movement and Parking

Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and d) 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 through a vision-led approach. Paragraph 116 of the NPPF confirms that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network, following mitigation, would be severe, taking into account all reasonable future scenarios.

Development Plan objectives align with the aspirations of national guidance with principal guidance within Policies TA1, TA2 and TA3 of the Local Plan encompassing outcomes for developing a sustainable model of transport, providing a good standard of access for walking, cycling, public and private transport modes, standard for parking and cycling facilities. The Neighbourhood Plan reinforces the guideline parking requirements contained in the Local Plan through Policy TH9 and more broadly offers support for new development proposals

where they are located on or near to public transport routes wherever possible and appropriate through Policy THW5.

The proposal proposes to maintain the existing vehicular access from Thurlow Road from a private access road that serves multiple properties. Thurlow Road is a 7 metre wide single carriageway residential street with footways on both sides. However, the southern footway is discontinuous due to private access roads. The road is subject to a 30mph speed limit. The former use of the application site was Use Class E (Commercial, Business and Services) and had 20no. parking spaces.

The proposed development seeks to retain 11no. parking spaces. Objectors have raised concerns regarding traffic and access. Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment, totalling 11no. off-street parking spaces, plus an additional parking space for visitors. The proposed layout does not assign specific parking spaces to each apartment. The Highway Authority has not raised a concern regarding the level of parking provision and is satisfied with the accessibility of the parking provision. It is noted that a large proportion of Torquay is accessible within a 25-minute walk which includes a wide range of local amenities and facilities, including schools, healthcare and convenience stores. The guidance notes also state that in flatted developments 20% of available spaces should have electric charging points and that there should be 10% of spaces suitable for disabled users. Should planning permission be granted, a planning condition should be employed to secure an appropriate level of electric charging points.

In terms of trip generation, the Highway Authority have stated that the proposed development will result in a net reduction in traffic from the site in each of the AM and PM peak hours respectively. The Highway Authority have confirmed that they are satisfied that the trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

The existing private access road has no dedicated pedestrian or cyclist provision, therefore operating via a shared surface arrangement. The proposal also includes 12no. bicycle storage spaces, which would comply with the policy requirement of 1no. space per apartment and is in the form of Sheffield stands to provide accessibility for users all ages and abilities. The proposed bicycle storage provision is considered to be acceptable, a planning condition is recommended to secure the provision prior to the first occupation of the development.

In terms of key ancillary elements, Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. As the private access road is not adopted and the proposals do not adhere to the Torbay Highways Design Guide, and the bin drag distances are excessive, the Highway Authority has recommended a planning condition of a Road Management and Maintenance Plan to facilitate safe and suitable access for waste collection.

5. Ecology, Biodiversity and Trees

The NPPF provides guidance 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 180). The Development Plan frames similar aspirations principally through Policy NC1 of the Local Plan and Policy TE5 of the Neighbourhood Plan, the latter in terms of impacts upon any existing protected species or habitats. Policy C4 of the Local Plan states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

Objectors have raised concerns regarding trees and wildlife. The application is supported by a Preliminary Bat Roost Assessment, a Biodiversity Net Gain Report, and the statutory Biodiversity Net Gain Metric.

The supporting ecological information has been reviewed by Devon County Council's Principal Ecologist. The nearest statutory protected sites are over 1km from the application site and are unlikely to be affected by the proposed development, therefore a Habitat Regulations Assessment (HRA) is not required. Furthermore, there are no non-statutory designated sites within 1km of the application site.

There is a deciduous woodland located approximately 500m north west of the application site, which would remain unaffected by the proposed development.

Within the immediate surrounding area there are some large mature gardens which could provide flight lines/foraging areas for the commoner species of bats, the Council's Ecologist concurs. The supporting ecological information provides mitigation measures in terms of lighting to ensure flight lines are not impacted, the Council's Ecologist recommends a planning condition is employed regarding external lighting. The application site falls within the Great Crested Newt consultation zone, however the habitat within the application site is not considered suitable for such. The application site has the potential for breeding birds, the supporting ecological information provides mitigation measures which the Council's Ecologist supports. Planning conditions are recommended to ensure adherence to the actions within the Preliminary Assessment, as well as the standard vegetation clearance planning condition. Furthermore, the Preliminary Assessment proposes mitigation measures in relation to badgers and hedgehogs, such are recommended to be included within a planning condition.

The Council's Ecologist initially raised concerns regarding the survey work undertaken in relation to bat roosts. The applicant has undertaken further survey work that the Council's Ecologist has deemed acceptable, as a detailed inspection of the areas of roof to be impacted by development has been carried out and has ruled out the presence of a maternity or hibernation roost. Such confirms that the structure offers a very low potential for roosting bats.

In England Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021). This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. The application was supported by a full Biodiversity Net Gain (BNG) assessment and other reports required as part of the validation of the application. The application form confirmed that development had not commenced prior to the submission of the application, however a site visit was undertaken in September 2024 whereby it was questioned whether development had commenced.

Section 56(2) of the Town and Country Planning Act 1990 provides that development shall be taken to be begun on the earliest date on which any 'material operation comprised in the development' begins to be carried out. A 'material operation' is defined in section 56(4) as:

- (a) any work of construction in the course of the erection of a building*
- (b) any work of demolition of a building*
- (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building*
- (d) the laying of any underground main or pipe to the foundations of a building or to a trench*
- (e) any operation in the course of laying out or constructing a road or part of a road, and*
- (f) any change in the use of the land, which constitutes material development*

The applicant has undertaken works to the application site including digging a trench and

laying underground pipes to provide utilities to the property. The application has become part-retrospective and the Council's Solicitor has confirmed such. The NPPF confirms that planning policies and decisions should contribute to and enhance the natural environment by providing net gains for biodiversity. A planning condition is recommended to ensure that the proposed development secures a net gain.

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

The trees on site are afforded statutory protection due to the application site being within a Conservation Area. There are also several individual Tree Preservation Orders within the application site.

SWISCo's Senior Tree Officer has reviewed the application on multiple occasions as well as undertaking a site visit. Upon receipt of updated arboricultural information, the Officer raises no objections of arboricultural subject to planning conditions securing the implementation of the supporting Tree Protection Plan and Arboricultural Method Statement. The supporting Arboricultural Statement addresses the investigation of works to underground infrastructure already undertaken, providing a method for evaluating any damage to protected trees which may have been caused. The statement raises a number of questions around root pruning to mitigate damage to trees from the ground works. The Officer is satisfied with the methodology and approach, but requires the findings and any evidence to be submitted to the Local Planning Authority in due course.

Subject to the aforementioned planning conditions, the development is considered acceptable, in-line with the aspirations of Policy C4 of the Local Plan, and advice contained within the NPPF.

6. Flood Risk and Drainage

The NPPF provides guidance towards avoiding inappropriate development in areas of flood risk by directing development away from areas at higher risk (Paragraph 170), and when determining applications seeks local planning authorities to ensure that flood risk is not increased elsewhere (Paragraph 181). The Development Plan offers similar expectations for ensuring the risk of flooding is not increased, together with expectations that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, through Policy ER1. Policy ER1 of the Local Plan also outlines a hierarchy for water-flow management within new development, with similar guidance is contained within the Environment Agency's Critical Drainage Area Advice Note for Torbay.

The application site sits within Flood Zone 1 and the wider Torbay Critical Drainage Area as designated by the Environment Agency. Objectors have raised concerns regarding drainage. The submission has been reviewed by the Council's Drainage Engineer. The application has been supported by a flood risk assessment and a drainage strategy.

The Engineer has confirmed that due to the gradient of the site and insufficient room on the site for soakaways to be constructed infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system. As the new buildings will require two separate discharge locations, it has been agreed that each location can discharge at a controlled rate of 1.0l/s. The hydraulic design confirms that the

drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

The Engineer has confirmed that providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design, they raise no objections on drainage grounds.

Subject to a planning condition to secure the surface water drainage for the proposed development, the proposal is considered to comply with Policy ER1 of the Local Plan.

7. Low Carbon Development and Climate Change

Paragraph 161 of the NPPF guides that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks and coastal change. It should help: to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Policy SS14 of the Local Plan supports national guidance and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 of the Local Plan seeks that all major development proposals should make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities.

The application is supported by an Energy Statement. The approach will be to reduce demand for energy consumption (be lean), prior to the consideration of integrating low carbon/zero carbon energy sources (be clean and be green). To reduce energy demand and carbon dioxide emissions for the proposed development, the following measures have been included:

- Re-use existing building
- Upgrade existing thermal performance of existing building
- High levels of thermal insulation for proposed new building
- Low fabric air permeability
- Energy efficient LED light fittings and controls
- Orientation allows for passive solar design
- Dual aspect living spaces and solar shading (new build) to control overheating

The Council's Climate Emergency & Project Officer has reviewed the application and has stated that they welcome the re-use of the existing building and improving the current thermal performance of such, along with the proposal of a new building that can provide better standards of energy efficiency. The applicant proposes to demonstrate the 'be lean, be clean and be green' principles through incorporating low fabric air permeability, thermal insulation, low energy lighting and solar shading. The Officer welcomes such. The applicant is also proposing the use of heat pumps to provide heating. The Officer has recommended a planning condition is employed to ensure that the energy and sustainability measures are carried out to maximise carbon reductions.

Subject to the aforementioned planning condition, the proposal is considered to accord with Policies ES1 and SS14 of the Local Plan, and the guidance contained within the NPPF.

8. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Neighbourhood Plan sets out that new development should provide a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The Police Designing Out Crime Officer was consulted and commented upon the application. The submitted Design and Access Statement includes a section on Secure By Design, however it refers to the Secured By Design Homes Guide 2019, which has been subsequently replaced with newer guides, the current one is Secured By Design Home Guide 2024. The Officer supports the proposed measures and also provides additional measures. A planning condition is recommended to secure up-to-date Secured by Design measures to assist in preventing crime and the fear of crime. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy SS11 of the Local Plan and Policy TH2 of the Neighbourhood Plan.

Sustainability

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

The Economic Role

The loss of the office use is considered acceptable, given the adjacent and surrounding uses are residential.

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

Once the residential units are occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

The Social Role

The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwelling to be provided must carry significant weight in this balance.

The provision of housing would provide an appropriate use and offer units within a sustainable location. On balance, the social impacts of the development weigh in favour of the development.

The Environmental Role

With respect to the environmental role of sustainable development, for reasons set out in this report there is considered to be less than substantial harm to the identified heritage asset of the Upton Conservation Area. This harm is considered to be at the minor end of the scale.

Other elements that are considered to be especially relevant to the proposed development are impacts on trees, biodiversity and drainage. A landscaping scheme has been submitted which results in no net loss of biodiversity and the proposal also provides low carbon and energy efficiency measures. These matters have been considered in detail above and weigh in favour of the proposal.

The proposed development is located in a sustainable location within close proximity to local amenities and public transportation links. This weighs in favour of the proposal.

It is concluded that the environmental impacts of the development, due to the adverse impact on the heritage asset weigh against the development, however the positive elements of the proposal in terms of a sustainable location, low carbon and energy efficiency measures, landscaping and drainage weigh in favour.

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

Affordable Housing

The proposal falls below the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15 dwellings or more.

CIL

The land is situated in Charging Zone 1 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £30/sqm for 4+ dwellings.

The estimated CIL liability is £3,254.90. This figure is indexed linked, and the final figure will be calculated on the day of the decision.

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

CIL is a "Local Finance Consideration" relevant to determining applications. However, in the officer's assessment, it is not a determining factor (either way) in the planning balance assessment below.

S106

Site Acceptability Matters: None.

Affordable Housing: Not applicable for this scale of development on a brownfield site.

Sustainable Development Matters: N/A as CIL liable development.

As such no S106 legal agreement is considered necessary.

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. The development does not meet the thresholds for screening and is not in a sensitive area.

HRA

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

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC and a formal HRA screening is not necessary in this instance as the proposed development is unlikely to have a significant effect on the South Hams SAC.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal and development plan policies.

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.

Development Plans often contain policies that pull in different directions and it is sometimes difficult to come to a view whether a proposal is in accordance with the development plan "taken as a whole". Whilst the proposal is supported by policies in the Local Plan that seek to boost housing supply, there are conflicts with the historic environment (Policy SS10 of the Local Plan). Whilst the harm to the character and appearance of the Conservation Area has been assessed as being "less than substantial" it is sufficient to render the proposal not in accordance with the development plan.

As noted above, the Council has less than 5 years housing land supply and on this basis the Development Plan must be "deemed" to be out of date. At 2.17 years supply, the shortfall is serious and must be given significant weight in the planning balance. However, the proposal is for 11no. residential units, which reduces the weight that should be given to the proposal,

and this weight is considered to be moderate. Out-of-date policies can still carry weight in the planning balance, but in practice attention shifts to other material considerations, especially the Presumption in Favour of Sustainable Development which is set out in Paragraph 11(d) of the NPPF.

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

The first issue is whether the application of NPPF policies related to heritage assets provides a strong reason for refusing the development.

Paragraph 210 of the NPPF states:

In determining applications, local planning authorities should take account of:

a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) The desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 212 of the NPPF states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 214 of the NPPF states:

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

When taking account of the Government's objective of significantly boosting the supply of homes and the role of the construction industry in supporting economic growth, along with the acknowledged important contribution that small sites can make to meeting the housing requirement of an area and the Council's housing land supply situation, the cumulative public benefits of the proposed scheme attract moderate weight.

Great weight should be given to the conservation of designated heritage assets. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Upton Conservation Area. However, in this case the harm identified to the designated heritage asset

of the Upton Conservation Area from the proposal is assessed as the minor end of less than substantial harm.

The public benefits in the form of the economic and social benefits include the economic growth and associated economic benefits to the construction industry from the proposed development, the proposal would also result in additional disposable income from the occupants. The proposal would provide housing where there is a lack of 5 year housing land supply and this would be located within a sustainable location. Other matters that weigh in favour include a landscaping and drainage scheme and the proposal promotes low carbon and energy efficiency measures in the building construction and promotion of electric vehicle charging points and bicycle storage.

The proposed development will result in less than substantial harm to the Upton Conservation Area, however the application site benefits from being heavily screened by existing vegetation and being sited towards the end of a private access lane.

Paragraph 215 of the NPPF indicates that proposals that result in less than substantial harm to the significance of designated heritage assets should be weighed against the public benefits of the proposal, including where appropriate securing its optimal viable use. The level of harm identified is less than the threshold that would constitute a “strong reason” for refusal under paragraph 11(d)(i) of the Framework and the accompanying Footnote 7.

Attention then turns to Paragraph 11(d)(ii) which directs decision makers to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. This can include a consideration of Development Plan policies. Particular regard should be given to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

On balance, the public benefits of the scheme as a whole, when weighed against the level of harm caused, are considered to justify the proposal and the proposal is considered to represent sustainable development when considering the Local Plan, Neighbourhood Plan and NPPF taken as a whole as the adverse effects of granting planning permission would not significantly and demonstrably outweigh the benefits.

Other than the less than substantial harm to the Conservation Area, there are no other adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits of the development.

In addition, the public benefits are a material consideration which weigh in favour of granting planning permission notwithstanding conflicts with some aspects of the development plan.

Conclusions and Reasons for Decision

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

In terms of material considerations, the provision of 11no. residential units, is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded housing supply is not insignificant where the most recent Housing Delivery Test (December 2023) for Torbay was published as 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required), and Torbay’s most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post construction in terms of local household spend within the local economy. The stated biodiversity net gain also weighs positively within the planning balance.

In-line with the above conclusions and the assessment within this report, the proposals are considered to be in principle accordance with the provisions of the Development Plan and to demonstrate that an acceptable scheme could be accommodated on the site. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay.

Due to the level of accordance with the Development Plan and in the absence of material considerations that weigh sufficiently against the proposal, the Officer recommendation is one of approval, subject to suitable planning conditions.

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.

The NPPF guides that decisions should apply a presumption in favour of sustainable development and for decision making that means approving development proposals that accord with an up-to-date development plan without delay. For housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, the NPPF guides to granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (11no. residential units), when assessed against the policies in the NPPF when taken as a whole. Subject to the recommended planning conditions, the application of policies in the NPPF that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed.

Officer Recommendation

Approval: subject to;

1. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.
2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Planning Conditions

1. External Materials

Prior to their installation, technical details and/or samples of the proposed exterior materials including wall finishes, roofing materials, eaves, fascias and rainwater goods shall be submitted to and approved in writing by the Local Planning Authority.

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

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

2. Windows and Doors

Notwithstanding the approved plans and details, prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority:

- Broken sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10
- Frame and door materials

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

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

3. Boundary Treatments

Notwithstanding the approved plans and details, prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. Once provided, the approved boundary treatment shall be maintained and retained for the life of the development.

Reason: To ensure a satisfactory completion of development in the interests of visual and residential amenity and to protect the privacy of future and neighbouring occupants in accordance with Policies DE1, SS10 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

4. External Lighting

No external lighting shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, number, luminance, angle of illumination and type of each luminaire or light source and a lux diagram showing the light spill from the scheme. The lighting shall thereafter be installed, operated and maintained operated in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

5. Surface Water Drainage

The development shall proceed in full accordance with the approved drainage details and drainage strategy and shall be fully implemented prior to the occupation of the development hereby approved. 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 Policies ER1 and ER2 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the National Planning Policy Framework.

6. Bicycle Storage

Prior to the first occupation of the development hereby permitted, the bicycle storage shown on the approved plan (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024), shall be provided in full and retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

7. Bin Storage

Prior to the first occupation of the development hereby approved, the bin storage area detailed on approved plan (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024) shall be installed and made available for use. Once provided, the agreed storage arrangements shall be retained for the life of the development.

Reason: In interests of visual amenity and in accordance with Policies W1 and DE1 of the Adopted Torbay Local Plan 2012-2030.

8. Waste Management Plan

Prior to the first occupation of the development a Waste Management Plan (WMP) for the building, setting out recycling and waste collections methods which follow the waste hierarchy to ensure locally established recycling targets at the that time are met, together with measures to review and respond to evolving targets, shall be submitted to and approved in writing by the Local Planning Authority. The approved WMP shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason: To ensure that the private waste collection strategy for the apartment building, which will not receive waste collection from the local authority due to the location within a building, accords with locally established recycling rates, to accord with Policies W1 and W2 of the Adopted Torbay Local Plan 2012-2030.

9. Electric Vehicle Charging Points

Notwithstanding the approved plans and details, prior to the occupation of the development hereby approved, a scheme for the insertion of 3no. electrical charging points to be located within the site shall be submitted to and approved in writing by the Local Planning Authority. Details shall include design, location, specification and a timescale for insertion prior to occupation. The agreed electrical charging point shall be thereafter maintained and retained for the lifetime of the development.

Reason: To ensure the parking provision of the new residential units is in accordance with the requirements of Planning Policy TA1, TA3 and Appendix F of the Adopted Torbay Local Plan 2012-2030.

10. Parking Provision

The residential units hereby approved shall not be occupied or brought into use until the parking areas as detailed on approved plans (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024), have been provided in full and are available for use. The parking areas shall thereafter be permanently retained for the use of parking for the associated apartment for the life of the development.

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

11. Designing Out Crime

Prior to the first use of the development hereby approved, evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable.

Reason: In the interests of crime prevention in accordance with Policy DE1 and SS11 of the Adopted Torbay Local Plan 2012-2030 and Policy TH2 of the Adopted Torquay Neighbourhood Plan 2012-2030.

12. Vegetation Clearance

No vegetation clearance or demolition works 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 works 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 Adopted Torbay Local Plan 2012-2030 and the advice contained within the National Planning Policy Framework.

13. Ecology Report

The development shall proceed, and shall be retained thereafter, in full accordance with the mitigation and enhancement measures contained within the approved Preliminary Ecological Appraisal (ref: ' 5750 (Bat PRA)', received 18th November 2024).

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

14. Biodiversity Net Gain

Prior to the first use of the development hereby approved, measures to maximise opportunities for biodiversity enhancement in and around development, in order to deliver a net gain for biodiversity, shall be submitted to and approved in writing by the Local Planning Authority. The submitted detail will recognise ecological features lost and include a measurable guide to demonstrate a net gain for biodiversity.

The approved measures shall be incorporated within the development prior to the developments first use and maintained thereafter.

Reason: To ensure the development positively incorporates biodiversity features proportionate to its scale, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the advice contained within the National Planning Policy Framework.

15. Sustainability

The construction of the development hereby approved shall be carried out in accordance with the details contained within the approved 'Torbay Sustainability Checklist' (ref: 'P-2024-0429-2' (Sustainability), received 26th June 2024). All measures contained within the approved document to limit carbon emissions shall be implemented prior to first occupation of the development and shall be retained for the lifetime of the development.

Reason: In interests of low carbon development and in accordance with Policy SS14 and ES1 of the Adopted Torbay Local Plan 2012-2030.

16. Construction/Demolition Management Plan

The development shall proceed in full accordance with the submitted and approved Construction Method Statement.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction and demolition works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of highway safety in accordance with Policies TA1, TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

17. Tree Protection Plan and Arboricultural Method Statement

The development hereby approved shall be carried out in full accordance with the approved Arboricultural Method Statement and Tree Protection Plan (refs: '06084 TPP 04.11.2024 Rev A' and '06084 AMS 08.11.2024 Rev A', received 19th December 2024).

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

18. Arboricultural Statement

The development hereby approved shall be carried out in accordance with the methodology and approach of the approved Arboricultural Statement (ref: '06084 (Arbo. Statement)', received 19th December 2024).

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

19. Arboricultural Findings, Evidence, Mitigation and Remediation

In the event that root pruning causes damage to the existing trees, which was not previously identified, is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless mitigation and remediation measures have been first agreed in writing with the Local Planning Authority. An investigation shall be undertaken and where mitigation and remediation are necessary, a revised Arboricultural Statement shall be submitted to and approved in writing by the Local Planning Authority.

The revised Arboricultural Statement shall thereafter be implemented as approved. The requirements of this condition shall also apply if any further damage to the existing trees arises during the development, which requires a reconsideration of the approved Arboricultural Statement.

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

20. Landscaping

Prior to first occupation of the development hereby approved a hard and soft landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- a. Size, species and positions for new trees and plants;
- b. Surfacing materials (including roadways, drives, patios and paths);
- c. Any retained planting; and
- d. A detailed programme of implementation.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with others of a similar size and the same species. All hard landscaping works shall be permanently retained thereafter in accordance with the approved details.

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

21. External Amenity Spaces

The development hereby approved shall not be occupied or brought into use until the outdoor amenity spaces, including balconies, detailed on the approved plans (refs: '4958-KEA-XX-XX-DR-A-12001-A3 P12', '4958-KEA-ZZ-ZZ-DR-A-22000 P10 (GF, LGF)' and '4958-KEA-ZZ-ZZ-DR-A-22001-A3 P7 (L01, L02, Roof)' received 18th November 2024) have been provided in full. The outdoor amenity spaces and balconies shall thereafter be maintained and retained for the use of the development's occupiers for the life of the development.

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

22. Removal of Permitted Development Rights C3 to C4

Notwithstanding the provisions of Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), the residential use of any one or more units hereby approved shall not be changed to a House in Multiple Occupation, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

Reason: In interests of visual and local amenity and the living environment conditions in this locality in accordance with Policies DE1, DE3, H4 and SS11 of the Adopted Torbay Local Plan 2012-2030.

23. Removal of Permitted Development Rights Schedule 2, Part 2, Class A

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 2, Class A, no other means of enclosures shall be erected within the external areas of this development, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

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

24. Obscure Glazing

Prior to the first occupation of the coach house hereby approved, the ground floor, hallway window in the eastern flank elevation of the development shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. This window shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The window shall thereafter be permanently retained in that condition for the lifetime of the development.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

25. Contamination

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall thereafter be implemented as approved. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.

Reason: For the protection of controlled waters from contaminated discovered during demolition or construction and in the interests of public health and the natural environment in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and guidance contained within the National Planning Policy Framework.

Informative(s)

Positive and Proactive

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, where possible, relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval for the reasons stated.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Relevant Policies

Development Plan Relevant Policies

- SS1 - Growth Strategy for a Prosperous Torbay
- SS3 - Presumption in Favour of Sustainable Development
- SS10 - Conservation and the Historic Environment
- SS11 - Sustainable Communities
- SS12 - Housing
- SS13 - Five Year Housing Land Supply
- SS14 - Low Carbon Development and Adaption to Climate Change
- TA1 - Transport and Accessibility
- TA2 - Development Access
- TA3 - Parking Requirements
- C4 - Trees, Hedgerows and Natural Landscape Features
- H1 - Applications for New Homes
- DE1 - Design
- DE3 - Development Amenity
- DE4 - Building Heights
- ER1 - Flood Risk
- ES1 - Energy
- W1 - Waste Hierarchy
- NC1 - Biodiversity and Geodiversity

- TS1 - Sustainable Development
- TS4 - Support for Brownfield and Greenfield Development
- TH8 - Established Architecture
- TH9 - Parking facilities
- TE5 - Protected species habitats and biodiversity
- TH2 - Designing Out Crime
- THW4 - Outside Space Provision
- THW5 - Access to Sustainable Transport

TORBAY COUNCIL

Application Site Address	Brixham Bowling Club Nelson Road Brixham TQ5 8BH
Proposal	Alterations to create disabled access including ramp and new entrance door.
Application Number	P/2024/0665
Applicant	Brixham Bowling Club
Agent	PMR Architecture
Date Application Valid	15/10/2024
Decision Due date	10/12/2024
Extension of Time Date	07.02.2025
Recommendation	<p>Approval: Subject to:</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional 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 Divisional 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 site is within land owned by the Council.
Planning Case Officer	Trenton Oldfield

Location Plan



Site Details

The site, Brixham Bowling Club, contains a single storey clubhouse, external bowling greens and various associated equipment including storage sheds and water tanks. There are various fences to enclose the different areas. The site is alongside Furzeham Green, Nelson Road Play Area, and Tennis and Basketball courts. It sits within both residential and recreational settings. The site is above and to the North West of Brixham Harbour and forms part of the built-up area.

Description of Development

Alterations to create disabled access including ramp and new entrance door. The proposed development would be to the South and East side of the existing clubhouse.

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 Brixham Peninsula Neighbourhood Plan (BPNP)

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.

Summary of Consultation Responses

1. Brixham Town Council	No objection
2. South West Water	Acceptable
3. LPA Environment Health	No objection
4. LPA Drainage	Use standing advice
5. LPA Adult Social Care	No response
6. LPA Parks	No response

Summary of Representations

At the time of writing a total of 4 letters of objection (from 3 addresses) have been received in which the following matters were raised:

1. Already an existing disabled access, no need for new access
2. Safety concerns – increases risk of accidents/hazard
3. Pathway will be overbearing and detract from their enjoyment of the green space
4. Removes land from community use
5. 'Mission creep' – Bowling club may be unduly extending its role and land use
6. Concern the club would seek to transform the 'green triangle' into parking.
7. Misleading documents submitted / lack of detail
8. Proposed railings out of character for area
9. Potential light pollution – adverse impact on nearby neighbours

SRM/Ward Councillor Responses

Councillor Hutchings	Emailed 31.12.2024	No concerns. Proceed.
Councillor Stevens	Emailed 31.12.2024	No concerns. Proceed.
Councillor Strang	Emailed 31.12.2024	No concerns. Proceed.

Relevant Planning History

P/2013/1032	Erection of storage shed	Approved
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P/2006/1248
P/2003/1285

Single Storey Extension
Erection of Metal Shed

Approved
Approved

Planning Officer Assessment

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 key issues have been identified and will be discussed in relation to the relevant development plan policies and material considerations.

1. Principle of Development
2. Design and Visual Impact
3. Impact on residential amenity
4. Access, movement and parking
5. Ecology and biodiversity
6. Drainage and flood risk

1. Principle of Development

The proposal is to create disabled access including ramp and new entrance door. The proposed development would be to the South and East side of the existing clubhouse.

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. Design and Visual Impact

Paragraph 131 of the National Planning Policy Framework (NPPF) states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. 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 139 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, taking into account any local design guidance and supplementary planning documents. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space.

Policy BH5 of the Brixham Peninsular Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area.

This aspect of the proposed development attracted the following Resident Representation(s):

- i) One objection to the proposed development stated they opposed the proposed railings as they consider the design and colour them to be out of character to the area. (Addressed in point 'c' below.)
- ii) Objections were lodged concerning the use of an aerial photograph as part of the application. The photograph incorrectly that showed the 'grassed triangle' area to be part of the bowling club site, including using a redline around this area. The document is labelled as 'PH001 Photos 23.72_05'. (Addressed in point 'f' below.)

The proposed development is considered acceptable for the following reasons:

- a) The proposed development will not adversely affect the already existing clubhouse/pavilion setting – it will not introduce an out of character development to the site and wider area 'recreational setting'.
- b) The proposed widening and lengthening of the existing path are limited in size, width and scope. The proposed will not have an adverse impact on design or setting of an existing club house and the wider 'recreational setting/context'. The relatively small increase in hard surfacing will not unduly unbalance the existing wider recreational setting.
- c) The site is not in the conservation area. The proposed railings on both sides of proposed path are acceptable for the use type, existing clubhouse/pavilion and wider recreational area setting. Due to the location and the slope most of the proposed railings will go largely unseen. The railings are proposed for part of the South elevation (the area seen from the road) and not the entire length. The proposed railings on the East elevation will be largely or entirely unseen from the street. The proposed white colour is acceptable for the recreational context outside of a conservation area.
- d) The proposed introduction of a new door to the South elevation will not have an adverse effect on the clubhouse/pavilion or the wider recreational setting.
- e) The proposed widening of the gate area to the West of the site, meeting with the road, will not have an adverse impact on the design and character of the existing development or the wider setting. The proposed materials are acceptable and will not be alien to the site or neighbourhood.
- f) The photographs are considered as supplementary information and are not considered part of the application. The Site Location Plan, which does form part of the formal application does not include the 'grassed triangle' area. The 'grassed triangle' area shown on as 'PH001 Photos 23.72_05' is not considered part of this planning application. The photographs will not form part of the application if approved.

The proposal is not considered to result in any unacceptable harm to the character or visual amenities of the locality and is considered to be in accordance with Policies DE1 of the Local Plan, Policy BH5 of BPNP, and the guidance contained in the NPPF.

3. Impact on Residential Amenity

Policy DE3 of the Local Plan states that development proposals should be designed to ensure an acceptable level of amenity for future and neighbouring occupiers.

Policy BH5 of the Brixham Peninsular Neighbourhood Plan states that all new development should demonstrate good quality design and respect the character and appearance of the surrounding area.

This aspect of the proposed development attracted the following Resident Representation(s):

- i) The proposed development would reduce land available for public use. (Addressed in point 'a' below.)
- ii) Potential lighting would result in light pollution in bedroom window(s). (Addressed in point 'b' below.)
- iii) The position of the door would result in loss of privacy. (Addressed in point 'b' below.)
- iv) The proposed development would set a precedent for future development/expansion. (Addressed in point 'c' below.)

The proposed development is considered acceptable for the following reasons:

- a) The proposed development is within the curtilage of the site as shown on the Site Location Plan submitted with the application. The proposed development is not extending outside the curtilage. As the aerial photo included as supplementary information to the application incorrectly included the 'grassed triangle' area it understandably was cause for concern. The photographs would not form part of an approved planning application. The site is defined by the Site Location Plan.
- b) The proposed development will not result in adverse impacts on the amenity and privacy of the occupiers of neighbouring properties. The use is reasonable for this existing development type and use. The dwellings are a significant distance from the site, on the other side of the road. It is considered very unlikely light will spill into windows will occur. The position of the door and its likely use will not result in overlooking or intervisibility with neighbours across the road.
- c) Concerns from objectors the 'grassed triangle' area may be turned into carparking for disabled visitors or otherwise is a thoughtful and understandable assessment given the error in the supplementary document that included photographs ('PH001 Photos 23.72_05'). As discussed above, this document would not form art of the approved documents. The application before the LPA relates only to the area shown with a redline of the Site Location Plan. The proposed development is within the curtilage of the site.

The proposal is not considered to result in any unacceptable harm to the amenity of neighbours or the wider the locality and is considered to be in accordance with Policy DE3 of the Local Plan and the guidance contained in the NPPF.

4. Access, Movement and Parking

Policy TA2 'Development Access' of the Local Plan states all development proposals should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. Policy TA3 'Parking Requirements' states the Council will require appropriate provision of car, commercial vehicle and cycle parking spaces in all new development. The policy states the loss of on-street or public parking provision will be a material consideration in planning applications.

This aspect of the proposed development attracted the following Resident Representation(s):

- i) Objectors are concerned the proposed development will result in conflict with road users and undermine the safety of both road users and those using the widened access area (pedestrian and wheelchair/buggy users). Objectors point out there is often parking on the double yellow lines and that the road narrows in this area. (Addressed in point 'd' below.)

The proposed development is considered acceptable for the following reasons:

- a) The proposed development will provide access to the bowling greens and not just the club house and some of the external areas as is currently the case. The proposed development will significantly increase access across the entire site allowing for a wider range of users to participate in the offering. The proposed development will provide access to the greens which is not currently the case.
- b) The proposed development will provide access to the greens from the clubhouse/pavilion by introducing a door to the South elevation. This will reduce awkwardness travelling around the clubhouse/pavilion to access the greens and vice versa.
- c) In documents supplementary to the application the proposed development is reported to meet disability user standards (incline, decline, width, railing height and type).
- d) The proposed development is not likely to result in an increase in hazard or undermine the safety of users. The LPA's Community Safety Team was consulted and did not object to the proposed development.
- e) In terms of parking, the proposed development does not make any changes to the existing on-street parking arrangements. There is no off-street parking at the site. The proposed development does not result in the need for more or different parking arrangements.

The proposed development is considered to accord with Policies TA2 and TA3 of the Torbay Local Plan.

5. Ecology and Biodiversity

The NPPF provides guidance 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 187). Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. The Brixham Peninsula Neighbourhood Plan does not include a specific policy for ecology and biodiversity (aside from Policy E8 that is specific to Internationally and nationally important ecological sites and species – which this site is not a part of).

This aspect of the proposed development attracted the following Resident Representation(s):

- a) The objector has concerns the proposed development will extend further into the 'grassed triangle' area than shown on the plans – adversely affecting the natural environment and removing currently open space from human use.

The proposed development is considered acceptable for the following reasons:

- a) The Torbay Wildlife Trigger Table was submitted with the application. No column was ticked which would trigger the need for an ecology study to be undertaken. The application is not liable for Biodiversity Net Gain (BNG) due to the de minimis exemption.
- b) It is suggested in the application the proposed development may include some lighting on some parts of the pathway (which may be a requirement under Disability legislation). As the site is within the 'Horseshoe Bat 5km Buffer Zone' and this is an open site with numerous dark areas, the LPA considers it reasonable to condition a scheme of external lighting. The scheme shall be developed with a suitably qualified ecologist. The scheme shall be submitted to and approved in writing by the Local Planning Authority prior to first use of the proposed development.

The proposed development is considered to accord with Policy NC1 of the Torbay Local Plan.

6. Drainage and Flood Risk

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 development is considered acceptable for the following reasons:

- a) The submitted Flood Risk Assessment form (dated 26.09.2024) states a SUD system will be provided. It is a condition of development approval the SYD system will be designed in accordance with BRE 365 for the critical 1 in 100 year storm event plus 50% climate change. To adhere to current best practice and take account of urban creep, the impermeable area of the proposed development must be increased by 10% in surface water drainage calculations. The proposed SUD system must be installed and operational prior to the first use of the proposed development – and maintained for the life of the development.
- b) The proposed drainage solution has been considered by South West Water and deemed acceptable.

The proposal is considered to accord with Policies ER1 and ER2 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

Minor development with limited impact on economic benefits. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

The Social Role

The principal social benefit of the proposed development would be the improved access to the facility and widening of participation. On balance, the social impacts of the development weigh in favour of the development.

The Environmental role

With respect to the environmental role of sustainable development, the elements that are considered to be relevant to the proposed development are impacts on the streetscape, ecology, biodiversity and surface water drainage. These matters have been considered above. The proposed development is considered in terms of the environmental element of sustainable development the balance is in favour of the development.

Sustainability Conclusion

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

Human Rights and Equalities Issues Human Rights Act:

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

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

Local Finance Considerations

S106 – Not applicable.

CIL - 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.

BNG

The application is not liable for Biodiversity Net Gain (BNG) due to the de minimis exemption.

Proactive Working

In accordance with paragraph 38 of the National Planning Policy Framework the Council has worked in a positive and creative way and has concluded that the application is acceptable for planning approval/imposed conditions to enable the grant of planning permission.

Conclusions and Reasons for Decision

The proposal is acceptable in principle; would not result in unacceptable harm to the character of the area or neighbouring living conditions; would provide acceptable arrangements in relation to highway safety, flood risk, and ecological constraints. The proposed development is considered acceptable, having regard to the Torbay Local Plan, the Brixham Peninsula Neighbourhood Plan, and all other material considerations.

Officer Recommendation

Approval: Subject to;

- The conditions as outlined below with the final drafting of conditions delegated to the Divisional 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 Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

Conditions:

1. Drainage

In accordance with the submitted flood risk signed/dated 26.09.2024 surface water drainage shall be provided by means of soakaways within the site which shall comply with the requirements of BRE Digest 365 for the critical 1 in 100 year storm event plus 50% for climate change unless an alternative means of surface water drainage is submitted to and agreed in writing by the Local Planning Authority prior to installation. To adhere to current best practice and take account of urban creep, the impermeable area of the proposed development must be increased by 10% in surface water drainage calculations. The development hereby approved shall not be occupied or brought into use until the agreed drainage scheme has been provided and it shall be retained and maintained for the lifetime of 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 the guidance contained in the NPPF.

2. Lighting

Prior to the installation of a lighting scheme for the proposed development, a lighting design scheme shall be submitted to and approved in writing by the Local Planning Authority. The Lighting Design scheme shall be implemented and maintained and retained as approved for the lifetime of the development.

Reason: To prevent disturbance to bats, including greater horseshoe bats, in accordance with Policy NC1 of the Adopted Torbay Local 2012-2030, Policies E1 and E8 of the BPNP and 2030 the guidance contained in the NPPF.

Policies:

Torbay Local Plan

Policy SS3 Presumption in favour of sustainable development
Policy SS8 Natural environment
Policy SS14 Low carbon development and adaptation to climate change
Policy NC1 Biodiversity and geodiversity
Policy DE1 Design
Policy DE3 Development amenity
Policy DE5 Domestic extensions
Policy ER1 Flood risk
Policy ER2 Water management
Policy SDB1 Brixham Peninsula
SC2 – Sport, leisure and recreation
ER1 - Flood risk
ER2 – Water management
SC1 – Healthy bay
TA2 - Development access
TA3 - Parking requirements
NC1 - Biodiversity and geodiversity

Brixham Peninsular Neighbourhood Plan, adopted June 2019

BH5 - Good design and the town and village Design Statements
BH7- Sustainable construction

Meeting: [Planning Committee](#)

Date: [3 February 2025](#)

Wards affected: [All](#)

Report Title: [Appeal Monitoring Report](#)

Cabinet Member Contact Details: [Councillor Chris Lewis. Cabinet Member for Place Development and Economic Growth and Deputy Leader of the Council.](#)
chris.lewis@torbay.gov.uk

Director Contact Details: David Edmondson. Divisional Director - Planning, Housing & Climate Emergency Place Directorate. David.Edmondson@torbay.gov.uk

Reporting Officer Contact Details: [Jim Blackwell. Service Manager – Development Management.](#) Jim.Blackwell@torbay.gov.uk

1. Purpose of Report

- 1.1 The report provides Members with information on the latest appeal decisions received. The constitution requires:

20. Reviews of Decisions

20.1 The Planning Committee will review, at least annually, a sample of the implemented decisions made by that committee to assess the quality of those decisions. Visits will be incorporated into the schedule of site visits arranged for that committee. The purpose is to improve the quality and consistency of decision making and will assist in reviews of planning policy and monitoring the quality of decisions as required by Best Value Performance Indicators. Members and officers will undertake reviews together and include consideration of whether there is a need to initiate a review of any policies or practices.

20.2 At quarterly meetings of the Planning Committee, the results of recent Planning Inspectorate decisions will be reported. A short report will be provided to identify whether the decision was a delegated officer decision, or one taken by the committee and briefly outlining the main issues.

2. Introduction

2.1 This report provides information on recent appeal decisions. Although all Councillors receive appeal decisions by email, the purpose of this report is to monitor and inform future decision-making. This will help ensure that future decisions benefit Torbay and its communities by allowing good quality development in the right locations and resisting inappropriate or poor quality development in the wrong locations.

2.2 Cost

It is sometimes necessary to employ a Barrister to act on the Council's behalf in defending decisions at planning appeals. This cost is met by existing budgets. Where an application is refused against Officer advice, during this interim arrangement, the Divisional Director - Planning, Housing & Climate Emergency Place along with the Chair/Deputy Chair of Planning Committee will be required to assist in defending their decision at appeal. Where applicable as planning considerations, specific issues relating to sustainability and environmental issues, equalities impact and crime prevention impact of each proposed development are addressed in the relevant report in the attached schedule.

2.3 Financial Summary

The cost of defending decisions at appeal is met by existing budgets. Costs can be awarded against the Council at an appeal if the Council has acted unreasonably and/or cannot defend its decisions. Similarly, costs can be awarded in the Council's favour if an appellant has acted unreasonably and/or cannot substantiate their grounds of appeal.

2.4 Risks

The key risk relating to appeal decisions relates to awards of costs against the Council. An appeal can be lodged by the applicant if planning permission is refused, or if planning permission is granted but conditions are imposed, or against the Council's decision to take formal enforcement action. Costs can be awarded against the Council if decisions cannot be defended as reasonable, or if it behaves unreasonably during the appeal process, for example by not submitting required documents within required timescales. Conversely, costs can be awarded in the Council's favour if the appellant cannot defend their argument or behaves unreasonably.

An appeal can also be lodged by the applicant if the application is not determined within the statutory time period. However, with major developments, which often require a Section 106 agreement, it is unlikely that the application will be determined within the statutory time period. Appeals against non-determination are rare due to the further delay in receiving an appeal decision: it is generally quicker for applicants to wait for the Planning Authority to determine the application. Costs could only be awarded against the Council if it is found to have acted unreasonably. Determination of an application would only be delayed for good reason, such as resolving an objection or negotiating improvements or Section 106 contributions, and so the risk of a costs award is low. Mitigation measures to reduce risk are detailed in the table below. The probability of these risks occurring is considered to be low due to the mitigation measures, however the costs associated with a public inquiry can be very significant. These are infrequent, so the impact is considered to be medium.

3. Recommendation(s) / Proposed Decision

3.1. That Members note the report and Appendix 1 which includes the planning appeal decisions issued between 1 October 2024 – 23 January 2025.

4. List of Appeal Decisions

4.1: Application reference: P/2024/0040

Address: 36 Lucius Street, Torquay

Description of development: The development proposed is proposed alterations and change of use from Class E to Class C.

Planning Inspectorate decision issued: 20 January 2025

Appeal reference: APP/X1165/W/24/3344516

Delegated decision

Main issues:

- the effect of the proposal on the character and appearance of the area having regard to whether the proposal would preserve or enhance the character or appearance of the Belgravia Conservation Area (CA);
- the effect of the proposal on the provision of employment space;
- whether the living conditions of future occupiers of the proposed development would be acceptable with particular regard to the provision of natural light and refuse storage; and,
- whether the proposal would help to close the gap between the most and least disadvantaged people and neighbourhoods.

Decision: Dismissed.

4.2: Application reference: P/2024/0121

Address: 8 Nut Tree Orchard, Brixham

Description of development: The development proposed is single storey extension to rear of property, flat roof with lantern, 3.2 m deep 4.9 m long.

Planning Inspectorate decision issued: 15th January 2025

Appeal reference: APP/X1165/W/24/3344286

Delegated decision

Main issues: The main issue is the effect of the development on flood risk.

Decision: Allowed.

4.3: Application reference: P/2024/0475

Address: Fosseyway West, St Agnes Lane, Torquay

Description of development: The development proposed is demolition of uPVC porch and replacement with one storey extension with terrace.

Planning Inspectorate decision issued: 23 December 2024

Appeal reference: APP/X1165/D/24/3353165

Delegated decision

Main issues: The effect of the proposed development on: (a) the character and appearance of the area, with particular regard to symmetry and the streetscene; and (b) the character and appearance of the area, with particular regard to designated and non-designated heritage assets.

Decision: Allowed. Costs refused.

4.4: Application reference: P/2024/0150

Address: 9 Thurlow Road, Torquay

Description of development: Removal of part of the existing boundary wall to allow improved access to the property.

Planning Inspectorate decision issued: 13 December 2024

Appeal reference: APP/X1165/D/24/3347211

Delegated decision

Main issues: The main issue is the effect of the proposed development on the character and appearance of the area with particular regard to the appeal sites location within the Upton Conservation Area.

Decision: Dismissed.

4.5: Application reference: P/2023/1062

Address: 13 Eugene Road, Preston, Paignton

Description of development: The development permitted is construction of detached ancillary annexe to rear of property (description of development changed on 9 January 2024 to reflect proposed development).

Planning Inspectorate decision issued: 13 December 2024

Appeal reference: APP/X1165/W/24/3349405

Delegated decision

Main issues: Planning permission Ref P/2023/1062 was granted for the construction of a detached ancillary annexe to the rear of the host property. It was subject to a number of conditions, including No 1 that required external materials to match those of the existing building. This appeal is made directly against the imposition of this condition. The appellant considers the proposed materials would be sympathetic and that the condition has been unreasonably applied. Conversely, the Council relies on its officer report which says that a composite cladding material would not be in keeping with the host dwelling.

Decision: Allowed.

4.6: Application reference: P/2023/1074

Address: 6 Laywell Close, Brixham

Description of development: Proposed garage standing in front garden.

Planning Inspectorate decision issued: 11 December 2024

Appeal reference: APP/X1165/W/24/3346839

Delegated decision

Main issues: The main issues are the effect of the proposed development on (i) the character and appearance of the area; and (ii) parking provision.

Decision: Allowed.

4.7: Application reference: P/2024/0150

Address: 9 Thurlow Road, Torquay

Description of development: The development proposed is removal of part of the existing boundary wall to allow improved access to the property.

Planning Inspectorate decision issued: 13 December 2024

Appeal reference: APP/X1165/D/24/3347211

Delegated decision

Main issues: The main issue is the effect of the proposed development on the character and appearance of the area with particular regard to the appeal sites location within the Upton Conservation Area.

Decision: Dismissed.

4.8: Application reference: P/2024/0318

Address: 4 Alison Road, Preston, Paignton

Description of development: The development proposed is formation of box dormer to south elevation.

Planning Inspectorate decision issued: 11 December 2024

Appeal reference: APP/X1165/D/24/3352341

Delegated decision

Main issues: The main issue is the effect of the proposed development on the character and appearance of the host property and surrounding area.

Decision: Dismissed

4.9: Application reference: P/2023/0524

Address: Former Korean Martial Arts, 37 Tor Hill Road, Torquay

Planning Inspectorate decision issued: 10 December 2024

Appeal reference: APP/X1165/W/23/3333004

Delegated decision

Main issues: The appellant applied to the Council to vary the approved plans as the height of the building and the dimensions of the first floor windows differ from the details shown on the plans.

The Council refused the application on 25 August 2023. The reason given for the refusal is that the proposed variation would result in development that is detrimental to the character and appearance of the host building and the Tormohun Conservation Area (the CA).

The main issue in this appeal is whether disputed condition P1 is reasonable and necessary in the interests of the character and appearance of the area, with special regard to the CA.

Decision: Dismissed.

4.10: Application reference: P/2024/0168

Address: 38 Church Street, Paignton

Description of development: Change of use from shop / restaurant to dwelling.

Planning Inspectorate decision issued: 28 November 2024

Appeal reference: APP/X1165/W/24/3345200

Delegated decision

Main issues: The main issues are the effect of the proposed development on:

- (i) The living conditions of future occupiers, having particular regard to outlook, natural light, privacy, noise and disturbance, and outdoor amenity space;
- (ii) The character and appearance of the Old Paignton Conservation Area; and
- (iii) Refuse storage.

Decision: Allowed.

4.11: Application reference: P/2023/0687

Address: 83 North View Road, Brixham

Description of development: The development proposed is the formation of an extension to rear with other external alterations.

Planning Inspectorate decision issued: 26 November 2024

Appeal reference: APP/X1165/D/24/3350973

Delegated decision

Main issues: The main issues are the effect of the proposal on a) the character and appearance of the host property and the locality and b) energy consumption and carbon emissions.

Decision: Allowed. Awards of costs refused.

4.12: Application reference: P/2023/0488.

Address: 35 Polsham Park, Paignton

Description of development: The development is a proposed detached garage with work/store area.

Planning Inspectorate decision issued: 27 November 2024

Reference: APP/X1165/W/24/3346362

Delegated decision

Main issues: The main issue is whether the proposed garage would preserve or enhance the character or appearance of the Polsham Conservation Area.

Decision: Dismissed.

4.13: Application reference: P/2023/0777 and P/2023/0778

Address: 18 Teignmouth Road, Torquay

Description of development:

The development proposed is a solar panel system to be added on to roof with associated electrical works and battery storage in loft-space.

The works proposed are a solar panel system to be added on to roof with associated electrical works and battery storage in loft space.

Planning Inspectorate decision issued: 20 November 2024

References: APP/X1165/W/24/3347465 and APP/X1165/Y/24/3347251

Delegated decision

Main issues: The main issue in both appeals is whether any harm to the heritage interest (significance) of 18 Teignmouth Road would be outweighed by the benefits of providing energy from a renewable resource.

Decision: Both dismissed.

4.14: Application reference: P/2023/1030

Address: 135 Grenville Avenue, Torquay

Description of development: The decision notice describes the development as erection of a single storey extension to outbuilding (retrospective).

Planning Inspectorate decision issued: 14th November 2024

Reference: APP/X1165/W/24/3344353

Delegated decision

Background and main issues:

- The effect of the proposed development the character and appearance of the area;
- The effect of the proposed development on the living conditions of the occupiers of 133 Grenville Avenue (No 133) with regards to outlook and overshadowing; and
- Whether the proposed development adequately deals with surface water run-off.

Decision: Dismissed.

4.15: Application reference: P/2022/1186

Address: Singleton Gardens, Meadfoot Sea Road, Torquay

Description of development: The development proposed is the erection of 7 apartments, 2 attached dwellings and extensions/refurbishments to an existing dwelling plus associated landscaping and access work.

Planning Inspectorate decision issued: 12 November 2024

Reference: APP/X1165/W/23/3333967

Committee decision

Main issues: The two main issues are: firstly, whether any harm to the significance of heritage assets would be outweighed by the public benefits of the proposed development and; secondly, whether, having regard to the information submitted in respect of the financial viability of the development, the proposal includes an adequate mechanism for securing any financial contribution towards the costs of providing affordable housing elsewhere within Torbay.

Decision: Dismissed. Costs allowed.

4.16: Application reference: P/2023/0584

Address: 9 Ilsham Road, Torquay

Description of development: The development is proposed new accommodation at rear of property.

Planning Inspectorate decision issued: 6 November 2024

Reference: APP/X1165/W/24/3340579

Delegated decision

Main issues:

- The effect of the development on the living conditions of future occupiers with regard to parking, amenity space, light levels and outlook, and the living conditions of occupiers of Bellair Cottage with regard to outlook, visual intrusion and overlooking; and
- Whether the development provides an adequate level of parking and affects highway safety

Decision: Dismissed.

4.17: Application ref: P/2024/0192

Address: Edwinstowe, Middle Warberry Road, Torquay, TQ1 1RN

Description of development: The development proposed is described as temporary retention of 1.7m front boundary fence, associated planting and permanent retention of front 2m security gate.

Planning Inspectorate decision issued: 4 November 2024

Reference: APP/X1165/D/24/3347977

Main issues: The main issue is the effect of the proposal on the character and appearance of the street scene and Warberries Conservation Area (WCA).

Decision: Dismissed.

4.18: Application ref: P/2023/0806

Address: Flat 10 Park Hall, Parkhill Road, Torquay

Description of development: The development is for the formation of decked area on roof terrace including external steps and shed.

Planning Inspectorate decision issued: 4 November 2024

Reference: APP/X1165/W/24/3343885

Delegated decision

Main issues: The main issues are the effect of the proposed development in respect of (i) the character and appearance of the area including the St Johns Wood, Park Hill Urban Landscape Protection Area, (ii) the living conditions of neighbouring properties, (iii) biodiversity, and (iv) trees.

Decision: Dismissed.

4.19: Application reference: P/2023/0978

Address: Palm Tree Court, Palm Tree View, Paignton, Torbay TQ4 7FD

Description of development: The development proposed is removal of Juliette balconies and construction of balconies to Apartments 5, 6, 7 & 8.

Planning Inspectorate decision issued: 1 October 2024

Appeal reference: APP/X1165/W/24/3342682

Delegated decision

Main issues: The main issue is the effect of the proposed development on the living conditions of nearby residents at Daveys Elm View, with particular regard to privacy.

Decision: Dismissed.

Enforcement appeals

Address: 80 Windsor Road, Torquay, TQ1 1SU

Breach of planning control alleged:

The demolition of the boundary wall and associated gate piers along the south-western boundary of the site, to create a means of access onto a Classified Highway.

Planning Inspectorate decision issued: 5 December 2024

Reference:

Appeal A Ref: APP/X1165/C/24/3340755

Appeal B Ref: APP/X1165/C/24/3340756

Decision:

The appeal is dismissed, and the enforcement notice is upheld, with the Inspector concluding that the alleged breach has happened as a matter of fact and would be a breach of the planning legislation; and that the requirements of the Notice are not excessive.

Address: 3 Manor Road, Paignton TQ3 2HT

Breach of planning control alleged:

- The demolition of the boundary wall and metal railings along the north-eastern boundary of the site, to create a means of access onto a classified highway.
- The erection of an outbuilding on the eastern boundary of the above land in excess of 2.5 metres in height within 2.0m of the boundary.

Planning Inspectorate decision issued: 5 December 2024

Reference: APP/X1165/C/24/3341395

Decision:

The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Address: 78 Spencer Road, Paignton TQ3 3SY

Breach of planning control alleged:

- The breach of planning control as alleged is: Without planning permission the carrying out of building and engineering operations in the front garden fronting on to Spencer Road, to erect retaining walls raising the land and the laying of a hardstanding and perimeter wall for the formation of off-road parking.

Planning Inspectorate decision issued: 5 December 2024

References:

Appeal A Ref: APP/X1165/C/24/3343570

Appeal B Ref: APP/X1165/C/24/3343571

Decision:

The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appendices

Appendix 1:

Planning appeal decisions issued between 1 October 2024 – 23 January 2025

Total	21	
Allowed	7	33
Dismissed	13	62
Withdrawn	1	5
Split	0	0