

Friday, 13 June 2025

**PLANNING COMMITTEE**

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

**Monday, 23 June 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

Councillor Mandy Darling

Councillor Fox (Vice-Chair)

Councillor Pentney

Councillor Strang

Councillor Tolchard

Councillor Virdee

---

**A Healthy, Happy and Prosperous Torbay**

---

Download this agenda via the free modern.gov app on your [iPad](#) or [Android Device](#). For information relating to this meeting or to request a copy in another format or language please contact:

**Governance Support, Town Hall, Castle Circus, Torquay, TQ1 3DR**

Email: [governance.support@torbay.gov.uk](mailto:governance.support@torbay.gov.uk) - [www.torbay.gov.uk](http://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 31 March 2025.

(Pages 5 - 6)

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. **Unit 12 - 12A Torbay Trading Estate, New Road, Brixham, TQ5 8NF (P/2024/0311)**

Redevelopment of the former Jewson site consisting of demolition of existing commercial building and erection of new three and four storey residential building to comprise 17no. two-bedroom flats.

(Pages 7 - 60)

## **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](mailto: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](mailto: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, 18 June 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](mailto: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.

This page is intentionally left blank

**Minutes of the Planning Committee**

**31 March 2025**

**-: Present :-**

Councillor Brook (Chairman)

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

---

**84. Apologies for absence**

An apology for absence was received from Councillor Pentney.

It was reported that, in accordance with the wishes of the Conservative Group, the membership of the Committee had been amended to include Councillor Bye in place of Councillor Strang.

**85. Minutes**

The minutes of the meeting of the Committee held on 3 March 2025 were confirmed as a correct record and signed by the Chairman.

**86. Land at Princess Gardens, Off Torbay Road, Torquay (P/2025/0061)**

The Committee considered an application for the change of use of land for the temporary erection and operation of 45m high observation wheel and ancillary development, for four seasonal years (between the period of March to October 2025-2028).

Prior to the meeting, written representations were available on the Council's website. The Chairman read out a representation received on behalf of the Torquay Neighbourhood Forum in support of the application. Jon Pope addressed the Committee in support of the application.

At the meeting the Planning Officer advised, that since the report had been published, three further letters of representation had been received from Torbay Heritage Trust objecting to the application on the grounds of the appearance of green spaces and protecting heritage assets.

Resolved (unanimously):

Approved subject to:

1. prior to the grant of planning permission, a 'Conservation Mitigation Obligation' to the sum of £110,000 be secured through a legal agreement, for improvement works identified within the committee Princess Gardens Masterplan Report Update, for the Registered Park and Garden;
2. the planning conditions as set out in the submitted report with the final drafting of conditions, delegated to the Divisional Director of Planning, Housing and Climate Emergency; and
3. the resolution of any new material considerations that may come to light following the 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.

---

Chairman

## TORBAY COUNCIL

Application Site Address	Unit 12 - 12A Torbay Trading Estate New Road Brixham TQ5 8NF
Proposal	Redevelopment of the former Jewson site consisting of demolition of existing commercial building and erection of new three and four storey residential building to comprise 17no. two-bedroom flats.
Application Number	P/2024/0311
Applicant	McCarthy Contracting & Development Ltd
Agent	Kay Elliott
Date Application Valid	29/05/2024
Decision Due date	28/08/2024
Extension of Time Date	06/06/2025
Recommendation	<p>Approval: Subject to;</p> <ul style="list-style-type: none"> <li>• The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency;</li> <li>• The completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone;</li> <li>• The consideration of any further representations received once the public consultation following readvertisement and notice period have concluded to be delegated to the Divisional Director of Planning, Housing and Climate Emergency; and</li> <li>• 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.</li> </ul> <p>If Members of Planning Committee are minded to refuse the application against officer recommendation, final drafting of the reason(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 to it being of a major nature.
Planning Case Officer	Emily Elliott

## **Location Plan:**



## **Site Details**

The site, Unit 12-12A, Torbay Trading Estate, New Road, Brixham, comprises of a parcel of land that contains a large industrial unit on the southern flank of New Road, Brixham. The building onsite has been adapted over the years. The site comprises a site area of 963 square metres.

The site is currently occupied by a tenant operating the existing buildings as a single unit as a car garage. The site forms part of a former large paint manufacturing facility. The existing building has been extended and adapted over the years which detracts from its original art deco style façade. The existing building is considered to be in a relatively poor condition. The western flank has a large dominating wall to separate the frontages of the application site from the adjacent residential use.

The site is allocated under Policy BH3 of the Brixham Peninsula Neighbourhood Plan as a housing site (Former Jewson) for 20no. affordable units not open market units.

The site is located within the Brixham Peninsula Strategic Delivery Area (Policy SS1 of the Local Plan). The site is within the Sustenance Zone and Landscape Connectivity Zone associated with the South Hams Special Area of Conservation (designation related to the Greater Horseshoe Bat colony at Berry Head). The site is partially designated as Flood Zone 3 and the remainder of the application site is designated as Flood Zone 1 and within a Critical Drainage Area. The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The application site is located approximately 300 metres to the west of the designated Brixham Town Centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site.

It should be noted that the site address was incorrect with the initial submission and rectified upon receipt of the Title Deed for the application site, the application was then re-advertised for a 21 day period.

### **Description of Development**

The proposal seeks permission for the redevelopment of the former Jewson site consisting of demolition of the existing commercial buildings and the erection of new three to four storey residential building to comprise 17no. two-bedroom flats, together with access, landscaping and associated works at Unit 12-12A Torbay Trading Estate, New Road, Brixham. The vehicular access would be from the southern side of New Road and 12no. unallocated parking spaces are proposed.

The proposed development is three to four storeys in height. The proposed building would have an approximate height of 12.6 metres, an approximate width of 22 metres, and an approximate depth of 27.6 metres. The proposed design incorporates a flat roof and the built form of the frontage (north elevation) is stepped back.

The proposed material palette includes a stone clad plinth to the ground floor, a white rendered finish to the first and second floors, and hung slate cladding to the third floor. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

### **Relevant Planning History**

No relevant planning history relating to the 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 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);
- 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. At the time of writing approximately 5 letters of objection have been received. The following provides a summary of the main issues identified:

#### **Objections include:**

- Drainage
- Loss of light
- Noise
- Privacy/overlooking
- Loss of employment land
- Sets precedent
- Impact on local area
- Not in keeping with local area
- Overdevelopment
- Traffic and access
- Density
- Agent of change

### **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:**

Response dated 21/06/2024

No objection.

**Torbay Council's Senior Environmental Health Officer:**

Response dated 30/04/2025

Please could you include a condition on any consent as follows?

*Cumulative noise from all mechanical building services plant shall not exceed a rating noise level of 51dB (07:00 to 23:00) or 17dB (23:00 to 07:00), measured in accordance with BS4142:2014 at 1m from the façade of any noise sensitive receptor.*

*To protect the amenity of those living and working nearby*

Response dated 23/04/2025

### **Existing Noise and Impacts on Amenity of Future Residents**

The report demonstrates that the levels of environmental noise affecting this site would require mitigation in order to achieve suitable internal and external noise levels. Proposed specifications for the acoustic glazing and ventilation elements are included. The report does not specifically address the question of noise, ventilation and overheating. If noise levels with the windows open are too high, the residents may feel forced to choose between thermal comfort (opening the windows) and acoustic comfort (quiet conditions). This matter requires further consideration by the applicant, and it might be that mechanical ventilation to prevent over heating is required. I accept however that the required information to specify the full details of such a system may not be available at this time.

The report provides no detailed information on how suitable external noise levels will be achieved (in amenity areas). There appears to be little private amenity space provided within the development. This is something that the planning officer may wish to consider further (i.e. whether sufficient quality or quantity of amenity space is provided to meet planning policy).

Having considered the report, I recommend the following condition is included on any consent:

*Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic*

*Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.  
Reason: To protect the amenity of the occupants of the development.*

### **Noise from the Development**

The development includes a communal plant room. No assessment of noise from this has been completed, and without background noise levels it is not possible to recommend a condition setting suitable plant noise limits.

Please could you ask the applicant's consultant to provide typical background noise levels which can be used to set plant noise limits? (typically, we would expect new building services plant to achieve a rating noise level of 5dB below background levels).

Previous response dated 05/06/2024 that relates to the original submission

### **Torbay Council's Principal Policy and Project Planner:**

Response dated 06/06/2024

I refer to the above consultation request for 17 x 2 bed flats at the former Jewson site, New Road, Brixham. Although listed as 12-12A new Road, the address appears to me to be number 50 New Road. The site is allocated for 20 affordable dwellings under Policy BH3 of the Brixham Peninsula Neighbourhood Plan.

I have recently set out Brixham's housing need and supply position in some detail in my policy comments on Copythorne Road (P/2022/0480), which I will not repeat here. In summary, Brixham has between 2012-2024 met its housing requirement under Policies SS12 and SDB1 of the Local Plan (which is repeated in in BH3 of the BPNP). However, there are very few opportunities for the parished town of Brixham to meet future housing needs without requiring development in the BCG Villages area. Inglewood at the furthest end of the Peninsula will be the main source of new dwellings over the next few years. At a Torbay level, there is a serious housing shortfall measured either against 5-year supply or housing delivery test, and the presumption in favour of sustainable development is triggered. Both the Local Plan (Policies SS1 and H1) and the NPPF (Chapter 11) seek to make effective use of land, particularly on brownfield sites.

There is already pressure for development outside of Brixham's built envelope into the National Landscape. The council has to date sought to resist major development in the AONB (e.g. P/2021/0890 at Upton manor Farm, and P/2023/0480 at Copythorne Road). However, pressure for the release of housing land in the BCG Villages is likely to grow unless concerted efforts are made to maximise the potential of sites within the built up area. As such there is a strong policy support for the principle of development on the former Jewsons site. It will be very important to maximise the site's housing

potential, and from a policy point of view consideration should be given to achieving more than 17 dwellings, especially as the BPNP allocation is for 20.

I appreciate that this may raise design and massing issues that will need to be considered as part of the wider planning balance. The December 2023 NPPF has strengthened the requirement to build well-designed and beautiful places. Paragraph 130 of the Framework indicates that significant uplifts in urban density may be inappropriate if the resulting built form would be wholly out of character with the existing area. Brixham Town Conservation Area runs the North side of New Road, and the site is close to the listed former Chapel (85 New Road): so the proposal will affect the setting of designated heritage assets, even though it is located outside of the Conservation Area.

The site is allocated in the BPNP for affordable housing rather than market housing. This is above the Local Plan Policy H2 requirement for 15% (20% if 20 or more dwellings could be achieved). I do not know if the BPNP's higher requirement was supported by the site's owners or if it is the intention of McCarthy's to develop the site as affordable housing. It will almost certainly not be viable to deliver 100% affordable housing on the site through S106 "developer contribution". However, consideration should be given to whether the site could be sold to a Registered Provider and affordable housing provided via public subsidy. Policy BH2 of the BPNP would still require first choice of affordable housing to be for residents of the Brixham Peninsula. It is not clear whether the applicant wishes to claim vacant building credit from existing floorspace in relation to affordable housing. The site may be CIL liable at 427 sq. m of additional floorspace i.e. £29,890. I would generally recommend that a site should be treated as ineligible for VBC, and CIL liable: or eligible for VBC but CIL liable (rather than both or neither). In any event, delivery of the site as affordable housing could help achieve a more viable development, and I would advise that McCarthy's could discuss possible options with Sam Irving.

If McCarthy's wish to construct open market dwellings, then there would be a residual requirement for 15% affordable housing based on 427 sq. m, which would be about 1 dwelling. There would also be a conflict with the BPNP allocation, although this is unlikely to obviate the strong tilted balance reasons to approve the application (leaving aside design, massing and other considerations).

The site is adjacent to employment land and there are obvious amenity issues. However, the site is allocated for housing, so amenity and "agent of change" type issues must have been taken into account. It may be that there is greater emphasis on redevelopment of Torbay Trading Estate for residential (BPNP H3-15) rather than employment (J1-3). However, that is really a matter that the updated Neighbourhood Plan or Local Plan should address.

In conclusion, I support development of the brownfield site. I appreciate that there will be design, access and amenity (etc.) issues that need detailed consideration. The site may be well suited for affordable housing (as per its Neighbourhood Plan designation).

**Torbay Council's Head of Strategic Housing and Development:**

Response dated 08/04/2025

The viability was examined at that time, and the scheme was considered to be unviable to provide any Affordable Housing either on or off site.

Therefore, the comments that were previously submitted remain relevant as this is unlikely to have been improved by the changes that are suggested.

Previous response dated 05/09/2024

Further to the comments provided by the Strategic Housing Service on 05 July 2024, we are aware that an independent review of viability has now been undertaken by a third party RICS Valuer for the above site.

This review has concluded that it would not be viable for the scheme to provide any affordable housing on-site or off-site as a contribution, having made an assessment about scheme incomes and benchmark costs. We are prepared to accept the independent findings of the external valuer and consequently rescind our previous comments in respect of seeking an affordable housing obligation from the proposed scheme.

Previous response dated 05/07/2024

The proposal seeks to redevelop a prominent, art deco-style commercial building from the early 20th century in Brixham, into 17-units of modern, flatted housing. The developer has outlined an intention to deliver homes that are likely to appeal to local people, including small families, couples and single people. If approved, it is considered that this may help regenerate a key part of the town and provide much-needed homes for local households. The local housing need profile is outlined below, clearly demonstrating a substantial need for new affordable homes, by local households:

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

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

The relevant affordable housing policy for this site is contained within Policy H2 of the adopted Torbay Local Plan. For brownfield sites such as this, there is a requirement to provide 15% affordable housing; based on a scheme of 17-units, an obligation of 2.55 affordable homes is required. This can be provided as either:

**Scenario 1** (rounded to the nearest whole unit):

- 3 x 2-bedroom (3-person) flats for Affordable Rent

**Scenario 2** (provided exact):

- 2 x 2-bedroom (3-person) flats for Social Rent
- 0.55 x off-site contribution

If Scenario 2 is preferred, the off-site contribution will be calculated by taking 55% of the Smaller Dwelling tariff (£115,400) set out in Torbay's adopted Planning Contributions and Affordable Housing SPD, to account for the fraction of a unit required in this instance. This equals £63,470, inclusive of enabling activity fee.

It should be noted that the application makes reference to perceived viability challenges on the site; however, this has not been substantiated with any evidence and as such, cannot be taken into consideration, currently. Where viability is cited as a reason for reducing any affordable housing obligation, this will need to be substantiated through an evidence-backed, fully objective Economic Viability Appraisal for review by the Council. This may also necessitate the Council securing independent advice on the validity of the information provided, with 100% of any costs incurred being paid for by the planning applicant.

Notwithstanding the above, if the scheme comes forward with a planning policy compliant affordable housing proposal, then the Strategic Housing Service would be pleased to offer its support for the scheme. This is in light of the benefits it will bring to helping local families secure good quality new affordable housing and the opportunity to support the economic growth and prosperity of Brixham.

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

- A Default Mix as outlined in Scenario 1, with an Alternative Mix as outlined in Scenario 2. With obligations to agree in writing with the Council prior to start on site, which of the two options will be taken forward;
- All on-site flats to be built to at least relevant Nationally Described Space Standards minimum sizes for the relevant dwelling;
- On-site affordable dwellings to meet category M(4)(2) of the Building Regulations, in respect of accessible housing;
- The developer to have agreed in writing with the Head of Strategic Housing prior to start on site, 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;
- Where Scenario 2 is used, prior to occupation, sale or transfer of the second open market dwelling to have paid to the Council not less than 50% of the affordable housing off-site contribution of £63,470 (index linked, and inclusive of Enabling Activity Fee, with any balance to be paid prior to the occupation, sale or transfer of the 9th open market home on the site);
- The Council to invest any off-site contributions into the provision of alternative affordable housing elsewhere within Torbay, within 10 years of the date of receipt, and for the money to be returned to the developer if not invested within this period; and,
- 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.

### **Torbay Council's Drainage Engineer:**

#### Response dated 31/03/2025

I can confirm that I have no objections on drainage grounds to planning permission being granted for the above development.

#### Previous response dated 28/06/2024

I can confirm that providing the surface water drainage is constructed in accordance with submitted drainage layout drawing and the submitted hydraulic designs, and the flood mitigation measures identified within the site specific flood risk assessment are incorporated into the final development, I have no objections on drainage grounds to planning permission being granted for the above development.

## **Torbay Council's Principal Historic Environment Officer:**

Verbal response received 29/04/2025

The proposed development would have a neutral impact on the Brixham Town Conservation Area and the setting of the Grade II listed building.

## **South West Water:**

Response dated 07/04/2025

As the amendments do not impact or affect South West Water infrastructure, there are no further observations to our previous reply of June 2024.

Previous response dated 28/06/2024

### 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, please note that method proposed to discharge into a surface water body is acceptable and meets with the Run-off Destination Hierarchy. 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.

#### **Environment Agency:**

#### Response dated 24/03/2025

The information submitted does not change our position from the attached response dated 20th June 2024.

#### Previous response dated 20/06/2024

We have no objections to the proposed development subject to the inclusion of conditions on any permission granted. Conditions include unsuspected contamination and the implementation of the flood risk assessment. An informative should also be included regarding culverted watercourses.

Before you determine the application, your Authority will also need to be content that the flood risk Sequential Test has been satisfied in accordance with the National Planning Policy Framework (NPPF) if you have not done so already. As you will be aware, failure of the Sequential Test is sufficient justification to refuse a planning application. Additional guidance on the application of the sequential test is provided at the end of this letter.

**SWISCo's Senior Tree Officer:**

Response dated 15/04/2025

No objection. The existing site is a commercial premises, the structures of which dominates the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity.

A tree survey has been carried out in accordance with BS5837. This identifies trees which are unsuitable for retention based on their current condition.

The proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene.

Proposed planting should be taken forward in this area and further detail on the soil planting volumes and appropriate tree species should be secured as part of the soft and hard landscape details. The use of structural soils and or bespoke tree planting pits may be required. Porous surfaces above tree pits may help with surface water management, and soil rooting volumes should be consistent with advice from the Tree Design Action Group to ensure species suitability for the available space.

Recommendations:

The provision of two trees on the roadside frontage should be incorporated into the detailed hard and soft landscape design for the development. A planning condition should secure all the relevant information to enable new tree planting to be secured, established and to for the chosen trees to achieve their species potential at maturity.

Previous response dated 20/06/2024

**Devon County Council's Principal Ecologist:**

Response dated 01/04/2025

I do not believe that the minor changes to layout/design change our comments from June 2024. I believe that ecological consultation response remains valid.

Previous response dated 10/06/2024

### Phase 1 Walkover Survey

Preliminary Ecological Appraisal undertaken on 20th April 2023. Report states that results are valid for 2 years from the assessment date, although more up-to-date data may be required for a planning application dependent on conditions and impacts.

Although the assessment is >1year, due to the findings within the report (i.e. negligible suitability for roosting bats) and nature of the buildings, the assessment is considered suitable to support this application.

### South Hams Special Area of Conservation for Greater Horseshoe Bats

Site lies within Sustenance Zone of South Hams SAC for GHB. Although the site is within proximity to the designated roosts at Berry Head, it is deemed that there are no habitats within the site that could support foraging or commuting by GHBs and the surrounding area appears well lit by both external and internal light sources. It is therefore considered unlikely that this species passes through the site and proposals would not cause a likely significant effect to the SAC. HRA is not required.

As the site is within the Sustenance Zone, excessive lighting should be discouraged therefore a condition relating to external lighting is appropriate.

### Bat Roosts – Buildings/Trees

Internal and external inspection carried out April 2023 which assessed the building as having negligible suitability for roosting bats due to a lack of roosting features and internal conditions. No impacts to roosting bats anticipated.

Report includes provision of an integrated bat box into the proposed building as an ecological enhancement and an informative regarding roosting bats. Enhancement considered proportionate and is encouraged. A condition is required to ensure the development is carried out in accordance with the actions of the Bat Preliminary Roost Assessment Update (Abbas Ecology, April 2023).

### Nesting Birds/Schedule 1 Birds

Evidence of former nesting by herring gull and potential nesting by house sparrow noted. Building demolition and vegetation removal at the end of building section 3 has potential to harm nesting birds.

Demolition and vegetation removal would likely impact nesting birds and result in a loss of nesting opportunities.

Timing restrictions on vegetation and building demolition removal including nesting birds checks by ecologist. Vegetation to be removed September to February or March/July/ August following check by an ecologist. Building to be demolition September to February or at other times following a check by an ecologist. Two integrated sparrow terraces and climbers to be installed/planted within new building walls.

Sensitive timing and checks will avoid impacts to nesting birds and two nest boxes considered appropriate to mitigate for the loss of nesting opportunities, a planning condition should be employed to secure such.

#### Urban Design for Wildlife and Access to Nature

Ecological report details enhancement measures including bee bricks.

Two bee bricks to be included in the southern wall of the new building at a height of at least 1m. Enhancement considered proportionate and is encouraged.

#### **Police Designing Out Crime Officer:**

##### Response dated 02/04/2025

From a designing out crime, fear of crime and anti-social behaviour perspective having reviewed the amended plans, I would still refer to my previous submission which is still relevant and at this time having nothing further to add.

##### Previous response dated 13/06/2024

From a designing out crime, fear of crime and anti-social behaviour perspective, it is welcomed to see the attached crime prevention statement and the measures included within it, which I support.

I have been involved in discussions with the applicant prior to this planning submission and my only comment would be regarding the secondary pedestrian access which it would be recommended to installing a gate to demarcate it as a private space to residents only. This will prevent it become used as a cut through or area which anti-social behaviour might occur and causing potential problems for the residents living along the pathway.

#### **WSP on behalf of the Local Highway Authority:**

##### Response dated 28/05/2025

### Cycle parking

The proposed cycle parking design issues remain outstanding as per the previous response dated 30th April 2025.

In order to resolved this issue, the Highway Authority recommend the following condition should the planning officer be minded to grant permission:

Prior to commencement of the hereby approved application, notwithstanding cycle parking design indicatively shown on submitted drawing no. 4959-KEA-ZZ-ZZ-DR-A-22010-A4-P4, a design that provides secure and practical cycle stands in line with the DfT's LTN1/20 cycle parking best standards must be submitted to the planning authority for approval. Once approved, the cycle parking design must be retained and maintained across the full lifetime of the site.

Reason: To ensure safe and suitable cycle parking is provided to encourage cycle usage as per Torbay Local Plan standards TA1 , TA2, TA3.

### Footway adoption / Access

The issues raised in the previous response dated 30th April 2025 have not been fully resolved, however it is noted an updated red line boundary (4959-KEA-XX-XX-DR-A-01000-A4 P5) has been submitted to the portal. Based on the submitted site plan, it remains unclear as to whether the proposed access will tie in with the existing kerbs along the site frontage. Should the Planning Officer been minded to approve the application, then the following planning condition is recommended.

Prior to commencement of the hereby approved application, notwithstanding the access design shown on the on Drawing No. 4959-KEA-ZZ-XX-DR-A-12001-A4-P4, a detailed design that demonstrates how the proposal ties in with the existing footway network must be submitted to the planning authority for approval.

The applicant must note that as part of the proposals, any changes to the highway including lighting must be at their cost.

### Conclusion

The Highway Authority does not wish to raise an objection subject to the recommended planning conditions.

Any sustainable travel obligations / CIL should be determined by the Planning Officer.

Construction Traffic Management Plan which follows the standard Torbay Council wording must also be implemented to any granting of permission.

### Multiple previous responses received in 2024 and 2025

## **Active Travel England:**

Response dated 24/03/2025

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.

## **Planning Officer Assessment**

### Key Issues/Material Considerations

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

### **1. Principle of 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, it retains its statutory force, but the focus shifts onto other material considerations particularly the NPPF and presumption in favour of sustainable development.

### Employment

Policy SS5 of the Local Plan outlines that proposals for the loss of employment space will be considered on the basis of the impact on the economic prosperity of Torbay, the appropriate mix of uses within a locality and on amenity. Where there is no reasonable prospect of a site being used for other (non-Use Class B) employment purposes or such a use would conflict with the Local Plan, alternative uses that support sustainable local communities will be supported. Where the proposed loss of employment space is agreed, the Council will seek financial contributions to mitigate the loss of employment.

The proposal will result in the loss of an employment use, albeit small scale with a tenant operating the premises as a vehicle mechanics workshop. Objectors have raised concerns regarding the loss of employment land. The adjacent Torbay Trading Estate will remain unaffected by the proposed development and continue operation. It is noted that the Neighbourhood Plan allocates a portion of the Trading Estate for housing (15no. units). As the application site is allocated for housing, the loss of employment is anticipated and therefore the proposal is considered to accord with Policy SS5 of the Local Plan.

### Housing

The site is allocated under Policy BH3 in the Neighbourhood Plan as a housing site for 20no. affordable units (Former Jewson). The building currently in this location has no constraints with regards to its retention and the principle of meeting the Neighbourhood Plan allocation is considered to be acceptable. The proposed development is for 17no. residential units in this location, which is below the policy allocation. The Council's Principal Policy and Project Planner has stated that consideration should be given to achieving more than 17no. units, however scale and design are matters that should be considered within the wider planning balance. Objectors have raised concerns regarding the density of the proposal.

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-I8 Former Jewson".

The Housing Site Assessment describes the application site as "*The detached industrial building fronts the main road and has forecourt car parking. The main section is of two-storey construction with two, single-storey bays to the rear. The site was previously used as the main Brixham branch of the national builder's merchants Jewson until their relocation to purpose designed premises elsewhere in the town. The building has been re-let but its future is unclear*".

In terms of the quantum of development, the Assessment states: "*There is a proposal as received in the Regulation 14 consultation from an experienced local affordable housing developer stating his interest in developing the site for 20 small affordable homes. This is a high site density. However, the specialist local knowledge of the developer is acknowledged as is the pressing need for affordable housing within the town. On this basis it is considered to allocate the site for 20 smaller affordable homes. The affordable housing need in the Bay has been outlined in Torbay Council's Housing and Health Needs Assessment (November 2015) which states: "Affordable housing is an issue in Torbay with an undersupply of social housing and relatively expensive property prices. There is a large waiting list for social housing. There is a pressing*

*need for affordable housing in Torbay to meet the needs of local people who are unable to afford open market house prices or rents.”.*

The Assessment outlines the opportunities for the application site as *“The site provides a real opportunity for a number of affordable homes for the young people of the town located at a short distance from the town centre.”.*

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.

The NPPF at Paragraph 124, promotes the effective use of land in meeting the need for homes and other uses, and also 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.

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.

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:

- 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 194) 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.

As concluded within this report neither of the above positions are breached in order to signify the proposal should be refused. The provision of housing and the local housing supply context weighs heavily in favour of the grant of planning permission.

## **2. 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 and beautiful 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’. 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.

The application site comprises of an existing building which has been extended and adapted over the years which detracts from its original art deco style façade. There is an area of hardstanding and existing access from New Road, as well as a secondary access from the private road. The application site is allocated for residential development and there are no constraints to resist the demolition of the existing

buildings onsite. The existing building has an approximate height of 10.8 metres, an approximate width of 24.4 metres without accounting for the large wall adjacent to the building and No.52 New Road, and an approximate depth of 29.3 metres excluding the wall.

The proposal seeks permission for the redevelopment of the former Jewson site consisting of the total demolition of the existing commercial buildings and the erection of new three to four storey residential building to comprise 17no. two-bedroom flats. The vehicular access would retain the existing access from the southern side of New Road. The proposed building would have an approximate height of 12.6 metres, an approximate width of 22 metres, and an approximate depth of 27.6 metres. When considering the existing and proposed layouts, the existing built form has a larger footprint of the plot than the proposed built form. The main bulk of the proposed development, first floor and above, would maintain the building line of the nearby terraces Nos.52-70 New Road. The proposed building would be stepped back on the north elevation as it increases in storeys. Objectors have raised concerns that the proposal would set an unwanted precedent, constitute overdevelopment, have a negative impact on the local area and would not be in keeping with the local area.

The proposed material palette includes a stone clad plinth to the ground floor, a white rendered finish to the first and second floors, and hung slate cladding to the third floor. The proposed materials include anthracite grey windows, glass balustrading and recessed colour render panels reflecting the site's history as a former paintworks.

The proposal has been revised in line with officer recommendations during the lifetime of the application, given initial concerns regarding the massing of the proposal. The revised use of materials and stepping back as the built form gains height has assisted at breaking up the massing of the proposal.

Given the constraints of the application site, namely that the application site is partially within Flood Zone 3. It should be considered that the allocation for residential development and the quantum of 20no. units within the Neighbourhood Plan, was likely to anticipate a built form of several storeys. There is a varied height of existing development in the nearby vicinity, Torbay Trading Estate lies to the east and south of the application site, and residential development lies to the north and west of the application site. The residential development is mainly two storeys in height with some flatted development being three storeys. The adjacent industrial buildings increase in height as they become further away from New Road, increasing the perceived massing of the buildings. Whilst New Road appears relatively flat, the topography to the south of New Road increases in height further to the south, which the other units of the Torbay Trading Estate fail to positively relate to.

The siting, scale and design of the development is considered acceptable given the context. The scale of the proposed building will sit comfortably alongside the existing

Torbay Trading Estate that forms part of the immediate and broader visual context. The proposal positively and considerately breaks up the facade into a stone clad plinth at ground floor level, white render with recessed colour render panels at first and second floor, and hung slate cladding to the third floor. The proposed recessed colour render panels will reflect the site's history as a former paintworks. Planning conditions are recommended to secure details of the external materials and boundary treatments.

The use of recessed vertical panels creates a rhythm to the main facade and contrasting colours will add depth and animation. The proposed palette of materials takes note of the existing buildings on this part of the site, whilst providing a modern and contemporary feel. The design, form and detail are considered to harmonise well with the adjacent neighbouring uses.

The proposal is considered to maintain the character and qualities of the area and would be in keeping with the appearance of the existing dwelling. Given the proposed siting, scale, and design, it is considered that it would not result in unacceptable harm to the character or visual amenities of the locality. Subject to the aforementioned planning conditions, the proposal is considered to accord with Policy DE1 of the Local Plan, Policies BH5 and BH6 of the Neighbourhood Plan, and the guidance contained within the NPPF.

### **3. Impact on Designated and Non-Designated Heritage Assets**

It is incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 66(1)), to 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, and (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

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), requires 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.

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.

The application site is adjacent to the Brixham Town Conservation Area and within 15 metres of a Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092). The Council's Principal Historic Environment Officer has verbally confirmed that the proposed development would have a neutral impact on the Brixham Town Conservation Area and the setting of the Grade II listed building. Therefore, the proposed development is considered to accord with Policy SS10 of the Local Plan and Policy BE1 of the Neighbourhood Plan.

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.

#### **4. 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 17no. two-bedroom residential units all comply with the nationally described space standards

The proposed apartments 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.

The application site is adjacent to the remainder of the Torbay Trading Estate. Paragraph 200 of the NPPF outlines that planning decisions should ensure that new development can be integrated effectively with existing businesses and community facilities. The NPPF states that existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established, therefore where the operation of an existing business or community facility could have a significant adverse effect on new development in its vicinity, the applicant should be required to provide suitable mitigation before the development has been completed. Objectors have raised concerns regarding the agent of change.

Having undertaken a review of the planning history relating to the Torbay Trading Estate, it can be confirmed that such units were given permission as the former B1 use class, which is now use class E(g)(iii). The definition of use class E(g)(iii) is for an industrial process which can be carried out in any residential area without causing detriment to the amenity of the area. It should be noted that there are many uses within Brixham that alongside residential development and the existing Torbay Trading

Estate including the application site is adjacent to residential development. Also, the application site is allocated for residential development where amenity and 'agent of change' issues would have been taken into account prior to the allocation. The Council's Senior Environmental Health Officer has been consulted on the application, the application was supported by a Noise Impact Assessment which demonstrates that the levels of environmental noise affecting this site would require mitigation in order to achieve suitable internal and external noise levels, a planning condition is recommended to secure an Acoustic, Insulation and Ventilation Plan. The Officer has also recommended that a planning condition is employed in relation to plant.

#### *External Amenity Space*

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

The proposed layout demonstrates that several apartments include balconies and terraces. There would be no outdoor amenity space for some of the future occupiers. However, the site is within close proximity to public open spaces, which mitigates this deficit and it is appreciated that town centre living, albeit the application site is not in the town centre but in very close proximity, often comes without the ability to deliver outdoor space due to the natural constraints of its location. Therefore, it is considered that the proposal broadly accords with Policy DE3 of the Local Plan.

#### *Neighbour Amenity*

Objectors have raised concerns regarding loss of light, noise and privacy/overlooking. The application site is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site. The proposed development will be in close proximity to No.52 New Road and No.58 New Road. The existing building adjoining No.52 New Road and is higher than the adjacent neighbour. The proposal will separate the proposed built form from No.52 New Road by approximately 2.3 metres. The proposal would be approximately 11.5 metres from No.58 New Road. It is noted that No.58 New Road sits behind the terrace of Nos.52-56 New Road and is at a higher level given the topography.

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 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/Demolition Management Plan, which is recommended as a planning condition. Subject to the recommended planning condition, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of noise.

With regards to privacy and overlooking, Officers initially raised concerns of the

potential for the proposal to overlook into adjacent neighbours openings and outdoor amenity spaces. The proposal has been revised and discussions had regarding obscure glazing, restricting the use of flat roof areas and privacy screens. There are several kitchen windows (Flats 2, 8, 12 and 17) that have the ability to overlook or have intervisibility issues with adjacent neighbours, so a planning condition is recommended to ensure such windows are obscurely glazed, this is considered acceptable given that the kitchens are not considered habitable rooms as they do not offer seating. The proposal also includes projecting balconies which will provide future occupiers with an amount of outdoor amenity space, however given the position of the application site and proximity to neighbours, it is considered necessary to secure privacy screens on several balconies to maintain an acceptable level of privacy for both future and neighbouring occupiers. Furthermore, the proposal included elements of outdoor amenity spaces for Flats 7 and 13, however concerns were raised regarding the potential for overlooking into adjacent existing neighbours. Therefore, a parapet to the roof edge has been introduced to reduce visibility and well as recommending a planning condition to prevent use of the balconies except for cleaning and maintenance purposes. Subject to the recommended planning conditions, the proposal is not considered to result in a detriment impact on adjacent neighbours in terms of privacy/overlooking.

In terms of loss of light, the application has been supported by a sun path analysis to show the summer and winter solstices in relation to the existing building and the proposed building. The existing building overshadows No.52 New Road in the morning summer solstice, in terms of their outdoor amenity space and their southern elevation. The proposal would increase the level of overshadowing, but such is not considered to be detrimental given the existing situation. In terms of the winter solstice, the proposal would not result in any further overshadowing than the existing situation.

Several planning conditions are recommended to protect the amenity of adjacent neighbours, including obscure glazing, privacy screens and restrictions to flat roof areas to prevent intervisibility/overlooking. Subject to the aforementioned planning conditions, given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, or access to natural light, and therefore the proposal is considered to accord with Policy DE3 of the Local Plan.

## **5. Impact on Highway Safety**

Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) appropriate opportunities to promote sustainable transport modes can be - or have been - taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; 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 southern side of New Road (A3022), which is an adopted public highway and a classified road. New Road is the main arterial route into Brixham. New Road is a single carriageway, two-way road that connects Brixham to the rest of Torbay. It features footways on either side and property access frontages. New Road is subject to a 30mph speed limit and on-street parking restrictions on both sides of the road. Objectors have raised concerns regarding traffic and access.

The proposal seeks to maintain the existing access from New Road. The application site is located approximately 300 metres to the west of the designated town centre but is within an established area of mixed commercial and residential use. Residential properties are located immediately to the north and west of the application site, whilst commercial businesses within the Torbay Trading Estate lie to the immediate east and south of the application site. The nearest bus stops are within 60 and 120 metres of the application site.

#### Access

The access for the proposed development will remain as per existing arrangement from the New Road. The Highway Authority are satisfied with the retention of the existing arrangement.

The supporting Transport and Travel Plan Statement states that the existing structures, kiosk and wall, that currently obstruct visibility when emerging from the

application site will be removed as part of the proposals and thereby removing the current obstruction to visibility in both directions. The areas will be replaced with ground level soft landscaping and a boundary treatment so as not to impede a visibility splay plotted 2.4m back from the carriageway edge and 43m along the carriageway, with a vertical line drawn at 1.05m driver height to a point 0.60m above the carriageway. Additionally, the supporting Transport and Travel Plan Statement highlights that junction sight lines, visibility splays, will be in accordance with the requirements of Manual for Streets for 30mph speed limit of New Road. The Highway Authority have considered such acceptable.

### Traffic Impact

A comparative assessment has been undertaken, assessing the likely trip generation arising from the proposed residential land use in the context of the extant use of the site. The Highway Authority has accepted the methodology. The supporting Transport and Travel Plan Statement outlines that the proposed redevelopment of the existing facility is forecast to result in a net increase of 1no. movement during the morning peak and 3no. movements during the evening peak. No likely trip distribution and junction assessment has been undertaken or presented in support of this application. Due to the scale of the proposed development, and the extant use, the 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.

The applicant has provided updated personal injury collisions data, which the Highway Authority have reviewed and consider such suitable and have confirmed that there are no current highway safety concerns in the area that would be exacerbated by the proposed development.

### Pedestrian and Cycle Access

New Road features footways on both sides of the carriageway for the majority of its length. To the east of the site, the south side footway ends near the Lower Manor Road bus stop, while the north side footway extends to the junction with Market Street, Fore Street, and Bolton Street. To the west, footways on both sides continue to the junction with New Road and Monksbridge Road. The footway network also features dropped kerbs at the side road accesses and property driveways, enhancing overall pedestrian connectivity.

The supporting Transport and Travel Plan Statement indicates that nearly all of Brixham is accessible within a 25-minute walk from the application site, with the town centre a 10-15 minute walk. It notes that all local amenities and facilities, including key services such as education, hospital, and shops, are within a 20-minute walk. The development proposal includes delivering a new segregated pedestrian access from New Road along the western boundary, leading to stairs to the first floor of the proposed built form. The supporting Transport and Travel Plan Statement also

demonstrates that nearly all of Brixham is accessible within a 10-minute cycle time of the application site.

The Highway Authority have reviewed their mapping data for the extents of the adopted highway network. The existing footway in front of the application site is not shown to be part of the adopted highway network. The Highway Authority requested that the applicant should consider offering the footway directly in front of the site for adoption as Highway Maintainable at Public Expense. The applicant has provided their Title Plan which confirms that the existing footway is not within their ownership either.

The Highway Authority have noted that the existing footway across the application site is narrow (approximately 1 metre). The Highway Authority suggested that the applicant should explore footway widening to enable safe and suitable access for pedestrians which would also increase access towards Brixham town centre. Whilst it is acknowledged that widening the existing footway would provide a safer and more suitable pedestrian access for all ages and abilities, by doing so would only affect a small portion of New Road given that if such would happen, the existing footway would remain narrow in front of Nos. 52-70 New Road and in front of the Torbay Trading Estate Units which front New Road.

#### Swept Path Analysis

The Highway Authority raised concerns regarding the manoeuvrability of some of the proposed parking spaces. The applicant has provided swept path analysis for the more challenging parking spaces to access and egress with a standard car and a larger vehicle. The Highway Authority are satisfied with the swept path analysis information.

#### Car and Cycle Parking Provision

Appendix F of the Local Plan requires 1no. car parking space (of which 20% should provide electric vehicle charging infrastructure) and 1no. cycle parking space should be provided per apartment. The proposal is for 17no. apartments. This calculates a total requirement of 17no. car parking spaces across the application site (of which 20% of the car parking spaces should provide electric vehicle charging infrastructure) plus the requirement for an element of visitor parking. The submitted layout indicates a total of 12no. car parking spaces will be provided across the site. The submitted plans do not include details of electric charging facilities, a planning condition is recommended to secure such. The submitted layout also includes a communal area of cycle storage, however it is unknown whether such would be secure. The proposed cycle storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of covered and secure cycle storage prior to the first occupation of the development. The proposed parking provision is considered to be acceptable, therefore a planning condition is recommended to secure such prior to the occupation of the development.

#### 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 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*”.

The submitted plans indicate an area of bin storage for the proposed development. SWISCo's Waste (Strategy and Performance) Team Manager has objected to the proposed development, due to the proposed plans lacking detail on whether the proposed bin store would be suitable for the number of waste and recycling containers required. The proposed bin storage is insufficiently detailed, a planning condition is recommended to secure appropriate details of bin storage prior to the first occupation of the development.

#### 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.

#### Concluding Remarks

The Highway Authority does not wish to raise an objection to the proposed development, subject to suitably worded conditions relating to highways matters.

The proposed development is therefore considered to comply with Policies TA1, TA2 and TA3 of the Local Plan, Policy BH8 of the Neighbourhood Plan, and the guidance contained in the National Planning Policy Framework.

#### **6. 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.

The application is supported by a Tree Survey, a Tree Constraints Plan and a Tree Protection Plan. SWISCo's Senior Tree Officer has been consulted on the application and has raised no objections to the proposed development. The application site is a commercial premises, the structures of which dominate the plot with minimal residual land containing natural or soft landscape features. The areas of limited open ground are not publicly visible and provide no wider amenity. A supporting tree survey has identified that the existing trees are unsuitable for retention based on their current condition. The Officer has confirmed that the proposed layout indicates potential for tree planting on the roadside frontage of the property which is a welcomed addition to the street scene. A planning condition is recommended to secure soft and hard landscaping details.

Subject to the recommended planning condition, the proposal is considered to have an acceptable impact on trees in accordance with Policy C4 of the Local Plan.

## **7. 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 within the Sustenance Zone of the Berry Head/South Hams Greater Horseshoe Bat (GHB) Special Area of Conservation (SAC). The application is supported by a Bat Preliminary Roost Assessment Update (Abbas Ecology, April 2023).

### South Hams SAC Sustenance Zone

The development site lies within the South Hams SAC Sustenance Zone for greater horseshoe bats (GHBs). Devon County Council's Principal Ecologist has confirmed that the application site does not contain any habitats that could support foraging or commuting by GHBs, furthermore the surrounding area is well lit by internal and

external light sources. The Ecologist has concluded that it is unlikely that GHBs would pass through the site and therefore a Habitat Regulations Assessment (HRA) is not required and the proposal would not cause a likely significant effect on the SAC. The Ecologist has confirmed that excessive lighting should be discouraged and therefore a planning condition is recommended to be employed in relation to external lighting.

#### European and Other Protected Species

Devon County Council's Ecologist has confirmed that no impacts to roosting bats are anticipated, however the proposed enhancement measures are considered proportionate and are encouraged. A planning condition is recommended that the proposal is carried out in accordance with the supporting Bat Preliminary Roost Assessment Update. Devon County Council's Ecologist has outlined that the demolition and vegetation removal would likely impact nesting birds and result in a loss of nesting opportunities. Therefore, sensitive timing and checks will avoid impacts to nesting birds and the enhancement measures are considered appropriate to mitigate for the loss of nesting opportunities. A planning condition is recommended in relation to vegetation clearance and building works.

#### 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 local financial contributions section of this report states the anticipated contribution.

#### Biodiversity Net Gain

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 site is absent of habitat and is a completely sealed surface. The development is deemed exempt from BNG.

### Concluding Remarks

Subject to the aforementioned recommended planning conditions and securing the mitigation payment for the South Hams SAC Berry Head Recreation Zone, the proposal is considered to accord with Policies NC1 and SS8 of the Local Plan and Policy E8 of the Neighbourhood Plan.

### **8. 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 partially located within Flood Zone 3 (closest part of the application site to New Road) and the remainder of the site is within Flood Zone 1 and the Critical Drainage Area. The application is accompanied by a Site Specific Flood Risk Assessment and drainage strategy for the proposed development. Objectors have raised concerns regarding drainage.

The supporting Flood Risk Assessment confirms that soakaway testing is yet to be undertaken. However, given the requirements of Building Regulations, the development layout has insufficient space to satisfactorily accommodate any form of soakaways to be compliant with such requirements. Therefore, infiltration drainage on site is not recommended. The nearest watercourse is the Lupton Stream which passes in a culvert through the site forecourt. The proximity to the watercourse allows the development the opportunity to dispose of surface water run-off directly to the stream. The proposed surface water design arrangement will include attenuation of the new drainage system and outfall to the adjacent stream culvert.

The Council's Drainage Engineer has reviewed the Site Specific Flood Risk Assessment and drainage strategy and has confirmed that providing the surface water drainage is constructed in accordance with submitted drainage layout drawing and the submitted hydraulic designs, and the flood mitigation measures identified within the site specific flood risk assessment are incorporated into the final development, the Engineer raises no objections on drainage grounds to planning permission being granted for the proposed development. The Environment Agency has been consulted on the application and provided a consultation response. The Environment Agency does not raise an objection to the proposed development subject to the inclusion of planning conditions relating to unsuspected contamination, and the implementation of

the submitted Flood Risk Assessment. The Environment Agency has also suggested including an informative relating to a culverted watercourse.

Paragraph 174 of the NPPF outlines that the sequential test steers new development to areas with the lowest risk of flooding from any source. Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 027 Reference ID: 7-027-20220825) confirms that the sequential test should be applied to 'major' and 'non-major' development proposed in areas at risk of flooding, however there are exceptions including where the site has been allocated for development and subject to the test at the plan making stage (provided the proposed development is consistent with the use for which the site was allocated and provided there have been no significant changes to the known level of flood risk to the site, now or in the future which would have affected the outcome of the test). As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the sequential test does not need to be applied to the proposal.

Planning Practice Guidance relating to Flood Risk and Coastal Change (Paragraph: 035 Reference ID: 7-035-20220825) is clear:

*The Exception Test should only be applied when following application of the Sequential Test, it has been demonstrated that it is not possible for development to be located in areas with a lower risk of flooding (taking into account wider sustainable development objectives).*

*Where a development proposal is in accordance with an allocation made in a Plan following the application of the Sequential and Exception Tests, it should not be necessary to repeat aspects of the Exception Test unless:*

- *Elements of the development that were key to it satisfying the Exception Test at the plan-making stage (such as wider sustainability benefits to the community or measures to reduce flood risk overall) have changed or are not included in the proposed development; or*
- *The understanding of current or future flood risk has changed significantly.*

As the application site has been allocated for development and the allocation was subject to the test at the plan making stage of the Neighbourhood Plan, therefore the exception test does not need to be applied to the proposal.

Subject to the recommended planning conditions, the proposal is therefore considered to accord with Policy ER1 of the Local Plan and the guidance contained in the NPPF.

## **9. 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 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 15 dwellings or more. For a net increase of 15-19 dwellings, it would have an affordable housing target of 15% which is to be 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 no affordable residential units. The application has been supported by viability information. An independent review of viability has now been undertaken by a third party RICS Valuer for the application site. The review concluded that it would not be viable for the scheme to provide any affordable housing on-site or off-site as a contribution, having made an assessment about scheme incomes and benchmark costs. The Council's Head of Strategic Housing and Delivery has confirmed that the Council is prepared to accept the independent findings of the external valuer and consequently rescind out previous comments in respect of seeking an affordable housing obligation from the proposed scheme.

### **10. 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 proposal includes a crime prevention statement. The Police Designing Out Crime Officer has been consulted and supports the supporting crime prevent statement. The Officer has confirmed that the applicant had been in discussions with them prior to submitting the application which is welcomed. The Officer has commented that regarding the secondary pedestrian access, it is recommended that a gate is installed to demarcate it as a private space to residents only, to prevent such becoming used as a cut through or area which anti-social behaviour might occur and causing potential problems for the residents living along the pathway.

It is recommended that a planning condition should be employed to secure the measures outlined within the submitted crime prevention statement. Subject to the aforementioned planning condition, the proposal is considered to be in accordance

with Policy SS11 of the Local Plan.

### **11. Low Carbon Development**

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.

The applicant has submitted a Low Zero Carbon Study and completed the Torbay Sustainability Checklist for Major Development. The Principal Climate Emergency Officer has been consulted on the application and has provided a consultation response. The Officer has confirmed that there is reference to a low carbon fabric approach to be taken to inform external materials and construction methods. However, the Low Zero Carbon Study is only a review of low carbon options and recommendations to the applicant. It does not fully outline what will be installed by the applicant in the final design of the development.

The proposal would incorporate electric vehicle charging points and cycle storage to promote sustainable travel.

Given the limited information provided, a planning condition is recommended to ensure that the proposed development provides a low carbon fabric approach. Subject to the aforementioned planning condition, the proposal is considered to accord with Policies SS14 and ES1 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.

Once the apartments 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.

The proposal would result in the loss of an employment use, however the application site is allocated for 20no. residential units in the Neighbourhood Plan. Therefore, the loss of employment is anticipated.

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 housing. Given the NPPF priority to significantly boost the supply of housing the residential units 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**

The proposed development would have a neutral impact upon the Brixham Town Conservation Area and the Grade II listed building (Nos.85 and 85A New Road including front garden wall – list entry number 1292092).

The proposal is considered to have an acceptable impact on trees, biodiversity and drainage. A landscaping scheme has been submitted which results in street trees to provide visual amenity and the proposal will provide low carbon and energy efficiency measures.

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.

In respect of the environmental element of sustainable development, the balance is considered to weigh in favour of the development.

## **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:**

A S106 legal agreement is not considered necessary.

### **Ecology**

Recreational impacts financial obligation to mitigate additional pressures upon the South Hams SAC in accordance with Policy NC1 of the Torbay 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 17no. residential units this would equate to an obligation of £2,295.00.

### **Affordable Housing**

Policy H2 of the Local Plan states that developments of 15-19 residential units on brownfield sites should provide 15% affordable housing. No provision of affordable housing or affordable housing contributions are to be provided given the tested viability of the proposal.

### **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 £1,075 x 16 = £18,275 and £1,290 x 1 = £1,290, however, as the 17no. units are CIL liable such cannot be sought.

### **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 17no. open market units being CIL liable which 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 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 17no. open market units being CIL liable which would be ineligible due to site deliverability matters.

### **NHS Devon**

The site is allocated in the Development Plan for 20no. 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 17no. open market units being CIL liable which 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.

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 does not require a formal HRA.

### **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".

The proposal is supported by policies in the Local Plan that seek to boost housing supply. 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. The proposal is for 17no. residential units, the NPPF outlines that substantial weight should be given to using suitable brownfield land which the proposal does given its allocation. 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. As concluded within this report neither limb of Paragraph 11(d) of the NPPF are breached in order to signify the proposal should be refused.

On balance, the public benefits of the scheme as a whole outweigh any identified harm, and 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 there are no other adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits of the development.

### **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 17no. 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 to 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. In addition, social, economic and environmental benefits associated with building and occupying homes weigh in favour of the development.

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.

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

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 strong reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (17no. residential units), when assessed against the policies in the NPPF when 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. Subject to the recommended planning conditions and planning obligations, there are no impacts on protected areas or assets of particular importance to provide a strong reason for refusal.

### **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 completion of a unilateral undertaking in relation to the South Hams SAC Berry Head Recreation Zone.
3. The consideration of any further representations received once the public consultation following readvertisement and notice period have concluded to be delegated to the Divisional Director of Planning, Housing and Climate Emergency.
4. 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. Construction/Demolition Management Plan

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

- a) The parking of vehicles of site operatives and visitors.
- b) Loading and unloading of plant and materials.
- c) Storage of plant and materials used in constructing the development.
- d) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- e) Wheel washing facilities.
- f) Measures to control the emission of dust and dirt during construction.
- g) A scheme for recycling/disposing of waste resulting from demolition and construction works, with priority given to reuse of building materials on site wherever practicable.
- h) Measures to minimise noise nuisance to neighbours from plant and machinery.
- i) Construction working hours from 8:00 to 18:00 Monday to Friday, 8:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays. Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- j) Procedures for maintaining good neighbour relations including complaint management.
- k) Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.

Reason: In the interests of highway safety with regards to construction traffic and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

## 2. 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 BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

### 3. Boundary Treatment

Notwithstanding the approved plans, 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 BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

### 4. 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 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

### 5. 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 plan (ref: '4959-KEA-ZZ-ZZ-DR-A-22010-A4 P5 (GF, 1F, 2F, 3F)', received 07.05.2025) and '4958-KEA-ZZ-ZZ-DR-A-22001-A3 P7 (L01, L02, Roof)' received 18.11.2024) 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.

#### 6. Obscure Glazing

Prior to the occupation of the development hereby approved, the openings in the following locations:

- Kitchen window of Flat 2 (first floor - west elevation)
- Kitchen window of Flat 8 (second floor - west elevation)
- Kitchen window of Flat 12 (second floor - west elevation)
- Kitchen window of Flat 17 (third floor - west elevation)

Shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. The windows 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 windows shall thereafter be permanently retained in that condition.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### 7. Privacy Screens

Notwithstanding the approved plans, prior to the following approved balconies being brought into use:

- Flat 2 (first floor)
- Flat 8 (second floor)
- Flat 12 (second floor)
- Flat 17 (third floor)

1.8m high obscure glazed privacy screens (to a minimum of Pilkington Level 4 or similar standard) shall be erected on the west elevation of the balconies and shall be maintained and retained as such for the lifetime of the development. The height of the privacy screens are measured from the finished floor level of the balconies.

Reason: In the interests of adjoining amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### 8. Restricted Flat Roof Use

No part of the external flat roofs from the living room, bedroom 1 and bedroom 2 of Flats 7 and 13 shall be accessed other than for cleaning and maintenance purposes.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy BH5 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### 9. 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: '4959-KEA-ZZ-ZZ-DR-A-22010-A4 P5 (GF, 1F, 2F, 3F)', received 07.05.2025), 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 and Policy BH8 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

#### 10. Electric Vehicle Charging Points

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.

#### 11. Bicycle Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted details of the proposed bicycle storage facility for 17no. cycles shall be submitted and agreed in writing by the Local Planning Authority. The cycle storage facilities shall be provided in accordance with the approved details prior to first occupation and maintained and retained as such for the lifetime 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.

## 12. Waste Storage

Notwithstanding the approved plans, prior to the first occupation of the development hereby permitted, provision shall be made for the storage of refuse and recycling awaiting collection according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained and maintained 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.

## 13. 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.

## 14. Travel Plan

Prior to the first occupation of the development hereby approved a Travel Plan shall have been submitted to and approved in writing by the Local Planning Authority. The Travel Plan shall outline measures to encourage non-car, sustainable forms of transportation, including a scheme of implementation, an annual review and travel surveys taken at appropriate timescales. The approved measures shall be undertaken in accordance with the approved scheme of implementation and shall be monitored and reviewed in accordance with the agreed Travel Plan targets to the satisfaction of the Local Planning Authority.

Reason: To support sustainable transport objectives including a reduction in single occupancy car journeys and the increased use of public transport, walking and cycling in accordance with Policy TA1 of the Adopted Torbay Local Plan 2012-2030 and Policy T1 of the Adopted Brixham Peninsula Neighbourhood Plan 2012-2030.

## 15. Ecology Report

The recommendations and ecological enhancements given in the approved ecological report (ref: '5562 (Bat Roost)', received 09.05.2024), shall be followed including the installation of 2no. sparrow terraces, 1no. bat box and 2no. bee blocks. The 2no. sparrow terraces, 1no. bat box and 2no. bee blocks shall be installed prior to the first use of the development hereby approved and shall be retained thereafter.

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

#### 16. Vegetation Clearance

No vegetation clearance or demolition works shall take place during the bird nesting season (01 March to 31 August in any year, inclusive) unless a breeding bird check by a suitably qualified ecologist has been carried out immediately prior, no more than 48 hours, to works starting and written confirmation provided that no active bird nests are present which has been agreed in writing by the Local Planning Authority.

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.

#### 17. 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.

#### 18. Surface Water Drainage

The development shall proceed in full accordance with the approved drainage details and drainage strategy (ref: 'AT2624 P2', received 09.05.2024) 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.

## 19. Flood Mitigation Measures

The development hereby approved shall be undertaken in strict accordance with the flood mitigation and resilient measures contained in the approved flood risk assessment (ref: 'AT2624 P2', received 09.05.2024). These mitigation and resilient measures shall be fully implemented prior to occupation. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

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

## 20. Unexpected 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 the guidance contained within the National Planning Policy Framework.

## 21. Designing Out Crime

The development hereby approved shall be undertaken in strict accordance with the approved Crime Prevention Statement (ref: '4959-KEA-XX-XX-RP-A-90002-P1 (Crime prevention)', received 24.05.2024) and shall be fully implemented prior to the first occupation of the development hereby approved, and retained thereafter.

Reason: In the interests of crime prevention in accordance with Policy DE1 and SS11 of the Adopted Torbay Local Plan 2012-2030.

## 22. Sustainability

A detailed energy and sustainability statement shall be submitted to and approved in writing by the Local Planning Authority prior to the construction of the development hereby approved. 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 development and retained for the lifetime of the development unless otherwise agreed in writing by the Local Planning Authority.

Reason: In interests of low carbon development and in accordance with Policy SS14 and ES1 of the Adopted Torbay Local Plan 2012-2030.

### 23. Plant Noise

Cumulative noise from all mechanical building services plant shall not exceed a rating noise level of 51dB (07:00 to 23:00) or 17dB (23:00 to 07:00), measured in accordance with BS4142:2014 at 1 metre from the façade of any noise sensitive receptor.

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

### 24. Acoustic, Insulation and Ventilation Plan

Prior to commencement of any construction (excluding demolition and site clearance) of the building hereby approved, an Acoustic Insulation and Ventilation Plan shall be submitted and approved in writing by the Local Planning Authority. This plan shall include details of the insulation and ventilation to be installed and describe how the installation shall be tested so as to demonstrate the achievement of suitable internal noise levels. Prior to the occupation of the building hereby approved an Acoustic Installation Verification Report shall be submitted. This report shall document the successful completion of the acoustic insulation work and post-installation testing.

Reason: In the interests of residential amenity and in accordance with Policy DE3 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 all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

#### **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.

#### **Culverted Watercourse**

The Environment Agency has noted the presence of a culverted watercourse through the site, such being the Lupton Stream which is designated as an 'ordinary' watercourse. All parties should be aware that riparian ownership responsibilities will apply here for which the landowner is responsible. It is therefore in the interests of the applicant to ensure the development layout is such that it does not compromise the ability to carry out future repairs, replacement works for which the landowner is responsible.

We strongly advise the developer to engage with Torbay Council's Lead Local Flood Authority team regarding the presence of the culverted watercourse within the site

boundary given they may be party to information of relevance to the planning application.

### **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

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

SS3 – Presumption In Favour Of Sustainable Development

SS5 – Employment Space

SS8 – Natural Environment

SS10 – Conservation and the Historic Environment

SS11 – Sustainable Communities

SS13 – Five Year Housing Land Supply

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

This page is intentionally left blank