

TORBAY COUNCIL

Application Site Address	Singleton Gardens Meadfoot Sea Road Torquay TQ1 2LQ
Proposal	Formation of 9 apartments and 2 semi-detached dwellings with access, garages & parking. Demolition of existing outbuildings. Alterations & extensions to existing dwelling to include 2 storey extension to side.
Application Number	P/2021/0802
Applicant	Mr R Bishop - O.J. Developments Ltd.
Agent	Mrs Anna Suszczynska
Date Application Valid	21/07/2021
Decision Due date	20/10/2022
Extension of Time Date	18/02/2022
Recommendation	Refusal for the reasons given at the end of this report. Final drafting of these reasons, and addressing any further material considerations that may come to light following Planning Committee, to be delegated to the Divisional Director responsible for Planning, Housing and Climate Emergency.
Reason for Referral to Planning Committee	The application has been referred to Planning Committee due it being of a major nature.
Planning Case Officer	Emily Elliott

Location Plan:



Site Details

The site, Singleton Gardens, is a residential dwelling with land on the northern edge of Meadfoot Sea Road. The residential dwelling is modest in scale within a large plot. The site is enclosed by stone and rendered boundary walls. The land rises to the north towards Lincombe Drive, with a copse of trees set above the northern extremity of the applicant's ownership. To the north-west of the site are two large villas with extensive grounds and to the east lies an array of private houses of varying ages and types. To the south of the site, on the opposing side of Meadfoot Sea Road are large villas with extensive grounds.

The site is located within an existing residential area, is designated as Flood Zone 1, is situated within the Lincombes Conservation Area and is subject to Area Tree Protection Order (2005.010). Within the Lincombes Conservation Area map, the dwelling, greenhouse and an outbuilding are noted as other key buildings of architectural importance which make a significant contribution to the townscape. The site is adjacent to 'Singleton' (Grade II) and opposite 'Palm Grove' (Grade II) which are listed buildings.

Description of Development

The proposal seeks permission for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings, namely the greenhouse and a pitched roof outbuilding. Also, alterations and extensions to the existing dwelling to include a two storey extension to side.

The proposed apartment block would involve a mixture of two (4x) and three (5x) bedroom apartments, which would have four storeys but only three storeys would be visible when viewed from Meadfoot Sea Road. The proposed apartment block would have a symmetrical frontage and would occupy more than half the width of the plot, whilst being sited in the rear section of the plot. The proposed apartment block would be finished in render, with the penthouses in a dark grey standing seam zinc cladding, with aluminium openings.

The proposed semi-detached dwellings would both be two storeys that offer three bedrooms. The proposed semi-detached dwellings would have a hipped roof and integral garages. The proposed finish of the dwellings would be a natural stone ground floor frontage, with the remainder of the elevations finished in render, with dark grey aluminium openings and a natural slate roof.

The proposals would have vehicular access from Meadfoot Sea Road and would provide twenty on-site parking spaces; two of which would be integral garages serving the semi-detached dwellings, nine within the courtyard, and nine within the apartment block.

Pre-Application Enquiry

DE/2019/0015: Development of 8 apartments with parking. Summary - The principle of residential development in this location is considered acceptable however, as discussed, there are a number of concerns relating to the proposal's design and layout; impact on neighbours; along with a workable parking and manoeuvring area. Should a planning application be submitted, planning officers are unlikely to support a proposal along the lines indicated in your submission. It is likely that the matters raised could be addressed if the scale and bulk of the proposed development was reduced in line with comments provided by the Council's Interim Heritage Advisor, which would decrease the amount of residential units and parking required, and subject to acceptable impacts on neighbours.

DE/2020/0042: Construction of six dwellings. Summary - The principle of residential development in this location is considered broadly acceptable subject to wider policy considerations. As discussed, there are a number of concerns relating to the proposal's design and layout; impact on neighbours; along with a workable parking and manoeuvring area. Should a planning application be submitted, planning officers are unlikely to support a proposal along the lines indicated in your submission. It is likely that the matters raised could be addressed if the design was sensitive to the heritage assets, along with decreasing the amount of parking proposed, and ensuring that the scheme has an acceptable impact on adjacent occupiers.

Relevant Planning Policy Context

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

Development Plan

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

Material Considerations

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

Relevant Planning History

No relevant planning history relating to the site.

Summary of Representations

The application was publicised through a site notice and neighbour notification letters. 15 letters of objection and 8 letters of support have been received.

Concerns include:

- Drainage
- Impact on local area
- Loss of light
- Impact on conservation area
- Noise
- Overdevelopment
- Not in keeping with local area
- Privacy/overlooking
- Traffic and access
- Trees and wildlife
- Sets precedent

Comments in support include:

- Impact on local area
- It provides facilities
- It provides houses
- It removes an eyesore
- Provides/retains jobs
- Residential amenity

Summary of Consultation Responses

Torquay Neighbourhood Forum:

No response received.

Torbay Council's Drainage Engineer:

No objections on drainage grounds to planning permission being granted for this development.

Torbay Council's Senior Tree and Landscape Officer:

Further detail on the AMS is required prior to any confirmation of approval. This may be best suited to carrying out trial pits to establish the presence of roots so help inform a satisfactory outcome for the entrance. Works to the London plane O1 are not require for the development and will be removed from the document.

Torbay Council's Senior Environmental Health Officer:

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

SWISCo's Waste Client Manager:

No objections subject to a planning condition to secure a suitable bin storage provision for the development.

WSP on behalf of the Local Highway Authority:

No objections subject to planning conditions.

Planning Officer Assessment**Key Issues/Material Considerations**

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

1. Principle of Development

The proposal is for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings. Also, alterations and extensions to the existing dwelling to include a two-storey extension to side. Supporters have stated that the proposal would provide facilities, housing and jobs.

Policy H1 of the Local Plan states that proposals for new homes within Strategic Delivery Areas, and elsewhere within the built-up area, will be supported subject to consistency with other policies in the Local Plan. It is noted that the Council is currently falling short of its 5-year housing land supply and that the proposal would make a contribution to this shortfall being addressed. As the Council cannot demonstrate a 5 year housing land supply the tilted balance in favour of sustainable development is applicable as required by the National Planning Policy Framework (NPPF)

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed⁷; or
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.

Footnote 8: This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites (with the appropriate buffer, as set out in paragraph 73); or where the Housing Delivery Test indicates that the delivery of housing was substantially below (less than 75% of) the housing requirement over the previous three years.

This broad position is subject to wider policy considerations that are relevant to the development proposal.

2. Impact on Visual Character

Paragraph 126 of the National Planning Policy Framework (NPPF) states that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 134 states that 'development that is not well designed should be refused, especially where it fails to reflect local design and government guidance on design'. Policy DE1 of the Local Plan states that proposals will be assessed against a range of criteria relating to their function, visual appeal, and quality of public space. Policy TH8 of the Neighbourhood Plan requires that developments be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

It is considered that the site, Singleton Gardens, once was part of the estate of 'Singleton', the Grade II listed villa which is sited north-west of the site. The site itself presents a modest, two storey, residential dwelling with large grounds including a dilapidated greenhouse and a disused outbuilding. The dwelling has uPVC openings, poor quality extensions and is surrounded by walls. The grounds of the plot gradually raise up from south to north forming terraces separated by stone walls. The natural stone walls define the site due East, West and North, whilst the southern boundary, along Meadfoot Sea Road, is a rendered wall. The existing dwelling occupies the south-western corner of the site. The building is built in the boundary walls and has an existing vehicular access at south-east corner off Meadfoot Sea Road.

The site is within the Lincombes Conservation Area and is adjacent to 'Singleton' (Grade II) and opposite 'Palm Grove' (Grade II) which are listed buildings. Within the Lincombes Conservation Area map, the dwelling, greenhouse and an outbuilding are

noted as other key buildings of architectural importance which make a significant contribution to the townscape. 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. The application is supported by a Heritage Significance Assessment. Supporters have stated that the proposal would have a positive impact on the local area and would remove an eyesore. Objectors have raised concerns in terms of impact on local area, impact on the Lincombes conservation area, it constituting overdevelopment, setting an unwanted precedent and is not in keeping with the local area.

The proposal is for the formation of nine apartments and two semi-detached dwellings with access, garages and parking, including the demolition of existing outbuildings including the greenhouse. The proposed apartment block would be four storeys in height, with the ground floor hidden from the streetscene given the proposed walls within the site and the topography. The proposed apartment block would have a symmetrical frontage and would occupy more than half the width of the plot, whilst being sited in the rear section of the plot. The proposed apartment block would be finished in render, with the penthouses in a dark grey standing seam zinc cladding, with aluminium openings. The proposed semi-detached dwellings would have two storeys, a hipped roof and integral garages. The proposed finish of the dwellings would be a natural stone ground floor frontage, with the remainder of the elevations finished in render, with dark grey aluminium openings and a natural slate roof.

The outbuildings proposed for demolition include the greenhouse, which the accompanying heritage assessment states it dates to the period between 1933 and 1953. The timbers do not suggest anything like the kind of quality that one might expect of Victorian glasshouses and its orientation and juxtaposition with the cottage suggest a more modern use. It is of little heritage value and has been badly repaired and altered over the course of the 20th century. Within the wider grounds, a number of brick and stone outbuildings appear to be late 19th- early 20th century in date, extended and altered with modern roofs and in various states of dilapidation. The small outbuilding on the west boundary is also proposed to be demolished. The heritage assessment states that this may have at one time been a pen or lean-to structure affixed to the wall and is visible on early mapping. However, its present roof is shallow pitched and tiled, with rebuilt gables. The walls are in poor condition and appear to be added to the earlier boundary. The building is of limited heritage value and may be retained and restored, or removed to better reveal the garden plot walls behind. The proposed demolition of such structures is considered to be acceptable given their state of disrepair.

The proposal also includes alterations and extensions to the existing dwelling 'Singleton Gardens' to include a two storey extension to the side of the dwelling. The

proposal proposes a render finish, slate roofs and aluminium openings to the existing dwelling.

National and local planning policy emphasises the importance of design. It should be noted that the applicant has entered into two pre-application enquiries and two Torbay Design Review Panel workshops which over the evolution of concepts for the site has seen the number of proposed residential units decrease. This part of Meadfoot Sea Road is characterised by the most significant buildings being 'Italianate' in their architectural language, with complex accretive massing, heavy articulated eaves detailing and multiple localised symmetries. The plot to building relationships and ratios are noteworthy with large villas set back from the main frontage and siting within generous gardens, visible verdant landscape and orientated somewhat to gain sea views. The streetscene and locality benefits from mature trees, including an off-site tree (O1 London plane) owned by Torbay Council, adjacent to where the proposed access would be to serve the development.

The proposed apartment block is similar to that discussed at the Design Review Panel second workshop, where concerns were expressed that the south-western elevation presents a symmetrical façade that leads to an incongruous set of relationships that does not generate a satisfying architectural design and leads to a "*deceitful composition*". The Panel's report goes on to state that "*The lack of variation in height / massing seemed to be a distinct departure from the character of the Conservation Area*", which remains within the current proposal. It is considered that the proposed apartment block would have an unrealistic and unbroken scale and massing that would be highly visible from when within the Lincombes Conservation Area. It would present itself as an overtly dominant mass within the locality which lacks attention to detail and high quality design.

The proposed semi-detached dwellings have a similar footprint to the previous informal drawings showing more dwellings in the early stages of pre-application enquiries and the workshops. The proposed dwellings would have a symmetrical façade and integral garages, which are considered to be alien to the layout and the surrounding locality. It was highlighted to the applicant on a number of occasions that the courtyard area should not be dominated by car parking, the character of the space should be landscape led, instead there is an oversupply of parking and a significant lack of landscaping, which when within the site or viewed from the streetscene would appear harsh. The proposed semi-detached dwellings have a two-storey form which combined with their siting close to the plot frontage, would be at odds with the prevailing character and appear evident in the streetscene. Whilst it is acknowledged that the existing dwelling is situated within the front and western boundaries of the site, it is not an imposing two storey structure. The proposed dwellings would have an unrealistic scale that would be highly visible from within the Lincombes Conservation Area. The proposed dwellings have a traditional, pitched design, that clashes and is at odds with the remainder of the site given the modern flat roofed apartment block.

The pitched roof element of the dwellings adds to the scale, massing and dominance of the proposed built form. The Design Review Panel workshop explicitly expressed concerns regarding the integral garages, as it promotes an “outdated suburban-style plot typology”. The proposal retains the integral garages which are not evident elsewhere within the local built form. The proposed semi-detached dwellings are of a poor design, it is considered that the proposal is out of character and disproportionate with the existing streetscene and other dwellings in the area, it appears cramped and would represent an overtly dominant built form. The proposal has a siting, scale and massing which fails to reflect the existing area.

It is considered that the apparent and incongruous siting and design of the built form in the way of the proposed semi-detached dwellings within the streetscene would lead to less than substantial harm to the setting of the ‘Palm Grove’ Listed Building, given the limited vegetational coverage between the site and the listed building. Should the vegetation around Palm Grove be pruned back this harmful intervisibility would be exacerbated

It is considered that the proposal in totality does not acknowledge the local character and does not have a clear urban structure and grain that integrates with the surrounding context, in terms of siting, scale and design. The proposed design is inappropriate, it does not even attempt to reflect the design of the locality. The proposed development appears cramped and would erode the spacious, verdant qualities of the site. It is considered that the proposal fails to acknowledge the local distinctiveness as well as relating acceptably to the heritage assets, as the proposal is not in keeping.

Paragraph 202 of the NPPF states that where a development proposal will lead to less than substantial harm to the significance of the designated heritage assets, this harm should be weighed against the public benefits of the proposal. The proposed development would provide limited economic benefit, in terms of the work itself and make a minor contribution to the housing land supply, however this does not amount to substantial public benefit which would outweigh the harm identified. In any event, in this case, it is considered that the development in totality will lead to less than substantial harm to the significance of the Lincombes Conservation Area and to the setting of the nearby listed building, the ‘Palm Grove’.

Given the siting, scale and design of the proposal, it is considered that the proposal would have a detrimental impact upon the existing street scene, locality, and heritage assets, contrary to Policies DE1 and SS10 of the Local Plan, Policy TH8 of the Torquay Neighbourhood Plan and the guidance contained within the NPPF. The development fails to preserve or enhance the character or appearance of the Lincombes Conservation Area.

The above conclusions have consideration of Paragraph 199 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. The conclusion also considers the general duties of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding conservation areas, which requires Local Authorities to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

Should planning permission be granted, planning conditions should be employed to secure landscaping, suitable boundary treatments, materials and window and door details to ensure that a suitable form of development is undertaken without detriment to the heritage asset and locality.

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

Policy DE3 sets out the minimum floor space standards for new dwellings and apartments. The proposed residential units comply with the minimum floor space requirements. Therefore, the proposed residential accommodation is considered to comply with Policy DE3 of the Local Plan in this regard.

External Amenity Space

Policy THW4 of the Torquay Neighbourhood Plan states that all new houses shall have not less than 20 square metres of outside space and must have garden areas with not less than 10 square metres of space suitable for growing plants or the equivalent allocated communal growing space within an easy walk. Flats or apartments must have either a balcony of not less than 10 square metres and as appropriate to the size of the home or a communal green area of not less than 10 square metres per unit within the curtilage of the property. The proposed layout provides a communal outdoor amenity space for the apartment block as well as providing most with their own individual private terraces. The proposed semi-detached dwellings and the existing

dwelling would also benefit from their own individual outdoor amenity spaces. The proposal is considered to comply with Policy THW4 of the Torquay Neighbourhood Plan.

Daylight

Habitable rooms in residential development should provide occupiers with adequate and suitable outlook and access to natural light. Officers are concerned that the room layout and fenestration for certain apartments, in particular apartments 3, 6 and 8 would have little or no sunlight owing to their orientation and adjacent trees on neighbouring land, of which their canopies would be some 5 metres from the habitable room openings. It has not been demonstrated by the applicant whether these apartments would have suitable levels of natural light, therefore the proposal is considered to fail to accord with Policy DE3 of the Local Plan in this regard.

Neighbour Amenity

Given the differences in finished floor levels, it is considered that the proposed openings between the proposed residential units will not provide direct intervisibility between habitable rooms.

Objectors have raised concerns in terms of noise, loss of light and privacy/overlooking, whilst supporters have stated it would improve residential amenity. The proposed apartment block would be some 32 metres from the closest neighbour to the east 'White Lodge', to the north is a dense copse of trees, to the west is 'Meadville' which is flatted development and is some 19 metres away. Given the existing vegetation outside of the applicant's ownership, as well as the boundary treatments and separation distances, it is considered that the proposal would not result in a detrimental impact on adjacent neighbours in terms of overlooking/intervisibility. Furthermore, given the separation distances it is considered that the proposal would not harm the outlook of the habitable openings of adjacent neighbours. Given the siting of the apartment block in relation to adjacent neighbours, it is considered that the proposal would not have a detrimental impact on the neighbours access to natural light.

The properties to the south are considered to be a sufficient distance away given the separation distance and Meadfoot Sea Road being in-between that there would not be a detrimental impact on the amenity of neighbours, in terms of their outlook, privacy, or access to natural light. Overall, given its siting, scale, and design of the proposal, it is considered that the proposal would not result in any unacceptable harm to the amenities of neighbours, in terms of their outlook, privacy, or access to natural light. More generally in terms of the finished development the residential use aligns with the residential uses nearby and the additional residential units would not result in undue noise or general disturbance for existing occupiers in the area. Should planning permission be granted, a planning condition should be employed to secure a Construction Method Statement, suitable boundary treatments including between the

roof terraces of apartments 3 and 4 and the gardens of the semi-detached dwellings.

4. Impact on Highway Safety

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 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 TH9 of the Torquay Neighbourhood Plan states that all housing developments must meet the guideline parking requirements contained in the Local Plan unless it can be shown that there is not likely to be an increase in on-street parking arising from the development or, the development is within the town centre and an easy walk of a public car park which will be available to residents for the foreseeable future. Policy TH9 goes on to state that new major developments must contribute to better pedestrian/cycle links where possible and encourage modal shift towards active travel.

The proposal includes a new access point from Meadfoot Sea Road and provides a total of 20 on-site parking spaces. Objectors have raised concerns regarding traffic and access.

The Local Highway Authority have been consulted on the application. The applicant has submitted a drawing which illustrates visibility splays of an 'X' distance of 2.4m and a 'Y' distance of 43 metres can be achieved in both the primary and secondary directions. This is commensurate with the requirements of a posted speed restriction of 30mph and is considered acceptable. The proposed plans also illustrate that the site access gates which open inwards into the site which is considered acceptable. The swept path analyses demonstrate that both large vehicles including refuse and fire vehicles can access and egress the site in a forward gear, which is considered to be acceptable.

Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment and two off-street parking spaces per dwelling, totalling 15 off-street parking spaces, plus an additional parking space for visitors. There is a surplus of 4 parking spaces. Appendix F states that parking spaces should be 4.8 metres by 2.4 metres except for when they abut the public footpath and/or public highway and then the spaces should be 5.5 metres by 3.2 metres to prevent vehicles from overhanging and causing an obstruction to the public footway and potentially the public highway. Furthermore, the adopted Highways Standing Advice states that where a parking space is adjacent to a solid obstruction such as a retaining wall, the minimum width of a parking space should be 3.2 metres and should not be reduced. In terms of the undercroft parking, the proposal proposes 4.8 metre by 2.4

metre spaces for parking spaces 2, 3, 6, 7,8 and 9, whereas parking spaces 1, 4 and 5 have been enlarged in relation to the guidance. It is considered that parking space 9 should also have a minimum width of 3.2 metres given its position adjacent to the bicycle store. Therefore, parking space 9 is substandard. The undercroft parking also accommodates a 6.3 metre back-to-back distance between opposing parking spaces for manoeuvring. Garages should have a minimum internal measurement of 6 metres by 3.3 metres. The proposed integral garages for the semi-detached dwellings adhere to this requirement. The Local Highway Authority concurs that there is an oversupply of parking, 10% of spaces should be for disabled users and 10% visitor parking for the apartment block. Should planning permission be granted, a planning condition should be employed to allocate the parking arrangements of the site, including disabled parking spaces.

Appendix F also states that 1 electric charging point should be provided for each dwelling and 20% of parking spaces for flatted development should have electric charging points. Should planning permission be granted, a planning condition should secure such details prior to occupation. Furthermore, in terms of sustainable modes of transport, Appendix F states that at least 2 covered and secure cycle storage spaces should be provided per dwellings and at least 1 covered and secure cycle space per flat. The proposed plans show a cycle storage for the apartment block, but not for the remainder of the site. Should planning permission be granted, a planning condition should secure such details prior to occupation.

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. The proposal provides bin storage, SWISCo's Waste Client Manager has concerns regarding the communal bin store, therefore should planning permission be granted notwithstanding the approved plans the bin storage needs to be satisfactory and align with the guidance of such matters prior to the occupation of the development. Subject to the aforementioned planning conditions, the proposal would have an acceptable impact in terms of highway safety, and would comply with Policies TA1, TA2 and TA3 of the Local Plan and Policy TH9 of the Torquay Neighbourhood Plan.

5. Impact on Ecology

Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale. Policy TE5 of the Torquay Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements in order to protect and enhance those species and habitats. Guidance within the NPPF provides similar guidance to the above in that planning decisions should contribute to and

enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity (Paragraph 174).

The application is supported by a Preliminary Ecological Appraisal. Objectors have raised concerns in terms of trees and wildlife. The report found that the property and outbuilding were considered to have low-moderate potential for roosting bats, therefore a single dusk emergence/dawn re-entry survey was required. The re-entry survey did not observe any bats emerging from either building no further surveys are required to prove their presence/likely absence. Nesting birds must be considered against disturbance during nest building or nesting; typically between March-August inclusive to avoid contravening the legislation which protects them. Furthermore, the initial ecological appraisal found that the amenity grassland is considered suitable habitat for common reptiles which are protected by legislation. The reptile surveys found a single juvenile Slow worm present; a breeding population was not determined but likely to be present due to the presence of a juvenile. Therefore, should planning permission be granted a planning condition should secure the recommendations, mitigation measures and biodiversity enhancement measures in the submitted ecological reports. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy NC1 of the Local Plan and Policy TE5 of the Torquay Neighbourhood Plan.

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 an Arboricultural Impact Assessment. The site is protected by a 1973.01 Area TPO and lies within the Lincombes Conservation Area. Both the TPO and Conservation Area provide statutory protection to the trees impacted by the development. The Council's Senior Tree and Landscape Officer has been consulted on the proposal and has stated that the submitted arboricultural information correctly identifies the trees and categorises them accordingly.

The off-site tree (O1 London plane) is owned by Torbay Council and is assessed as part of their ongoing management of the wider tree stock. Although pruning of London plane 01 has been included it is not necessary with the reasons provided largely academic in respect of the development proposal. As a Council owned tree it is Torbay Council's responsibility to manage and maintain as it sees fit and currently no works have been prescribed for the tree. The proposed pruning of the third party owned Monterey pine is reasonable with the tree having experienced injudicious pruning before resulting in lengthy stubs being retained in the lower crown. The

proposed works will remediate the perceived dominance of the tree in relation to the building which will provide an improved spatial relationship with the building. It should be noted that although the works are considered reasonable agreement from the owner of the tree will be required to carry out the pruning.

An Arboricultural Method Statement has been submitted to mitigate against root damage to the London plane 01 to create the access for the development. The Officer has requested further details to ensure that the roots of the tree are properly protected throughout the creation of the entrance and the severing of any roots encountered is against the relevant British Standards. The Officer has advised that that carrying out explorative trial holes to ascertain the presence of roots in the area would help inform any works going forward. The Officer has also raised concerns regarding debris and natural light in relation to the existing tree stock outside the ownership of the applicant and the proposed apartment block, matters of which were covered under the residential amenity section of this report.

Given the response from the Council's Senior Tree and Landscape Officer, further details with regards to the Arboricultural Method Statement have been requested and the applicant has failed to provide such. Therefore, it is considered that insufficient information has been provided to establish whether the proposed development would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene, as such it is considered that the proposal fails to accord with Policy C4 of the Local Plan.

6. Impact on Flood Risk and Drainage

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

The site is located within the Critical Drainage Area and the application is accompanied by a Flood Risk Assessment. Objectors have raised concerns regarding drainage. The Council's Drainage Engineer has been consulted on the scheme and has stated that the hydraulic modelling confirms that the surface water system as designed will not result in a flood risk to properties on the site or any increased risk of flooding to properties or land adjacent to the site for the critical 1 in 100 year storm event plus 40% for climate change. The Council's Drainage Engineer raises no objections on drainage grounds to planning permission being granted, subject to a planning condition to secure the surface water drainage. Should planning permission be granted, a planning condition should be employed to secure the surface water drainage. The proposal is considered to accord with Policy ER1 of the Local Plan.

7. Affordable Housing Contributions

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 greenfield sites of three dwellings or more. For eleven dwellings it would have an affordable housing target of 20% which is usually sought through an on-site provision. Commuted payments will only be accepted where this would achieve more effective provision of affordable housing, or bring significant regeneration benefits.

Paragraph 63 of the NPPF states that where a need for affordable housing is identified, planning policies should specify the type of affordable housing required, and expect it to be met on-site unless:

- a) off-site provision or an appropriate financial contribution in lieu can be robustly justified; and
- b) the agreed approach contributes to the objective of creating mixed and balanced communities.

Paragraph 65 of the NPPF states that where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership, unless this would exceed the level of affordable housing required in the area, or significantly prejudice the ability to meet the identified affordable housing needs of specific groups.

The applicant has not indicated that they intend to provide any affordable housing.

In the absence of a signed Section 106 Obligation the proposed development cannot deliver the necessary affordable housing as required, therefore the proposal is considered to fail to accord with Policy H2 of the Local Plan and paragraphs 63 and 65 of the NPPF.

8. Designing Out Crime

Policy SS11 of the Local Plan seeks that development proposals should help to reduce and prevent crime and the fear of crime whilst designing out opportunities for crime, antisocial behaviour, disorder and community conflict. Policy TH2 of the Torquay Neighbourhood Plan states that new development should provide for a safe environment and consider opportunities to prevent crime or the fear of crime from undermining quality of life or community cohesion.

The proposal does not include a scheme of designing-out crime measures. Therefore, should planning permission be granted, it is considered that a planning condition should be employed to secure a scheme of such prior to occupation. Subject to the use of this condition, the proposal is considered to be in accordance with Policy SS11 of the Local Plan, and TH2 of the Torquay Neighbourhood Plan.

9. 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 an energy statement which states that the prime objective of a low energy or low carbon design is to optimize the orientation, structure, window/glazing location, and size and selection of proper materials pertaining to the building envelope. In addition, amalgamation of energy-efficient heating, ventilation and air conditioning (mechanical ventilation with heat recovery) is also covered under low energy building aspect. Furthermore, the use of modern construction with an external wall insulation providing a continuous envelop of the thermal insulation for the buildings.

A light timber construction will be used for penthouse apartments to reduce load and impact on the structural design. The proposed dwellings have been suitably designed with larger windows facing either south or west direction and with living accommodation always having a dual aspect openings. Good quality, double glazed, aluminium windows will prevent from heat loss and solar gain. All apartments will have 100% energy efficiency lighting, interoperable building communication system and optimized control strategy. The use of the flat roof over the apartment's block for installation of the Photovoltaic Panels to power the onsite lighting.

The proposals allowed for two electric car charging points on the site encouraging the low carbon electric car usage to evolve. Also, the new development wanted to promote a healthy living by securing a suitable storage areas for bikes or paddle boards to give the future occupants a chance for active and healthy living. The buildings will be well insulated to high standards which along with an energy efficient electric installations, good quality, modern, aluminium fenestration and sustainable materials will be an example of low carbon emission development.

Should planning permission be granted, a planning condition should be employed to ensure that the development adheres to the measures stated within the submitted energy statement.

Sustainability

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

The Economic Role

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

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

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

In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

The Social Role

The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing, the residential units to be provided must carry significant weight in this balance. However, the proposal fails to secure the required 20% affordable housing, which fails to meet the housing needs of local people.

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

The Environmental Role

With respect to the environmental role of sustainable development, for reasons set out in this report there is material harm to identified heritage assets (the Lincombes Conservation Area and setting of the Palm Grove Listed Building) which presents a clear reason for refusing the application. In addition, other elements that are considered to be especially relevant to the proposed development are impacts on trees, biodiversity and drainage. These matters have been considered in detail above.

The proposal provides low carbon and energy measures. The environmental benefits identified are marginal in the case of any biodiversity net gain, where it is proposed to require enhancement measures through condition should planning permission be granted.

It is considered that insufficient information has been provided to establish whether the proposed development would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene.

Concerns have also been raised with regards to access to natural light to habitable rooms when considering a number of the proposed apartments.

It is concluded that the environmental impacts of the development, in the absence of the tree information, adverse impact on heritage assets and concerns over access to natural light for some of the apartments, weigh against the development.

Sustainability Conclusion

Having regard to the above assessment the proposed development is considered to represent unsustainable 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:

Policy H2 of the Local Plan states that developments of over 11 residential units on greenfield sites should provide 20% affordable housing. The applicant has not indicated that any of the units would be affordable and has not provided heads of terms

for the S.106 legal agreement that would be necessary to secure provision of affordable units as part of the development.

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.

EIA/HRA

EIA:

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

HRA:

Not applicable.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal and development plan policies.

When taking account of the Government's objective of significantly boosting the supply of homes and the role of the construction industry in supporting economic growth, along with the acknowledged important contribution that small sites can make to meeting the housing requirement of an area and the Council's housing land supply situation, the cumulative public benefits of the proposed scheme only attract modest weight.

Therefore, having regard to the great weight that should be given to the conservation of designated heritage assets, the public benefits do not outweigh the less than substantial harm to the significance of the Lincombes Conservation Area and the setting of the 'Palm Grove' Listed Building.

The Council's housing land supply situation also means that paragraph 11 d) of the Framework must be applied. This sets out that planning permission should be granted, subject to whether the application of policies in the Framework which protect areas or assets of particular importance provides a clear reason for refusing the development.

Designated heritage assets are one of the defined protected assets and given the harm to the Lincombes Conservation Area and the setting of the 'Palm Grove', the policies in the Framework which seek to protect designated heritage assets provide a clear reason for refusing the development. The presumption in favour of sustainable development therefore does not apply.

It is concluded that whilst the proposal assists the delivery of housing, when considering the planning balance the significant benefit of providing such is not

outweighed by the harm identified within this report. Therefore, on balance the proposal is considered to be unacceptable having regard to the Development Plan taken as a whole.

Conclusions and Reasons for Decision

The Council cannot currently demonstrate a 5-year housing land supply, as sought by Government, and the proposal will help with the delivery of housing. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay. For reasons set out in this report there is material harm to identified heritage assets which presents a clear reason for refusing the application. As such, in applying the 'tilted balance' identified in Paragraph 11 of the NPPF, it is concluded that the application should be refused.

The provision of housing is a significant benefit within the planning balance. In the absence of 5-year housing land supply the NPPF advises that the policies most important for determining the application should be considered to be out of date.

It is concluded that the development is considered to conflict with the Development Plan however paragraph 11 (d)(ii) of the NPPF states that where the policies which are most important for determining the application are out-of-date, permission should be granted unless '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'. It should be noted that the absence of a 5 year housing supply principally sets a higher benchmark to resist development, however it is considered that notwithstanding the benefits of providing housing, the adverse impacts of the development, as set out in this report, significantly and demonstrably outweigh the benefits when assessed against the policies in the NPPF taken as a whole.

As such it is recommended that planning permission be refused.

Officer Recommendation

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

Reason(s) for Refusal

1. Given the siting, scale and design of the proposal, it is considered the proposal would fail to reflect local distinctiveness as well as failing to relate acceptably to the heritage assets. The proposed siting, scale and design of the semi-detached dwellings is suburban in character and would be dominant in the street scene. As such they would be inappropriate and out of character with the context of the site

and surrounding area and fail to respect the local character and would lead to less than substantial harm to the setting of the 'Palm Grove' listed building. The proposed scale and design of the apartment block fails to provide a quality design, respect the local character in terms of design, scale and bulk, and in terms of reflecting the identity of its surroundings. It would present itself as an overtly dominant mass within the locality that would be highly visible within the Lincombes Conservation Area. The proposal in its totality would result in an incongruous addition that would cause demonstrable harm to the heritage assets that is not outweighed by sufficient public benefit. The proposal is considered to fail to conserve or enhance the distinctive character and appearance of the Lincombes Conservation Area and would therefore lead to less than substantial harm to the heritage asset. The proposal is considered to be contrary to Policies DE1 and SS10 of the Adopted Local Plan 2012-2030, Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030 and the guidance contained within the NPPF, in particular Paragraphs 130, 134, 199 and 202.

2. The proposed development would provide a poor quality residential environment by reason of the trees adjacent to the western boundary in relation to the proposed apartment block, in particular apartments 3, 6 and 8, some of the habitable rooms would have limited access to natural light given the trees, which would result in the creation of an environment injurious to the amenity of future residents, contrary to Policy DE3 of the Adopted Torbay Local Plan 2012-2030 and the National Planning Policy Framework, in particular Paragraph 130.
3. The proposed works are in close proximity to a protected tree within the conservation area. As insufficient information has been provided it cannot be confirmed that the proposal would have an acceptable impact on the protected tree and the contribution it makes to the surrounding streetscene, and therefore whether the proposal would be in accordance with Policy C4 of the Adopted Torbay Local Plan 2012-2030.
4. The proposal, in the absence of a completed S106 Legal Agreement, fails to secure the necessary provision of affordable housing, contrary to Policy H2 of the Adopted Torbay Local Plan 2012-2030 and the National Planning Policy Framework, in particular Paragraphs 63 and 65.

Informative(s)

1. In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order 2015, in determining this application, Torbay Council has worked with the applicant in a positive and proactive way by clearly setting out concerns relating to the proposal and providing an opportunity for the applicant to amend the application. However, the local planning authority was unable to resolve these issues with the applicant

and the applicant elected not to withdraw the application, thereby resulting in this refusal of planning permission.

Relevant Policies

C4 – Trees, Hedgerows and Natural Landscape Features

DE1 – Design

DE3 – Development Amenity

ER1 – Flood Risk

ER2 – Water Management

ES1 – Energy

H1 – Applications for New Homes

H2 – Affordable Housing

NC1 – Biodiversity and Geodiversity

SS3 – Presumption In Favour Of Sustainable Development

SS11 – Sustainable Communities

SS14 – Low Carbon Development and Adaptation to Climate Change

TA1 – Transport and Accessibility

TA2 – Development Access

TA3 – Parking Requirements

TE5 – Protected Species Habitats and Biodiversity

TH2 – Designing Out Crime

TH8 – Established Architecture

TH9 – Parking Facilities

THW4 – Outside Space Provision

W1 – Waste Hierarchy