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| Application Site Address                  | Former Magistrates Court,<br>Union Street,<br>Torquay<br>TQ1 4BP   |
| Proposal                                  | Conversion of the former Magistrates Court to form 14 residential apartments, including partial demolition, the provision of an additional floor, and external changes including the provision of balconies, terraces, and associated car parking, bike parking and bin storage.   |
| Application Number                        | P/2022/0969  |
| Applicant                                 | Mr E.K Richardson  |
| Agent                                     | Kay Elliott Architects   |
| Date Application Valid                    | 16.09.2022   |
| Decision Due Date                         | 16.12.2022   |
| Extension of Time                         | N/A  |
| Recommendation                            | Approval: Subject to; <ul style="list-style-type: none"> <li>1. The conditions as outlined, with final drafting delegated to the Divisional Director of Planning, Housing and Climate Emergency.</li> <li>2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</li> </ul> |
| Reason for Referral to Planning Committee | Major Development  |
| Planning Case Officer                     | Scott Jones  |

Old Magistrates Court Location Plan 1-1250 - Location Plan



## **Site Details**

The former Magistrates Court, located on the corner of Union Street with Trematon Avenue, west of Grade 2\* St Mary Magdalene's Church and south of the Town Hall Car Park. The building has been empty and unused for approximately 5 years.

The principal element of the existing building fronts Union Street and is a stone finished two-storey flat-roofed building with an element of under-build evident along Trematon Avenue, responding to the drop in levels. There is a secondary element in the form of a linked annex, which is brick finished elevated single-storey element set over parking spaces. The corridor link is elevated with the existing vehicular access passing underneath the linking corridor to a courtyard area and under-croft parking under the annex. The pedestrian entrance is via Union Street where there is stepped and ramped access to the central door feature.

There is very limited landscaping within the plot as the building dominates, however there are significant trees adjacent within the grounds of the church to the east.

In terms of context the building sits within the Upton Conservation Area and dates from between 1870 and 1904, initially being a school building. In addition to the church the site also forms part of the immediate setting to the Grade 2 Listed Castle Chambers to the east across Trematon Avenue. In addition to heritage designations it is also pertinent to note that the site sits at the upper end of the designated Town Centre and is within a Community Investment Area, as identified within the Torbay Local Plan.

## **Description of Development**

The proposal is for the Change of Use of the building, with partial demolition and a roof-level extension, to provide 14 residential apartments.

The accommodation created being 13 x 2-bed apartments and 1 x 3-bed apartment, with one of the apartments being within the rear elevated annex.

Within the main building the partial lower ground floor will chiefly hold plant and bin storage, with a single-aspect apartment facing east towards the church. On the ground and first floors, within the existing building, four apartments are provided on each floor with the arrangement loosely split into quarters providing double aspects to each unit. Each of the first-floor units are to be provided with a balcony, two facing Union Street and one to the northern end of each of the side elevations. Above four apartments are to be provided within an additional roof storey, which takes the form of a double gabled structure that frames an internal flat-roofed section. The roof slopes face Trematon Avenue and the church, inset with dormers. The apartments are again double aspect and the two facing Union Street feature inset terraces between the gables, whilst the two facing the Town Hall Car Park feature rear-facing balconies. The sole 3-bed apartment sits within the annex which is accessed via enclosed stairs near to the main entrance. The unit features outdoor space in the form of a balcony created through recessing the existing building line adjacent to the enclosed stairs.

In terms of partial demolition the main element of this is the removal of the slightly protruding section of the building facing Trematon Avenue, recessing the building back to present a straight building line.

In terms of supporting elements the vehicular courtyard between the linked buildings and partially under the 'annex' element is laid out to provide 14 car parking spaces. The design and Access Statement cites cycle parking for 28 cycles is provided adjacent to the individual parking bays. Recent detail shows these split, with the majority within the secure undercroft courtyard and a small number within the walled garden.

The materials palette within the scheme is natural stone in the main building to three sides, reusing the existing, with the rear elevation facing the annex reformed and extended in a mix of white render and grey standing seam. The added roof storey is formed in grey metal standing seam, and the existing window stock is to be replaced with grey aluminium windows and doors. The annex building retains the existing brick and again grey aluminium windows replace the existing Upvc stock.

### **Relevant Planning Policy Context**

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

#### **Development Plan**

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

#### **Material Considerations**

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)
- Published standing Advice
- Planning matters relevant to the case under consideration, including the following advice and representations, planning history, and other matters referred to in this report:
- Heritage setting, within a Conservation Area (Upton) and is part of the immediate setting of the Grade 2\* Listed St Mary Magdalene's Church and Grade 2 Castle Chambers.

### **Relevant Planning History**

P/2021/0266: Change of use from former Magistrates Court to 10 residential apartments & associated facilities, including amendments to windows, doors and external staircases, and the addition of rooflights. Application withdrawn.

### **Summary of Representations**

**Support:** x1 – positive impact on local area, it provides facilities, it provides houses, it removes an eyesore.

**Objections:** No objections.

## **Summary of Consultation Responses**

### **Torquay Neighbourhood Forum**

No comments.

### **Torbay Council Community Safety Officer**

No objections.

### **Torbay Council Heritage Advice**

The balconies to the front have been retained which I still don't think are appropriate. They will attract lots of residential paraphernalia at high level which will not look attractive and is not common in this location.

I am also concerned with the loss of the historic pier and walling towards the corner/junction which I feel could be integrated into the scheme. I am also concerned with the treatment and detailing of the proposed boundary wall which I feel could respond better to the traditional treatment seen elsewhere within the conservation area.

### **Highway Authority (SWISCo)**

The Applicant is required to address the following items before a recommendation can be issued by the Local Highway Authority in respect to the acceptability of the proposals:

- Further consideration is required as to the design of cycle parking and justification regarding the car parking provision;
- Further consideration is also required as to delivery and servicing of the proposed apartment in the Annex;
- A revised layout is required for the proposed gated vehicular access as, so it aligns with the required design standards; and
- Further evidence is required as to the feasibility of the proposed car park layout.

### **Green Infrastructure Manager (SWISCo)**

The site is within the Upton Conservation Area with the trees over 7.5cm in diameter at 1.5m above ground level afforded statutory protection under the Conservation Area regulations.

Owing to the proximity of the tree canopies some minor pruning works will have to be undertaken should the proposal be granted consent, and this is highlighted in the supporting information. The trees will tolerate the required pruning to ensure that there is adequate spatial relationship between the building and the canopies.

Consideration will need to be given to the fenestration and room use within in proposed development. The eastern aspect is likely to be significantly shaded and the perceived dominance of the trees a concern to the occupiers leading to calls for the trees to be pruned or removed owing to their position to the building.

The internal design will need to be delivered and supported by further arb assessment showing the natural light levels reaching the rooms are commensurate with the use of the rooms.

### **Drainage Engineer (Torbay Development Agency)**

Providing the surface water drainage is constructed in accordance with the hydraulic design and drawing number DR-001 revision B, I have no objections on drainage grounds to planning permission being granted.

### **Waste and Recycling Officer (SWISCo)**

No objection.

It will be important to make sure that the sunken courtyard has a solid non-slip surface rather than gravel or chippings and that the area including any gateway is wide enough to bring the bins through and that it is well lit.

To complete collections we would pull into the entrance to the car park to avoid blocking the highway, so please can it be ensured that there is adequate space for our vehicles to pull into safely. Combination locks are an ideal way for access to be granted to our teams to collect.

We would require the details of a contact in case of problems with collections and would ask property management to work with us to make sure that the waste is correctly presented for collection.

I note that 1100L bins are shown on the plans, but we do not provide 1100L bins for recycling any more. Instead we would provide smaller bins (usually 240 litre to begin, but can be adjusted to fit demand) for different materials (paper, cardboard, glass, plastic & cans, food). If 1100L bins are provided by SWISCo for residual waste a rental charge will be applied annually, currently at £123.59 + VAT per 1100L bin.

Request waste management contributions for this development as per the table 4.2 of the Council's Planning Obligations SPD.

### **Building Control Officer**

This application will require Building Regulation consent. Below are some general observations that will apply which I'm sure the agent is already aware of, this list is not intended in any way to be exhaustive.

- Changing the use to flats will require all existing thermal elements such as the roof, walls, floors and windows to be upgraded to comply with current thermal insulation requirements.
- New separating walls and floors between the units must be upgraded to current fire resistance and sound insulation requirements. A pre-completion sound test will need to be undertaken and arranged by the builders or applicant. It is highly recommended advice is sought from an acoustic engineer if in any doubt.
- Ventilation to the units will need to satisfy the current updated Building Regulation requirements.
- The size, location and construction of the communal waste store will need to be considered in accordance the local waste collection agency and the requirements of the Building Regulations.

- An Automatic opening vent for fire service use will be required at the head of the common stair to provide smoke ventilation to the staircase.
- The internal layout of the common areas serving the flats will require careful consideration regarding maintaining fire compartmentation, travel distances, access and facilities for firefighting, smoke venting etc.

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

The proposed development site sits within the policing beat area of Torre which Police have high demand in respect of crime and anti-social behaviour compared to other areas of Torquay as a result it would request the following conditions are in place:

It is respectfully requested a condition is in place so that any low walls surrounding the development are designed so not to have a flat top or in a way which will prevent the wall becoming an informal seating area for people or large groups to congregate. Reason – To prevent the fear of crime and anti-social behaviour.

It would be respectfully requested that a condition is in place to create a secured lobby at the front entrance of the building with an access control/visitor door entry system. Reason – In the interest of the security of the building and prevent crime and anti-social behaviour.

It is requested a condition is in place so that the gate to the sunken private garden is lockable from both sides by means of a key as an example. Reason - to prevent unauthorised access and to prevent crime.

### **South West Water**

The applicant should demonstrate to the Local Planning Authority that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable.

The applicant's current information, to discharge to the public combined sewerage network, is not acceptable in the absence of clear evidence to demonstrate why the preferred methods listed within the Run-off Destination Hierarchy has been discounted by the applicant.

### **Planning Officer Assessment**

#### **Key Issues/Material Considerations**

1. Principle of Development
2. Design and Visual Impact (Inc Heritage)
3. Residential Amenity
4. Highways and Movement
5. Ecology
6. Flood Risk and Drainage
7. Low Carbon / Climate Change

#### **1. Principle of Development**

The building is a disused law court in the built-up area, in a Community Investment Area, Conservation Area (Upton), and within the defined Town Centre (Torquay).

The principle of a change of use to residential apartments is considered acceptable, for the reasons below.

Policies SS12 and H1 of the Torbay Local Plan supports proposals for new homes in the built-up area, subject to wider policy consistency, and promotes the re-use of brownfield land and the need to provide homes and meet housing needs. In addition Policy TC1 of the Local Plan states that housing provision, within town centres not covered by primary or secondary shopping frontages, together with the reuse of underutilised floor space above existing commercial premises as a source of housing supply, will be supported. These policies support the provision of housing where it is sustainable development.

In terms of the Torquay Neighbourhood Plan the central policy guidance re principle is contained within Policy TT2 (Change of Use in Conservation Areas and Listed Buildings), which offers that within designated Conservation Areas the change of use, where proposals require consent, will be supported in principle (subject to other policies in this Plan) to ensure a sound future for such heritage assets and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

For the reasons above the principle of the change of use is comfortably aligned with the aspirations of the Development Plan.

In terms of national guidance the NPPF seeks to support the vitality of town centres, confirming that planning policies and decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation. It recognises, in Paragraph 86, that residential development often plays an important role in ensuring the vitality of centres and encourages residential development on appropriate sites.

It is also relevant to note that the Council is currently falling short of a 3 and 5-year housing land supply and that the proposal would make a moderate contribution to this shortfall being addressed as a windfall brownfield development. The application of the 'tilted balance' in favour of sustainable development is a material policy consideration as identified by the NPPF in this circumstance. However, as cited above, the principle of residential is supported for the reasons stated. The 'tilted balance' guides to granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF. In regard to applying the 'tilted balance' it is relevant to note that there are heritage considerations due to the Conservation Area setting and being within the setting of a Grade 2\* Listed Church and other listed buildings. As concluded within this report there are no heritage reasons that provide clear reason for refusing the application, so the 'tilted balance' is considered applicable. This guides to granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF. Notwithstanding the NPPF and the 'tilted balance' guidance, this does not displace the primacy of the Development Plan.

As stated for the reasons above the principle of the change of use is aligned with the Development Plan and is hence supported, having regard for the aims and objectives of Policies SS12, H1, TC1 and TT2 of the Development Plan.

## **2. Design and Visual Impact (Including Heritage Impacts)**

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 (Para 126). It also 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 (Para 134).

In terms of the Development Plan Policy TH8 'Established architecture' is the key policy tool within the Torquay Neighbourhood Plan and cites that development must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings. Policy TT2 (Change of Use in Conservation Areas and Listed Buildings), offers that the change of use will be supported in principle to ensure a sound future for such heritage assets, and wherever possible unsympathetic development of the past is removed or altered to enhance the historic environment.

In terms of further advice within the Development Plan Policy DE1 of the Torbay Local Plan outlines the importance of good design and is also a key policy tool in design terms.

For development affecting heritage assets the thrust of policy guidance within the Development Plan and NPPF is for development to sustain and enhance character, to take opportunities to remove deleterious features, and to give great weight the conservation of assets. This is relevant as the site sits in the Upton Conservation Area and contributes to the immediate setting of the Grade 2\* Listed church and Castle Chambers, and the wider setting of Listed civic buildings around Castle Circus.

This former school and law building is not identified as a building of merit in the Upton Conservation Area Appraisal, however it is considered a positive contributor to the townscape, where its stone finish and utilitarian form sits comfortably with the buildings of merit in the area. The buildings merit is however weakened by a modern window stock, rooftop clutter, and the beginnings of general disrepair.

As a response to the building and context the conversion scheme is considered, in the round, as a positive reimagining of this civic building into a residential use.

The additional roof storey takes reference from the adjacent Castle Chambers in terms of the gabled roof form and the proportions of the gables presented, and the reuse of stone from other parts of the building within the gables facing Union Street reinforces the stature of the principal elevation. The use of a modern material (a grey metal seamed finish) within the roof is considered acceptable in terms of honestly characterising the additional floor as a modern addition. The colour reflects the predominant slate finish, and the dormers help break up the roof form and add some interest. Below roof level the demolition of the protruding 2.5/1.5-storey element facing

Trematon Avenue provides some breathing space to the street and is welcomed as a positive regression from the edge of the public realm. The replaced and reformed window and door arrangement presents pleasant elevations to the public realm, with grey aluminium frames replacing white uPVC within regularly formed openings. The success of the balconies on the principal elevation has been raised as a question with the agent and any response will be reported to members. However, as matters stand the scheme, in the round, is considered acceptable as a positive reinvention of the building for a future residential use. In terms of boundary works the creation of a stone wall along Trematon Avenue is positive and provides a defensible space in a suitable form. There is some question on the impact of the boundary works on the historic pillar, which should be retained and worked successfully into the boundary amendments. At present it is unclear whether the pillar will be subsumed into a higher wall feature that wraps around the corner. As a related matter on the boundary works there is some concern on the success of a high wall wrapping around the corner of the site in terms of closing off the corner and hindering clear and unobstructed views of the turn and of the entrance ramp. Aside the visual character concerns there are designing out crime concerns. It is proposed that if unresolved that the matter is addressed by a planning condition for acceptable detail resolving the concerns.

In terms of the rear of the development the more modern treatment of the rear elevation, which is to be a mix of render and metal cladding with prominent glazed gables, is considered acceptable in the context of the building and where the annex provides some substantial screening. The works to the annex building involve replacing uPVC windows with grey aluminium and reforming the rear corner to integrate a covered terrace for the proposed unit. The works are considered acceptable.

Overall the proposal is considered to secure a positive reinvention of this civic building and presents a well-resolved suite of changes to make the building fit for residential use. The impact on heritage assets, the Upton Conservation Area and the immediate setting of the Grade 2\* Listed St Mary Magdalene's Church and Grade 2 Castle Chambers, and the wider kinetic setting of the group of listed civic buildings to the east, is considered neutral or slightly positive.

As detailed there are some minor matters to resolve regarding the success of the balcony features facing Union Street and the height and topping detail of the stone boundary wall, and its impact on the historic pillar. Members will be updated on the progress to resolve these minor points, however as they are minor it is considered acceptable to secure detail through a planning condition.

When considering policy guidance the proposal is deemed to be in accordance with Policies DE1, SS10 and HE1 of the Torbay Local Plan, TH8 of the Torquay Neighbourhood Plan, and is aligned with the guidance contained in the NPPF in terms of good design and heritage assets.

This conclusion considers the provisions of The Planning (Listed Buildings and Conservation Areas) Act, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas and the setting of listed buildings.

### **3. Residential Amenity**

The Torbay Local Plan contains policy guidance (principally through policies SS11, H1 and DE3) towards ensuring that residential development produces high-quality living environments that present a good level of amenity for future users and neighbouring occupiers. Policy DE3 also identifies size standards for self-contained units, which reflect national space standards.

The NPPF (Para 130) guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

In terms of location the central setting is considered positive for the future use and well suited to a residential occupancy, presenting good opportunities for future occupants in terms of access to services, facilities and sustainable transport options, which is all positive.

In terms of the proposed units the main building is converted and extended to provide 12 2-bed apartments, whilst the annex building would provide a 3-bed unit. Although this presents a largely uniform character of unit they are generously scaled and would present attractive propositions for single occupants, couples, or small families, which presents some potential diversity in terms of occupation. This is noted in respect to seeking to influence mixed and balanced communities. Overall, the form of the proposed units is considered a positive in the terms of the Community Investment Area, as it doesn't seek small bedsits or small apartments.

The size of the units comfortably exceed the minimum National Space Standards, which are also engrained within Policy DE3 of the Torbay Local Plan, and key living spaces are also generally well scaled and proportioned. These aspects are positive influencers in terms of amenity.

In terms of natural light and outlook the internal arrangement, which loosely divides the main building into quarters on the 3 main floors, provides dual aspect apartments with adequate light and outlooks. The annex apartment also has multiple aspects and good light and outlooks. There will be some shading from the adjacent trees facing east towards the church however the units are dual aspect which reduces the impact, and outlooks towards natural features have some benefit. It is noted that the lower ground floor apartment is single aspect and faces east towards the boundary with the churchyard. The adjacent trees within the churchyard will influence light and outlook afforded this unit, however on balance the unit is considered to offer an acceptable living space being mindful of there being some tangible benefits of a 'green' outlook.

In terms of outdoor amenity space Policy THW4 of the Torquay Neighbourhood Plan seeks that flats or apartments must have either a balcony of not less than 10 sqm and as appropriate to the size of the home, or a communal green area of not less than 10 sqm per unit within the curtilage of the property. Policy DE3 of the Torquay Local Plan similarly expects apartments to offer 10sqm of outdoor space individually or communally. Most apartments within the scheme would benefit from some degree of

outdoor space, either from private gardens, balconies or terraces, albeit not to the scale expected by the Development Plan Policies. These elements are positive and would enhance the residential environments but, when considering the central location and proximity to urban parks, the provision of such areas is welcomed but not necessary, certainly as town centre living is often bereft of outdoor private space. Notwithstanding policy advice within the Development Plan the provision is considered acceptable in this particular context.

Cycle parking and waste storage facilities are to be provided in a safe and secure under-croft, courtyard and lower ground floor, which provides positive supporting facilities. The amount of cycle parking is considered adequate and there appears sufficient storage space for the necessary bins.

In terms of impacts upon adjacent occupiers the proposed use is comfortably aligned with the established mixed character of the area and would not impact adjacent buildings or uses.

In terms of designing out crime it is proposed that a planning condition can address the receipt and consideration of detailed design elements to limit the susceptibility of the development to crime. The condition referencing the Police's initiative Secured By Design.

Having regard to the amenities provided within the proposal for future occupants the scheme is considered sufficiently aligned with the aims and objectives of Policies SS11, H1, DE1 and DE3 of the Torbay Local Plan 2012-2030, and the NPPF.

#### **4. Highways and Movement**

The NPPF guides that in assessing specific applications for development it should be ensured that (a) appropriate opportunities to promote sustainable transport modes can be – or have been – taken up, given the type of development and its location; b) safe and suitable access to the site can be achieved for all users; 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 (Para 110).

The Development Plan, largely through Policies TA1, TA2 and TA3 of the Torbay Local Plan, outlines similar policies goals as the NPPF, but also guides on parking levels and support towards promoting sustainable travel and providing sustainable transport facilities within new development. The Torquay Neighbourhood Plan supports the provision of parking outlined in the Local Plan in Policy TH9 and supports the encouragement of development that provides good access opportunities and thus reducing the need to travel within Policy TTR2.

The proposal includes 14 car parking spaces within the courtyard/under-croft area, with cycle parking for 20 cycles in the same area and further facilities within the adjacent enclosed courtyard. The courtyard is secure behind a gated access set 6m back from the adjacent road, slightly amended to respond to Highway Authority

comments. Development Plan parking standards guide that the estimated requirement for apartments is 1 space per apartment and that visitor parking should be provided. In the context of a town centre site 14 car parking spaces is considered more than adequate where there is more opportunity to make journeys through walking, cycling and more sustainable modes such as buses and trains. This position is supported within the Development Plan, which clearly states that greater flexibility on the levels of parking provision should be considered in town centres. The cycle parking facilities are safe and secure, within a covered gated under-croft, and exceed the amount expected by the Development Plan, which is 1 per apartment. The provision is considered satisfactory.

It is noted that the highway authority has raised a request for further consideration of vertical cycle parking however standard parking is shown on the more recent plan submitted. There is also a request for justification regarding the car parking provision and further evidence as to the feasibility of the proposed car park layout. The level of parking is considered acceptable and there is a swept path plan showing access and egress of the furthest space. The layout appears generally workable, there are spaces that aren't afforded the extra width detailed in the highway guidance, but they do not appear overly compromised. Considering that there is flexibility on parking numbers the current level of detail and layout is considered acceptable. It is noted that a revised layout has been submitted responding to the request from the highway authority.

The proposal is considered acceptable on highway and movement grounds, providing development in a sustainable location with adequate car and cycle parking facilities, in accordance with Policies TA1, TA3 and DE1 of the Torbay Local Plan, Policy TTR2 of the Torquay Neighbourhood Plan, and the NPPF.

## **5. Ecology**

Policy NC1 of The Local Plan seeks for development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Policy TE5 of The Neighbourhood Plan cites that where there may be an impact development should be accompanied by an assessment of impacts upon any existing protected species or habitats and as necessary provide mitigating arrangements to protect and enhance those species and habitats. Guidance within the NPPF provides similar guidance to the above in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity (Para 174).

The site is a developed urban plot with limited ecological features present. The application is supported by an ecology report that confirms that protected species or habitats would not be effected by the development.

In terms of biodiversity goals the report does reflect that NPPF seeks to maintain and enhance biodiversity within planning policies and decisions with regards to new development and that the development should incorporate bat and bird friendly features within its design, and in particular Swift boxes should be incorporated to provide potential nest sites for this declining species of bird. It also cites that any new landscaping should use native species or those beneficial to wildlife to address this requirement. In terms of precautionary advice that report also confirms that nesting

birds must be considered against disturbance during nest building and nesting; typically between March-August inclusive to avoid contravening the legislation which protects them.

Subject to conditions to secure enhancement measures the proposals are considered in accordance with the aspirations of Policies SS8, DE1 and NC1 of The Torbay Local Plan, Policy TE5 of the Torquay Neighbourhood Plan, and advice contained within the NPPF.

## **6. Flood Risk and Drainage**

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. The policy outlines a hierarchy for water-flow management within new development, and similar guidance is contained within the Environment Agency's Critical Drainage Area Advice Note for Torbay.

The Council's drainage advisor (TDA) has advised that as the site is located in Flood Zone 1, is not in an area susceptible to surface water flooding and the planning application relates only to a change of use, there are no objections on drainage grounds to planning permission being granted. The proposal is considered acceptable in terms of drainage and flood risk. South West Water has raised concern that the application has not presented sufficient information to demonstrate that the sustainable hierarchy in the Development Plan cannot be followed.

The proposed controlled discharge will significantly reduce the rate of flow to the combined sewer system over the currently unrestricted discharge. Notwithstanding concern from SWW regarding lack of clarity on accordance with the hierarchy within the Development Plan there is support from the Council's drainage officer acting as the Lead Local Flood Authority.

As the proposal is principally a change of use with reduced flood risk from improving the existing surface water drainage system the proposal is considered acceptable.

The proposal is considered comfortably aligned with the aims and objectives of Policies ER1 of the Torbay Local Plan and the NPPF.

## **7. Low Carbon / Climate Change**

Policy SS14 of the Local Plan relates to 'Low carbon development and adaptation to climate change' and seeks major development to minimise carbon emissions and the use of natural resources, which includes the consideration of construction methods and materials. Policy ES1 seeks that all major development proposals should make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities. ES1 also states that the retrofit of energy efficiency measures to existing buildings will be encouraged and supported, and that opportunities for reducing carbon emissions associated with energy use will be sought through the development management process as part of the wider conversion/ refurbishment of buildings where planning permission is

required. Policy W1 (Waste hierarchy) of the Local Plan seeks that all development should seek to minimise the generation of waste, having regard to a waste hierarchy, which includes prevention, for example using less material in design and other measures to minimise waste generation.

The Design and Access Statement submitted in support of the proposal includes a section on energy efficiency. It cites that the development will look to minimise CO2 emissions in accordance with the energy hierarchy of “Be Lean, Be Clean, Be Green”. Be Lean is linked to passive design measures, Be Clean is linked to the use of clean energy source technologies, and Be Green is based on considering the potential for renewable energy sources. The statement cites that the first two are expected to significant CO2 savings, with the third having the potential to maximise CO2 production. The concepts are supported however it is considered necessary to secure a demonstrable understanding of the carbon credentials of the scheme via a planning condition should planning permission be granted.

The reuse of the building is supported in terms of utilising the embodied energy within the building. This includes reusing material within the partial demolition for stone walls and the upper floor stone façade.

The development is, for the reasons above and subject to the detailed condition, considered suitable for approval, in accordance with Policies SS14 and ES1 of the Torbay 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 provision is a driver of economic growth and there would be economic benefits of bringing the site into use and into a residential use. Aside the longer-term economic benefits of local spend from occupants the construction phase would also create jobs within the local economy. There are no adverse economic impacts that would arise from this development. The building has not been used for 5 years and the provision of 14 households in the town centre will help town centre vitality and viability. In respect of the economic element of sustainable development the balance is in favour of the development.

### **The Social Role**

The principle social benefit of the proposed development is that it would help deliver good-sized units, largely 2-bed, that could be occupied by singles, couples or small families, helping aspirations towards mixed and balanced communities. This would be in an area that would be well located for shops, services and job opportunities for occupants. In respect of the social element of sustainable development the balance is in favour of the development.

## **The Environmental role**

The environmental benefits are considered positive. It provides a long-term use for a building that has embodied energy within its fabric and the sustainable central location provides lifestyle opportunity that may be less reliant on cars and reduces need for travel. In respect of the environmental element of sustainable development the balance is in favour of the development.

## **Sustainability Conclusion**

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

## **Statement on Human Rights and Equalities Issues**

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

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

## **Local Finance Considerations**

### **CIL**

The land is situated in Charging Zone 1 in the Council's CIL Charging Schedule and residential units is chargeable development, this means that all new floorspace will be charged at a rate of £30/sqm unless exempt.

Based on the submitted CIL form, which provides an indication, subject to formal determination, that the proposal, which is stated as delivering 1962sqm of CIL liable floorspace, is likely to deliver circa £ 58,860.00 in CIL payments.

### **S106**

Site Acceptability Matters: None.

Affordable Housing: N/A for this scale of development on a brownfield site.

Sustainable Development Matters: N/A as CIL liable development. Waste obligations requested by SWISCo cannot be sought as they are deemed SD obligations within the Council's Planning Contributions and Affordable Housing SPD.

S106 legal agreement hence not required. No obligations necessary to make the development acceptable.

### **EIA/HRA**

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

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

### **Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to promote reuse brownfield sites and provide housing would produce a positive impact overall. It is also noted that it will also trigger CIL payment of approximately £58,860.00.

### **Conclusions and Reasons for Decision**

The change of use and alterations are acceptable from a policy perspective and will provide a suitable use for the location in what is a defunct law court building and deliver much needed housing.

The proposal will provide an acceptable standard of accommodation when considered in the round and in the location is very sustainable with easy access to shops, facilities, employment opportunities, sustainable transport modes, and local parks.

Subject to appropriate Conditions the proposal is recommended for approval.

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

### **Officer Recommendation**

Approval: Subject to the conditions as outlined.

### **Conditions**

#### **Boundary solution**

Notwithstanding detail on the plans hereby submitted and approved, prior to works commencing to the existing boundary wall bordering Union Street and Trematon Avenue a revised boundary detail and general enclosure plan for all means of enclosures between the building and the public highway shall be submitted and approved in writing by the Local Planning Authority. The boundary detail and enclosure plan shall seek to;

- I. Retain the existing pillar and adequately resolve an enclosure detail that secures its form and historic value.
- II. Provides a boundary treatment for the corner of the plot and an enclosure detail for the adjacent terrace/garden that responds positively to the public realm and limits
- III. Where practicable incorporates a cock-and-hen topping detail that responds to local character of walls in the immediate vicinity.

The development shall proceed in full accordance with the approved detail and the boundary treatments shall be completed prior to occupation of the development

Reason: To secure appropriate form of development in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030, Policy TH8 OF THE Torquay Neighbourhood Plan, and the NPPF.

### **Detailed Design - PI**

Prior to the installation the following details, to a scale between 1:1 and 1:5 where appropriate, shall be submitted to and approved in writing by the Local Planning Authority;

- (i) metal Juliet balcony enclosures
- (ii) frameless glass balcony and terrace enclosures
- (iii) detailed design and finish of the principal entrance
- (iv) all sill and head details to apertures
- (v) finishing detail of projecting balconies
- (vi) detailed form and colour of metal cladding

The development shall proceed fully in accordance with the approved detailed design elements on the submitted and approved plans (including the approved reveal depths).

Reason: To secure appropriate form of development in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030, Policy TH8 OF THE Torquay Neighbourhood Plan, and the NPPF.

### **Stone**

All stone within the proposed building or reformed/extended boundary walls shall be natural stone reclaimed from demolition within the development hereby approved. Should additional stone be required it shall match, in colour and form, that which exists within the building or boundary wall.

All stone shall laid/formed shall match that of the existing building and boundary.

Reason: To secure appropriate form of development in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030, Policy TH8 OF THE Torquay Neighbourhood Plan, and the NPPF.

### **Energy / Low Carbon - PC**

Prior to the commencement of development an Energy Statement, which responds in detail to the Energy Strategy outlined within the submitted Design and Access Statement, specifically how the development limits its carbon production through its lifetime from detailed consideration of the stated "Be Clean" and "Be Green" concepts, shall be submitted to and approved in writing by the Local Planning Authority.

The approved measures within the submitted and approved Energy Statement shall be incorporated within the development in full prior to occupation of the development and thereafter be maintained and operational.

Reason: In the interests of sustainable development and to minimise carbon emissions in accordance with Policy SS14 and ES1 of the adopted Torbay Local Plan 2012-2030. These details are required pre-commencement in order to inform the construction phase.

### **Secured by Design**

Prior to the first use of the development evidence shall be submitted to and approved in writing by the Local Planning Authority to demonstrate that the design of the development meets Secured by Design standards as far as practicable.

The approved measures shall be incorporated within the development in full prior to occupation of the development and thereafter be maintained and operational.

Reason: In the interests of crime prevention in accordance with Policy DE1 of the Torbay Local Plan and Policy TH2 of the Torquay Neighbourhood Plan.

### **Hours of Construction**

All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between 08:00 Hours and 18:00 Hours on Mondays to Fridays, and 08:00 and 13:00 Hours on Saturdays, and at no time on Sundays and Bank Holidays.

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

### **Nesting Season**

Within the nesting season, March to August inclusive, prior to the commencement of any works to the existing roof of the building a preliminary assessment shall be undertaken to establish any presence of nesting birds. Should nesting birds be found all works to the roof shall stop until the bird have fledged and a suitably qualified ecologist has confirmed that works can commence.

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

### **Ecology – biodiversity enhancement - PO**

Prior to the first use of the building measures to maximise opportunities for biodiversity enhancement in and around development, to deliver a net gain for biodiversity, shall be submitted to and approved in writing by the Local Planning Authority, in accordance with the submitted ecology report.

The approved measures shall be delivered in full prior to the first occupation of the development and maintained for their purpose thereafter through the life of the development.

Reason: To ensure the development positively incorporates biodiversity features proportionate to its scale, in accordance with Policy NC1 of the Torbay Local Plan 2012-2030 and advice contained within the NPPF

### **Parking provision - PO**

Prior to the first occupation of the development the parking facilities hereby approved shall have been provided in full. These elements shall thereafter be retained in full as parking facilities to serve the development for the life of the development.

Reason: To secure an appropriate form of development in accordance with Policies DE1 and TA3 of the Torbay Local Plan 2012-2030 and Policies TH8 and TH9 of the Torquay Neighbourhood Plan.

### **Electric charging facilities - PO**

Prior to the first occupation of the development details of the location and form of electric car charging facilities to serve the development shall be submitted to and approved in writing by the Local Planning Authority. The provision shall serve no less than 20% of the development.

The charging facilities shall be implemented in full and made available for use prior to the first use of the building and shall be always maintained and available for use thereafter to serve the development.

Reason: To secure an appropriate form of development in accordance with Policies TA3 and SS14 of the Torbay Local Plan 2012-2030 and Policy TH9 of the Torquay Neighbourhood Plan.

### **Cycle parking provision - PO**

Prior to the first use of the development the approved cycle parking facilities shall be completed and made available for the purpose of cycle parking to serve the development. Once provided, the cycle parking facilities shall be retained for the life of the development for such purposes.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and TA3 of the Torbay Local Plan 2012-2030.

### **Waste provision - PO**

Prior to the first occupation of the development the waste and recycling storage facilities shall be completed and made available for the purposes of waste storage to serve the development. The approved waste storage arrangements shall thereafter be retained for the life of the development.

Reason: In interests of amenity and in accordance with Policies DE1, DE3 and W1 of the Torbay Local Plan 2012-2030.

### **Boundary treatments / means of enclosure**

Notwithstanding the provisions of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting, or further amending that Order), no means of enclosure, other than those detailed within the plans hereby approved, including gates, fences, walls or other means of enclosure, shall be erected/installed within the development.

Reason: In order to safeguard the character and visual amenities of the locality in accordance with Policies SS10 and DE1 of the Torbay Local Plan 2012-2030 and Policy TH8 of the Torquay Neighbourhood Plan and advice contained within the NPPF.

### **Dwelling Use / Small HMO PD**

Notwithstanding the provisions of Schedule 2, Part 3, Class L (small HMOs to dwellinghouses and vice versa), of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking, re-enacting, or further amending that Order), all residential units hereby approved shall be used and occupied solely as Class C3 Dwelling-houses, by: (a) a single person or single household; (b) a single household of not more than 6 residents where care is provided; or (c) a single household of not more than 6 residents, and for no other purposes.

Reason: In order to ensure a satisfactory form of development in accordance with Policy SS11 of the Torbay Local Plan 2012-2030.

## **Informative(s)**

In accordance with the requirements of Article 35(2) of the Town and Country Planning (Development Management Procedure) (England) Order, 2015, in determining this application, Torbay Council has worked positively with the applicant to ensure that all relevant planning concerns have been appropriately resolved. The Council has concluded that this application is acceptable for planning approval.

## **Relevant Policies**

### **Development Plan Relevant Policies**

SS1 - Growth Strategy for a prosperous Torbay  
SS3 - Presumption in favour of sustainable dev  
SS10 – Conservation and the historic environment  
SS11 – Sustainable communities  
SS12 – Housing  
SS13 – Five year housing land supply  
TC1- Town Centres  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 – Parking requirements  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
ER1 - Flood Risk  
ER2 - Water Management  
ES1 – Energy  
HE1 – Listed buildings  
W1 - Waste management facilities  
W2 – Waste audit for major development and significant waste generating developments  
NC1 - Biodiversity and geodiversity  
C4 – Trees, hedgerows and natural landscape features

TS1 - Sustainable Development  
TS4 - Support for Brownfield and Greenfield development  
TH8 - Established architecture  
TH9 – Parking facilities  
TT2 – Change of use in conservation areas and listed buildings  
THW4 – Outside space provision  
THW5 - Access to sustainable transport  
TH2 - Designing out crime  
TE5 - Protected species habitats and biodiversity  
TTR2 – Sustainable communities