

Application Site Address	Lincombe Keep Lincombe Drive Torquay TQ1 2HQ
Proposal	Formation of additional storey with external terrace and alterations.
Application Number	P/2023/0081
Agent	Base Planning Consultants
Applicant	Mr and Mrs Marks
Date Application Valid	25/01/23
Decision Due date	22/03/23
Recommendation	<p>Approval: Subject to;</p> <p>The conditions as outlined below with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency.</p> <p>The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.</p>
Reason for Referral to Planning Committee	The application has been referred to Planning Committee following the SRM procedure.
Planning Case Officer	Sean Davies



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Block Plan
Scale 1:500 @ A3



0 10 20 30

Site Details

The site at Lincombe Keep, Lincombe Drive Torquay TQ1 2HQ is a detached dwelling and its curtilage. The site forms part of the built up area but is not otherwise subject to any designations within the Torbay Local Plan. The garden to Lincombe Keep is a Registered Park and Garden which contains a listed turret feature. Castle Tor is a Grade II listed building behind the site. Lincombe Keep is not a listed building and is not in a Conservation Area.

Description of Development

Formation of additional storey with external terrace and alterations:

The applicant is seeking planning permission to build an additional storey on top of Lincombe Keep with an internal floor to ceiling height of 2.4m. The additional storey would have three windows in the south east (front) elevation, five windows in the north west (rear) elevation and two windows and doors in the south west (side) elevation, with the doors giving access to a small terrace area (the roof of the existing second floor). As explained below, the applicant already has planning permission for the additional storey. The current proposals differ from the approved scheme only as regards 1. The internal floor to ceiling height and 2. The proposed openings in the south west elevation, which are not included in the approved scheme.

The applicant is also seeking planning permission, at second floor level, to replace an existing door with steps leading down to the garden of the property and two windows in the north west (rear) elevation with a window (replacing the door – steps to be removed), two Juliet balconies and a new more centrally positioned door and steps leading down to the garden between them. A new door would also be added in the south west elevation at second floor level giving alternative access to an existing terrace area. The applicant already has planning permission to replace the two afore mentioned existing windows in the north west elevation with three Juliet balconies. The current proposals differ from the approved scheme only in so far as 3. The existing door in the north west elevation would be replaced with a window, the existing steps would be removed and the central approved Juliet balcony would be replaced with a new door, with new steps leading down to the garden. The new door in the south west elevation would be added.

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:

Development Plan

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

Material Considerations

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

Summary Of Consultation Responses

Torquay Peninsula Neighbourhood Forum: Objection that proposals do not comply with Torbay Local Plan policies SS3, SS8, SS9, SS10, TA1, TA2, TA3, C4, C5, NC1, HE1, DE1, DE3, DE4, DE5, ER4 and Torquay Neighbourhood Plan policies TS1, TS3, TH8, TH9, TH10, TE2

Historic England: "... Historic England provides advice when our engagement can add most value. In this case we are not offering advice...."

Summary Of Representations

Approximately 7 objections have been received:

Richard Rawson, Wellswood Community Partnership

“The proposal will have a detrimental effect on neighbours and impact on the local amenities, namely Lincombe Woods and Ilsham Green, designated Green Spaces. The proposal is for an additional floor which would make a 5 storey structure which is totally out of keeping with the surrounding area. It contravenes policies within the Torquay Neighbourhood Plan and Torbay Local Plan, namely Policies TH12, TE2, SS8-10, TA2, HE1, DE4. I would particularly draw your attention to Policy DE10 Building Heights. This Policy requires the height to be appropriate to the location, historic character and setting. I would also draw your attention to the floor height which is in excess of the permitted 2.15m. Furthermore the application now includes an increase in windows and a balcony area which increases the overlooking aspect of the proposal”.

[note - as the Local Plan does not contain a policy DE10 it is assumed that policy DE4 is referred to]

Mr & Mrs Lloyd, Castle Tor, Torquay

- The proposals are substantially similar to previous proposals that have been refused.
- The current proposals contain elements that were not included in the proposals subject to upheld appeal decision for P/2022/0403 (i.e adjusted internal floor to ceiling height and openings in side elevation).
- Castle Tor is Grade II listed. Lincombe Keep is included in the listing for Castle Tor and so permitted development rights don't apply.

Lawrence Stringer, The Spinney, Lincombe Drive, Torquay

- Current application assumes that neighbour amenity may not be re-examined beyond the Inspector's conclusions reached in upholding the applicants successful appeal under reference P/2023/0403. However this assumption is incorrect.
- Current application should be treated as a new application and neighbour amenity issues should be considered again. Application should be refused for same reasons as previous similar applications.
- Disagree with Planning Inspector's conclusions (P/2022/0403) that the proposals would leave The Spinney with adequate views.
- Proposals involve more windows in rear elevation to proposed new storey that would be visible from living area at The Spinney. The applicant has not provided any analysis to identify any overlooking from these or from the western edge of the proposed terrace (as recommended in pre-application advice).
- Proposed windows and terrace will overlook habitable rooms of The Spinney and garden.
- Loss of views.
- Proposed new windows not in keeping with existing windows in Lincombe Keep.
- No plans showing height of Lincombe keep in relation to neighbouring properties.
- Proposals will make Lincombe Keep over dominant and out of keeping with local area due to five storey appearance.
- Construction disruption
- Concern about road safety in relation to parked contractor vehicles and in regards to contractor vehicles potentially making it more difficult to use parking for The Spinney.
- Concern about effect of proposed works on the structural integrity of Lincombe Keep.

Mr & Mrs Haynes, 26 Oxlea Road, Torquay

- Change of use to commercial business would be detrimental to the area
- Parking vehicles on a narrow road might cause another problem.

Jacky Little, 28 Oxlea Road Torquay

- Lincombe keep is within curtilage of Grade II listed Castle Tor – listings 2010 (UID: 1393661) & 1987 Grade II listing - PARK AND GARDEN (UID: 1000131) are relevant.
- Contrary to development plan policies as below:
- DE1, TH8, TH10, HE1, C4, NC1: TS1, SS3, SS8, SS9, TE2 SS10, TA1, TA2, TA3, TH9, ER4, DE3, TS3, DE4, DE5, C5, NC1, HE1, TS1, TS3, TH9, TE2.
- Proposals involve a change of use to business use.

Ian Collinson, Hacdombe Chase, Harcombe, Newton Abbot

- Proposals are overbearing to The Spinney and involve loss of light
- Proposed bay windows will affect privacy of The Spinney, The Cairn, Castle Tor and The Chine.
- Lincombe Keep is within the curtilage of Grade II listed building Castle Tor
- Proposals involve change of use from residential to business use.
- Contrary to Torbay Local Plan Policies DE1, DE3, DE4, DE5, ER4, SS3, SS8, SS9, SS10, TA1, TA2, TA3, C4, C5, NC1, HE1 and Torquay Neighbourhood Plan policies TS1, TS3, TH8, TH9, TE2

Alex Collinson, The Grampians, Shepherds Bush Road, London

- A site notice was posted so the site must be in a conservation area of the Council have made a mistake
- Site notice was not correctly served as didn't include case officer details
- Application form hasn't been filled out properly re materials, trees and hedges, pre-application advice
- The application should be refused as the permitted development application upheld on appeal (P/2022/0403) for the additional storey was conditional on the internal floor to ceiling height of the proposed new storey not exceeding 2.145m and there being no windows in a side elevation.
- Planning Statement incorrectly says that there is no intervisibility between relocated steps on second floor and neighbours.
- Plans are inaccurate (as they refer to floors incorrectly as ground floor, first floor etc.)
- Historic England's advice for P/2023/0081 is incomplete since they did not have access to a daylight assessment provided by the applicant in the context of upheld appeal P/2022/0403.
- Proposal will make Lincombe Keep into a 5 storey house – immediate neighbours are all 2 storey.
- Proposals too bulky and out of scale with local area (DE1 & TH8).
- Will compromise long distance views (DE1).
- Proposals do not integrate with existing street scene (DE1)
- Noise & nuisance, visual intrusion, overlooking road closure (DE3)
- Does not comply with DE4 as proposals would exceed prevailing height of nearby buildings.
- Proposals will have adverse effect on The Spinney and street scene (DE5)
- Overlooking to 28 Oxlea Road (DE5)
- Not clear how surface water run off would be managed (ER1)
- There may be structural problems with the original build of Lincombe Keep that an additional storey would make worse.
- Proposed new windows in north west elevation not sympathetic with existing windows of leaded design.

NON PLANNING ISSUES

- Contrary to restrictive covenant from 1930 in relation to access to The Spinney
- Construction disruption
- Steps and path leading to The Spinney are private property attached to The Spinney.

A number of objections relate to the breach of a restrictive covenant, construction disruption, and the ownership of the path from Lincombe Drive up to The Spinney. These are not material planning issues in this case and are not considered further below.

CHANGE OF USE TO BUSINESS/COMMERCIAL USE

A number of objections raise concerns that the proposals involve a change of use from residential to business/commercial use. For the complete avoidance of doubt, the application is **not** for a change of use. Lincombe Keep is currently covered by a C3 residential use and if the proposals are approved it will remain covered by a C3 residential use. The applicant has at no point applied for a change of use. The confusion here appears to stem from the wording of previous site notices and neighbour notification letters issued by the LPA. The notices and letters were generated automatically using the LPA's "Uniform" planning IT system and incorrectly referred to a "change of use" in relation to previous applications. This error is regrettable and has since been corrected. The current site notice that has been issued does not refer to a change of use.

Again, the current proposals do **not** involve a change of use; the applicant has never applied for a change of use of the building or any part of it.

PROCEDURAL ISSUES

Objections have been made on the basis that the application form has not been filled out properly and that submitted plan are inaccurate (as they mislabel floors as being ground, first etc). Officers do not agree with this and consider that the application form as filled out is acceptable. The submitted plans are accurate and the proposals are clearly shown on the submitted plans.

Attention has also been drawn to the fact that the Council no longer posts site notices for Householder Applications unless they are in a Conservation Area. The implication here is that the site may be in a Conservation Area. Officers have checked why a site notice was produced and are advised that this is because the site is near Castle Tor, which is a listed building. There is a separate listing for the terraced gardens and all associated garden buildings at Castle Tor. There is also a listed turret feature within the Registered Park and Garden. For the avoidance of doubt the site is **not** in a Conservation Area.

An objection has also been made that the site notice didn't include the case officers personal contact details. For clarity, all site notices produced by the Council include the same contact details and all representations are always passed to the case officer.

Officers are satisfied that no procedural issues have arisen here.

Relevant Planning History

P/2020/0558 Bay window on East elevation to be extended downwards, changes to fenestration in north elevation, minor change to layout of lower ground floor garage and changes to internal layout. APPROVED

DE/2021/0071 Construction of additional storey to main building, and formation of hardstanding to roadside. PRE-APPLICATION

P/2021/1075 New access to restore portcullis as principal entrance, with laying of permeable hardstanding (see accompanying application P/2021/1076) WITHDRAWN

P/2021/1076 New access to restore portcullis as principal entrance, with laying of permeable hardstanding (see accompanying application P/2021/1075). WITHDRAWN
P/2021/1077 Installation or replacement windows, doors and steps on rear elevation. APPROVED
P/2021/1084 Addition of storey on existing property (revised plans received 9/12/21). REFUSED & APPEAL DISMISSED
P/2022/0403 Addition of storey on existing property. REFUSED & APPEAL UPHeld
P/2022/0662 Reposition of entrance including steps, with refuge area. See adjoining LB P/2022/0663. Reposition of entrance including steps, with refuge area. See adjoining LB
CN/2022/0121 Discharge of condition relating to P/2022/0662. Condition: 01 - Surfacing. APPROVED
DE/2022/0141 Upward extension and alterations following Class AA approval. PRE-APPLICATION ENQUIRY

In this case understanding the planning history to the site is helpful in understanding the current proposals. As can be seen above, the site history runs to three years now and to 12 applications of various kinds, including this one.

The applicant first applied to alter Lincombe Keep extensively under reference P/2020/0558. Historic England objected to these proposals. The LPA worked with the applicant and allowed the applicant to scale the proposals back to a simple downwards kitchen extension below a bay window in the front elevation that was needed to address a visible structural problem. This application as scaled back was approved.

At around this time the LPA asked the applicant to submit a Pre-Application Enquiry for the other changes they wanted to make at the property and to also make a pre-application enquiry to Historic England. The applicant did this under reference DE/2021/0071 and the LPA provided generally positive advice in relation to proposals for an additional storey to Lincombe Keep and a new proposed pedestrian access to Lincombe Keep so that people could walk through an existing portcullis feature and have a more direct access to the property. The applicant also received positive advice from Historic England.

The applicant then made a Full application (P/2021/1075) and a Listed Building application (P/2021/1076) to create a new pedestrian access using the portcullis feature and to create an area of hard standing next to Lincombe Drive. Both applications were subsequently withdrawn after discussions with the LPA.

The applicant made a Permitted Development (Certificate of Lawful Use Proposed) application made under Class A, Schedule 2 of the General Permitted Development Order 2015 (the "GPDO") to make changes to the fenestration in the rear elevation of Lincombe Keep under reference P/2021/1077. The applicants amended the design of their original proposals in response to officer feedback. A revised scheme was then approved, comprising of three new windows with Juliet balconies. Although these windows are correctly identified as being at second floor level on the approved internal layout plans, they are at ground floor level at the rear of the building due to a difference in levels (Lincombe keep has been built extending up a hill in terraces). The windows look out onto a circular "rose garden" forming part of the Registered Park and Garden.

The next application to be made was P/2021/1084 for an additional storey to Lincombe Keep, which the applicants made as a Permitted Development application under Class AA, Schedule 2 of the General Permitted Development Order 2015 (as amended). The LPA refused this application as the internal floor to ceiling height of the proposed additional storey would have exceeded that of the existing garage (in breach of permitted development rules) and due to the detrimental effect that officers considered that the proposals would have on neighbour amenity at

The Spinney, the closest property to Lincombe Keep, in terms of overshadowing, visual intrusion and overbearing impact. The appellant appealed this decision of refusal.

The applicant then made application P/2022/0403. This was again a Permitted Development application made under Class AA. The proposal was substantially similar to refused application P/2021/1084 but the internal floor to ceiling height of the proposed additional storey now matched that of the existing garage. Officers did not manage to issue a decision for this application (which would have been refusal due to the effect of the proposals on the amenity of The Spinney for the same reasons as P/2021/1084) within the target determination date for the application. The appellant appealed the LPA's non determination of the application.

The Planning Inspectorate considered both appeals together. The LPA submitted a representation covering both applications (P/2021/1084 and P/2022/0403) arguing why they should both be refused. The applicant likewise submitted their own statement arguing why they should be approved. In a combined decision the Inspector dismissed the appeal for P/2021/1084 on the basis that the internal floor to ceiling height of the proposed additional storey would have exceeded that of the garage.

However, the Inspector upheld the appeal for P/2022/0403 as the internal floor to ceiling height of the additional storey was the same as that of the garage in this application (the LPA had not objected to the proposed internal floor to ceiling height of the additional storey for that reason) and as the Inspector disagreed with the LPA that the proposed additional storey would affect the amenity of the occupiers of The Spinney to an unacceptable degree. The Inspector's decision is attached to the applicant's Planning Statement.

The Inspector's decision to uphold the appeal for P/2023/0403 means that the applicant already has planning permission to build the additional storey without any further involvement with the LPA. This decision has been made and cannot be changed now, regardless of how the current application is determined.

The application next made Full planning application P/2022/0662 and Listed Building application P/2022/0663 for revised proposals for the afore mentioned new pedestrian access from Lincombe Drive making use of the portcullis structure. These applications took account of officer feedback provided before applications P/2021/1075 and P/2021/1076 were withdrawn and were subsequently approved. The applicants subsequently applied to discharge a condition that the LPA attached to P/2022/0662 relating to surfacing – CN/2022/0121 – and this was also approved.

The most recent application made by the applicant, was a Pre-Application Enquiry made under reference DE/2022/0141 for the current proposals. The applicant made it clear that they intended to submit a Householder Application for the proposals that have now been submitted. Officers provided supportive advice in relation to the current proposals (which is attached to the applicant's Planning Statement). In doing so officers accepted that approved applications P/2021/1077 (concerning rear fenestration) and P/2022/0403 (the approved additional storey) were the starting points for the assessment of the current proposals. In other words, the LPA recognised that the additional storey already has planning permission and so focussed on the changes that the applicant now proposes to the additional storey that already has planning permission.

SUMMARY

In summary, the applicant already has planning permission for a small downwards extension to the existing kitchen facing Limcombe Drive (P/2020/0558). It is understood that these works are completed.

Also, to carry out works to create a new more direct pedestrian access to Lincombe Keep from Lincombe Drive, making use of the existing portcullis feature (P/2022/0662 & P/2022/0663). These works were substantially complete the last time officers visited the site.

The applicant has planning permission to alter fenestration at the rear of the building to create three new Juliet balconies (P/2021/1077).

The applicant also has planning permission to create a new storey on top of Lincombe Keep to the same external dimensions and using the same materials as are involved with the current proposals (P/2022/0403).

None of these planning permissions can be overturned and none will be affected by how the currently proposals are determined (i.e approved or refused).

Planning Officer Assessment

Key Issues/Material Considerations

The key issues to consider in relation to this application are:

Planning Officer Assessment

1. Principle of development
2. Visual Amenity
3. Amenity
4. Conservation and Historic Environment
5. Sustainable Development
6. Transport
7. Environment
8. Landscape
9. Flood Risk and Drainage

10. Ground Stability
11. Maidencombe

1. Principle of development

The proposal seeks permission for Formation of additional storey with external terrace and alterations. There are no Local Plan policies indicating that the proposal is not acceptable in principle.

2. Visual amenity

Policy DE1 (Design) 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 DE4 (Building Heights) of the Local Plan states that the height of new buildings should be appropriate to the location, historic character and setting of the development. Policy DE5 of the Local Plan states that extensions to domestic dwellings should not dominate or have other adverse effects on the character or appearance of the original dwelling or any neighbouring dwellings or on the street scene in general. Policy TH8 of the Torquay Neighbourhood Plan states that development proposals must be of good quality design, respect the local character in terms of height, scale and bulk, and reflect the identity of its surroundings.

The proposals have three main elements. Two relate to the additional storey that has already been approved (P/2022/0403). The third relates to changes to fenestration at second floor level on the

north west i.e. rear elevation that have already been approved (P/2021/1077) and the addition of new doors in the south west i.e. side elevation¹:

ADDITIONAL STOREY

The proposals are for an additional storey on top of Lincombe Keep. Lincombe Keep was built in the early 1990s. It presents as a four-storey building at present (lower ground floor, ground floor, first floor, second floor) when viewed from Lincombe Drive. The proposals would add a fifth storey (i.e. a third floor). The new storey proposed has exactly the same exterior dimensions (height, width and materials) and footprint as the additional storey that was approved following the applicant's appeal of refused permitted development application P/2022/0403.

The proposed additional storey would increase the height of Lincombe Keep (when viewed from the front i.e. the south east elevation) from approximately 12m to 15m, including a low parapet wall. The new storey would have three leaded windows in the front south east elevation to match existing windows and five windows in the rear north west elevation. Two of these windows would light a staircase and small landing. The other three windows (and the three windows in the front elevation) would light a lounge. No openings are proposed in the north east side elevation facing the garden of The Spinney. These elements of the proposed additional storey are exactly the same as for the additional storey approved under P/2022/0403.

As set out above, as the applicant already has planning permission for the additional storey approved on appeal under planning reference P/2022/0403 this means that the applicants can build this extension now with no further involvement with the LPA.

It should be noted that permitted development rules mean that the LPA could have refused application P/2022/0403 (and also application P/2021/1084 which preceded it) on the basis of the visual appearance of the proposed additional storey but did not do so as officers found that the visual appearance of the proposed additional storey was acceptable.

A senior officer with design expertise reviewed the proposed additional storey in relation to application P/2022/1084 in the context of relevant Local Plan policies and advised that *"In my view, the proposal is acceptable"* Historic England also commented that *"The application has now been amended to address our minor residual heritage concerns. We welcome these changes which follow our recommendations. We have no further comments to make on the application and leave the consideration of other heritage and planning matters to your authority."* (letter dated 02/02/22).

The officer report for refused application P/2021/1084 stated that:

"The principal policies in the Local Plan dealing with design are Policy DE1 Design and development, Policy DE4 Building Heights and Policy DE5 Domestic Extensions. Policy DE1 states that development should be well designed and that development proposals will be assessed against their ability to meet specified design considerations which include visual appeal. Policy DE4 deals with the height of new buildings and so is not relevant here. Policy DE5 states that extensions to domestic dwellings will be permitted where they do not result in a cramped or overdeveloped site and would not dominate or have other adverse impacts on the character or

¹ Note: the existing and proposed first and second floor plans show some internal changes to the building. These changes do not need planning permission as Lincombe Keep is not a listed building. The plans also show some rooms being used for different purposes i.e. bedroom to lounge etc. These changes do not need planning permission either.

appearance of the original property or neighbouring properties or the street scene in general. In addition, Policy TH8 of the Torquay Neighbourhood Plan states that development must be of good quality design and respect local character in terms of height, scale and bulk and reflect the identity of its surroundings.

... Historic England and the Local Planning Authority have considered the external appearance of the proposals including the principal and side elevations, generally and relative to the Registered Park and Garden and as viewed from Lincombe Drive and consider that the external appearance of the building with the additional storey as proposed is acceptable”.

Officers did not raise the visual appearance of the proposed additional storey in the LPA’s Statement of Case covering refused application P/2021/1084 or non-determined application P/2022/0403.

Officers remain of the view that the proposed additional storey is acceptable in visual terms.

It should also be noted in this respect that the Inspector found in his combined decision covering the appeals for P/2021/1084 and P/2022/0403 at paragraph 30 that:

“Concerns have also been raised regarding the external appearance of the proposal, which is a matter that can be considered under an application for prior approval. In this regard, however, I note that the additional storey would respond to the host building in terms of its scale, materials, and design. It would not, therefore, appear as an incongruous addition to the roof of the building, but rather as a well-considered extension”.

1. Internal floor to ceiling height

The current proposals seek to make two changes to the additional storey that the applicant already has planning permission for. The first of these is to raise the internal ceiling of the proposed additional storey so that the internal floor to ceiling height would rise from 2.145m, as approved under P/2022/0403, to 2.4m. The height of the roof would not change.

Permitted development rules mean that the internal floor to ceiling height of an additional storey cannot exceed the floor to ceiling height of any other storey within the building. The LPA successfully argued within the appeals for P/2021/1084 and P/2022/0403 that the existing integral garage forms a floor of Lincombe Keep. The applicant’s appeal for P/2021/1084 was dismissed as the floor to ceiling height of the proposed additional storey included with that application exceeded 2.145m. The appeal for P/2022/0403 was upheld in part because the applicant had reduced the internal floor to ceiling height of the additional storey to 2.145m to match the floor to ceiling height of the garage.

The applicant’s proposal to raise the internal floor to ceiling height to 2.4m would not be allowed under permitted development rules for an additional storey. However, the current application is for a Householder Application and there is no restriction on floor to ceiling heights for a Householder Application. Officers do not consider that the approximately 30cm increase in internal floor to ceiling height of the proposed additional storey would make any noticeable difference to its visual appearance.

Officers therefore consider that this part of the proposals is acceptable in terms of visual amenity. As noted above, the external dimensions of the additional storey would not change.

2. Fenestration in side (south west elevation) of additional storey

The south west (side) elevation of the proposed additional storey, facing across the garden, was approved with no openings in it under P/2022/0403. This is because permitted development rules for an additional storey state that openings (i.e. windows and doors) in a side elevation of an additional storey are not allowed.

The current Householder Application includes two windows and doors in the south west elevation, with the proposed doors giving access to a small terrace area which currently forms the roof to the second storey below it. Again, officers do not consider that these changes would make any significant difference to the visual appearance of the additional storey that already has planning permission.

Officers also therefore consider that this part of the proposals is acceptable in terms of visual amenity.

SECOND FLOOR FENESTRATION

Due to a difference in levels the north west elevation of Lincombe Keep at second floor level, i.e. the rear elevation, is at ground floor level. The existing fenestration in this elevation consists of a door with steps leading down to a circular garden and two small windows.

Planning permission was granted under reference P/2021/1077 to change the fenestration in this elevation. The existing door and steps was to be retained but the existing two small windows were to be replaced with three larger windows with Juliet balconies. As in the case of the additional storey, as planning permission has already been granted for P/2021/1077, the applicant can make these changes now without any further involvement with the LPA.

3. New doors in north west and south west elevations

The current proposals are to change the approved fenestration slightly. The existing door would be changed to a window and the steps outside of it removed. New steps would be built from the garden up to the middle approved Juliet balcony. This Juliet balcony itself would be replaced with new glazed doors and would become the new access to the circular garden. As the north west elevation is the rear of the site it is not visible from the public domain.

New double doors, matching the appearance of existing double doors, would also be added to the south west elevation to give an alternative access to an existing terrace. Again, it appears unlikely that these doors would be visible from the public realm.

As such officers consider that these elements of the proposals are also acceptable in visual terms. It should be noted that none of the objections that have been made appear to relate to these proposed changes.

OBJECTIONS

Objections have been made that the proposed additional storey is contrary to policies DE1, DE4, DE5 and TH8. Arguments against the proposals include that the additional storey represents poor design, would be overly dominant and bulky, would not use materials to match the existing dwelling and would be out of character with the local area and would be too high with reference to policy DE4, which calls for new buildings to be built to the prevailing height of nearby buildings.

As noted above, officers have already had two opportunities to object to the proposed additional storey within the context of refused application P/202/1084 and the LPA's appeal Statement of case covering both P/2021/1084 and P/2022/0403 in relation to Policies DE1, DE5 and TH8 (the LPA does not consider that Policy DE4 is relevant since it only applies to new buildings) but have not done so.

Officers did not do this as officers considered that the proposed additional storey was acceptable in visual terms. Officers do not consider that the proposed changes to the additional storey that already has planning permission now make the proposed additional storey unacceptable. The proposed changes are considered to be minor in nature and officers do not consider that they would change the visual appearance of the approved additional storey to any significant degree.

Officers consider that the proposed changes to second floor fenestration in the north west and south west elevations are benign and do not affect the visual appearance of Lincombe Keep in an unacceptable way.

Given the siting, scale, and design of the proposal it is considered that the proposal would not result in unacceptable harm to the character or visual amenities of the locality.

The proposal is therefore considered to be in accordance with Policies DE1, DE5 and TH8.

3. Amenity

The principal policies dealing with neighbour amenity in the Local Plan are Policy DE3 Development Amenity and Policy DE5 Domestic Extensions. Policy DE3 states that development should not impact upon the amenity of neighbouring uses with reference to criteria including, noise, nuisance, visual intrusion, overlooking, and privacy, light and air pollution and the scale and nature of the proposed use where this would be overbearing. Policy DE5 sets out criteria where domestic extensions will be acceptable including that the extension would not cause harm to the amenity of nearby properties, for example through overlooking, overbearing impact, loss of light or privacy, or water run-off.

Objections have been made that the proposed additional storey would be detrimental to neighbour amenity. Concerns have been raised that the proposed additional storey, including the new openings in the south west elevation and terrace, would result in overlooking to The Spinney, The Cairn, Castle Tor and The Chine. The occupants of The Spinney have also raised objections about the effect of the proposed additional storey on their amenity and have suggested that the proposals should be revisited again without reference to the appeal decision for P/2022/0403, in which the Inspector found that the proposed additional storey would not unduly impact on neighbour amenity.

When officers considered the proposed additional storey proposed under P/2021/1084 officers found that it would have unacceptable neighbour amenity impacts on The Spinney only. Officers considered overlooking to other properties but found that the distance between Lincombe Keep and these properties meant that no significant impacts were likely to arise. The officer report for refused application P/2021/1084 stated that:

“The proposals do not comply with Article AA.2.(3)(a)(i) of Schedule 2, Part 1, Class AA of the General permitted Development Order 2015 (as amended) and prior approval is refused in any event as the proposed additional storey would lead to unacceptable overshadowing to the garden

of the neighbouring property The Spinney and would have an overbearing and visually intrusive impact in relation to that property”.

The LPA’s appeal Statement of Case for applications P/2021/1084 and P/2022/0403 stated that:

“Officers consider that the proposals submitted with P/2021/1084 and P/2022/0403 remain unacceptable due to their overbearing and visually intrusive impact as set out in the officer report for P/2021/1084. The appellant has not challenged this conclusion in the Statement of Case for either appeal.

“Also that notwithstanding the report considering the daylight and overshadowing implications of the proposals submitted with both appeals, the proposals remain unacceptable in so far as they would involve unacceptable overshadowing to the garden of the Spinney”

As set out above, the Inspector dismissed the appeal for P/2021/1084 due to the internal floor to ceiling height of the proposed additional storey but upheld the appeal for P/2022/0403. The internal floor to ceiling height of the additional storey had by that time been altered so as to be acceptable and so this was not an issue of contention. The Inspector’s Decision stated at paragraph 28 that:

“I conclude that the proposal would not have a harmful impact on the amenity of the adjoining premises, The Spinney, regarding loss of light and outlook, and visual intrusion.”

It should be noted that P/2022/0403 and the current application are different application types, with the former being a Permitted Development application and the latter being a Householder Application. The criteria for assessing neighbour amenity is nevertheless exactly the same for both, namely policies DE3 and DE5.

Officers do not consider that the changes to the approved additional storey involved with the current application (increase in internal floor to ceiling height, new windows/door in south west elevation to access terrace, and changes to fenestration in north west elevation) would have any significant effect on neighbour amenity for any property.

It should be noted that the proposed terrace would be approximately 50m distant from Castle Tor and 60m distant from nos. 26 and 28 Oxlea Road. The proposed terrace in the south west elevation would face away from The Spinney and would be approximately 30m distant from it. Officers consider it unlikely that any new significant overlooking would occur to The Spinney. A planning condition can be used to ensure that a small triangular part of the roof that it might be possible to view The Spinney from is not used for sitting out purposes and is only accessed for maintenance purposes (see proposed third floor drawing 20.16_PL_5.10 dated January 2023).

Officers do not consider that they can maintain the objections to the proposed additional storey that officers raised in the refusal for P/2021/1084 or the appeal Statement of Case covering P/2021/1084 and P/2022/0403 as the issues have already been examined by a Planning Inspector and found to be acceptable.

Officers do not consider that the proposed changes to fenestration at second floor level in the north west (rear) or south west (side) elevations involve any significant loss of neighbour amenity.

As such officers consider that the proposals are acceptable in terms of neighbour impacts.

The proposal is therefore considered to be in accordance with Policy DE3.

4. Conservation and Historic Environment

Policy SS10 (Conservation and the Historic Environment) of the Local Plan states that development proposals will be assessed against the need to conserve and enhance conservation areas while allowing sympathetic development within them. Also, that proposals that may affect heritage assets will be assessed in view of their impact on historic buildings and their settings. Policy HE1 (Listed Buildings) sets out the importance of ensuring that development proposals should preserve listed buildings and their settings. Policy TH10 (protection of the historic built environment) of the Torquay Neighbourhood Plan sets out that alterations to listed buildings will be supported where they safeguard their historic qualities.

Objections have been made that the proposals are contrary to policies SS10, HE1 and TH10. Also that Lincombe keep is included in the listing for Castle Tor, a Grade II listed building, and that permitted development rights do not therefore apply, meaning that permitted development application P/2022/0403 should not therefore have been approved.

Officers do not consider that policy TH10 is relevant as Lincombe keep is not a listed building.

Listing 1206820 for “Terraced gardens and all associated garden buildings at Castle Tor” was made on 18/04/85. It covers the ground that Lincombe Keep was built on around 1992. However, this does not mean that Lincombe Keep is itself a listed building. Historic England have confirmed that it is not. It also does not mean that permitted development rights don’t apply at Lincombe Keep. Permitted development rights would have needed to be removed via a planning condition when planning permission was granted for Lincombe Keep and officers are satisfied that this did not happen (officers checked this point and considered how listing 1206820 and two other listings covering Castle Tor² related to permitted development rules in determining refused application P/2021/1084). Officers are satisfied that listing 1206820 has not removed permitted development rights from Lincombe Keep and that the listing does not mean that the approval for the additional storey subject to permitted development application P/2022/0403 should not have been granted.

The nearest listed buildings to the site are Castle Tor and (separately listed) the terraced gardens and all associated garden buildings at Castle Tor. Castle Tor itself is approximately 50m away from Lincombe keep and set at a higher level. Officers do not consider that the proposals would affect the setting of Castle Tor or the separately listed gardens. There is a listed turret feature within the Registered Park & garden that forms the garden to Lincombe Keep. Here again, officers do not consider that the proposals would affect the setting of this listed feature or that the proposals would be contrary to policy HE1.

Historic England has been involved in pre-application discussions with the applicant from an early stage and commented in relation to refused application P/2021/1084 (for the additional storey) in a letter dated 02/20/22 that:

“Historic England has no objection to the application on heritage grounds. Your authority should take these representations into account in determining the application”.

² Listing 1000131 for “Castle Tor” was made on 12/08/87 and listing 1393661 for “Castle Tor” was made on 04/02/10.

A senior officer with heritage expertise commented that:

“The application is for prior approval, however, I have provided my assessment based on the heritage implications, streetscene and residential amenity. In my view, the proposal is acceptable”

The officer report for refused application P/202/1084 stated that:

“...objections refer to the site being within the curtilage of one of more of the following listings: 1206820 (Terrace gardens and all associated gardens at Castle Tor), 1000131 (Castle Tor), 1393661 (Castle Tor). Historic England has confirmed that Lincombe Keep is not a listed building but does not fall within the Castle Tor listing (1000131) only and does form part of the Registered Park and Garden.

However, although Lincombe Keep falls within the listing of Castle Tor this does not qualify it as Article 2(3) land. If listed building consent is required for any works then an application will have to be made for that prior to any works being carried out.

The Planning Statement submitted with the application states that "The Site is neither on (i) article 2(3) land nor (ii) a site of special scientific interest". Officers agree with this assessment”.

In summary, Lincombe Keep is not a listed building and is not in a Conservation Area. The impact of the proposed additional storey has been previously assessed by Historic England and a senior planning officer within the LPA with heritage expertise as being acceptable in heritage terms.

Officers consider that the changes that are proposed now to the proposed additional storey in its south west (side) elevation and to second floor fenestration in the north west (rear) and south west (side) elevations are minor in nature and do not alter the previous assessments that have been made. It should be noted that while being consulted on the current proposals Historic England has declined to comment.

In light of the above, officers consider that the proposals are in accordance with policies SS10 and HE1. As set out above, officers do not consider that policy TH10 is relevant.

5. Sustainable development

Policies SS3 (Sustainable Development) of the Local Plan and TS1 (Sustainable Development) of the Torquay Neighbourhood Plan set out guiding principles for the consideration of development proposals. Policy TS3 (Community Led Planning) of the Torquay Neighbourhood Plan sets out the importance of early engagement with Community Partnerships for major development.

Objections have been made that the proposals are contrary to these policies. Officers have considered this but do not agree. As policy TS3 refers to major development proposals it is not relevant (as the proposals are for minor proposals).

6. Transport

Policy TA1 of the Local Plan sets out high level sustainable transport aims for Torbay. Policy TA2 sets out requirements for new accesses to the highway network. Policy TA3 and Appendix F of the Local Plan states that new residential dwellings should be served by two parking spaces and that a new parking space should be provided for every two new bedrooms. Policy TH9 of the Torquay Neighbourhood Plan states that all housing developments must meet the 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.

Objections have been made that the proposals are contrary to policies TA1, TA2, TA3 and TH9.

Officers disagree with the objections that have been made. The proposals do not involve the creation of any new bedrooms. The proposed additional storey would be used as a lounge. As such parking requirements for the site are unaffected. Existing vehicle access arrangements would also be unaffected by the proposals. Officers do not consider that policy TA1 is strictly relevant here, but certainly the proposals do not conflict with it.

The proposal is therefore considered acceptable with regards to Policies TA1, TA2, TA3 and TH9.

7. Environment

Policy SS8 (Natural Environment) of the Local Plan sets out high level objectives for nature conservation in relation to protected sites. Policy SS9 (Green Infrastructure) sets out strategic aims for integrating development with green infrastructure. Policy C4 (Trees, hedgerows and natural landscape features) sets out that proposals will not be permitted where they would seriously harm veteran or protected trees and hedgerows. Policy NC1 of the Local Plan states that all development should positively incorporate and promote biodiversity features, proportionate to their scale.

Objections have been made that the proposals are contrary to policies SS8, SS9, C4 and NC1. Reasons include the effect that the proposals would have on trees and removal of hedgerows.

Officers do not consider that policies SS8 or SS9 are strictly relevant given the scale of the proposals but do not agree in any event that the proposals are contrary to them. The proposals do not affect hedgerows or trees or protected species and so officers consider that policies C4 and NC1 are also not relevant here.

8. Landscape

Policy C5 of the Local Plan sets out the importance of Urban Landscape Protection Areas (ULPAs) and states that development within ULPAs will only be permitted where it does not undermine and makes a positive contribution to the ULPA. Policy TH10 of the Torquay Neighbourhood Plan sets out designated areas of green space where development is ruled out. Policy TE2 of the Torquay Neighbourhood Plan sets out areas of Local Green Space where development is ruled out other than in very special circumstances.

Objections have been made that the proposals conflict with these policies. Objections have been made that the proposals would affect the character of Lincombe Woods and Ilsham Green, which are both identified as Local Green Space under Policy TE2.

The site is not in a ULPA or designated green space. It does not fall with the designated Lincombe Woods or Ilsham Green Local Green Space Areas. Officers do not therefore consider that these policies are relevant.

9. Flood risk

Policy ER1 (Flood risk) 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.

Objections have been made that it is not clear how surface water run off will be managed.

The proposals do not involve any increase to the impermeable area of the site. As such officers do not consider that policy ER1 is relevant here.

10. Ground stability

Policy ER4 (Ground Stability) of the Local Plan sets out that appropriate investigations should be carried out in relation to identified or suspected ground instability.

Objections have been made that the proposals are contrary to policy ER4 as there may be a risk of ground slippage associated with the proposed additional storey and, also, as there is a perceived risk that the proposed additional storey may affect the structural integrity of Lincombe Keep.

Officers do not agree that there is any evidence of ground slippage that the proposals would be affected by. The structural integrity of Lincombe keep is not included within the remit of policy ER4. In any event officers consider that Building Regulations are sufficient to cover this.

11. Maidencombe

The Wellswood Community Partnership has raised an unspecified objection in relation to policy TH12 (Maidencombe area) of the Torquay Neighbourhood Plan.

As this policy only applies to Maidencombe it is not relevant here.

Human Rights and Equalities Issues

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

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

Local Finance Considerations

S106/CIL

S106:

Not applicable.

CIL:

The CIL liability for this development is Nil.

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.

Planning Balance

This report gives consideration to the key planning issues, the merits of the proposal, development plan policies and matters raised in the objections received. It is concluded that no significant adverse impacts will arise from this development. As such it is concluded that the planning balance is in favour of supporting this proposal.

Conclusions and Reasons for Decision

The proposal is considered acceptable, having regard to the Local Plan, the Torquay Neighbourhood Plan and all other material considerations.

Officer Recommendation

Approval: Subject to;

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

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

Conditions

Visual appearance

The additional storey hereby approved shall be clad in materials matching those of the host dwelling, and shall be retained as such for the life of the development.

Reason: In the interest of visual amenity and in accordance with Policy DE1 of the Torbay Local Plan 2012-2030.

Construction management plan

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

- Procedures for maintaining good neighbour relations including complaint management.
- Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above.
- Mitigation measures as defined in BS 5528: Parts 1 and 2 : 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
- Control measures for dust and other air-borne pollutants.
- All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 08:00 Hours and 18:00 Hours on Mondays to Fridays and 08:00 and 13:00 Hours on Saturdays and; at no time on Sundays and Bank Holidays.

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.

Terrace

The triangular area of the roof of the second floor shown on proposed third floor drawing 20.16_PL_5.10 dated January 2023 and marked as “Area not to be used as terrace maintenance only” shall only be accessed for maintenance purposes.

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