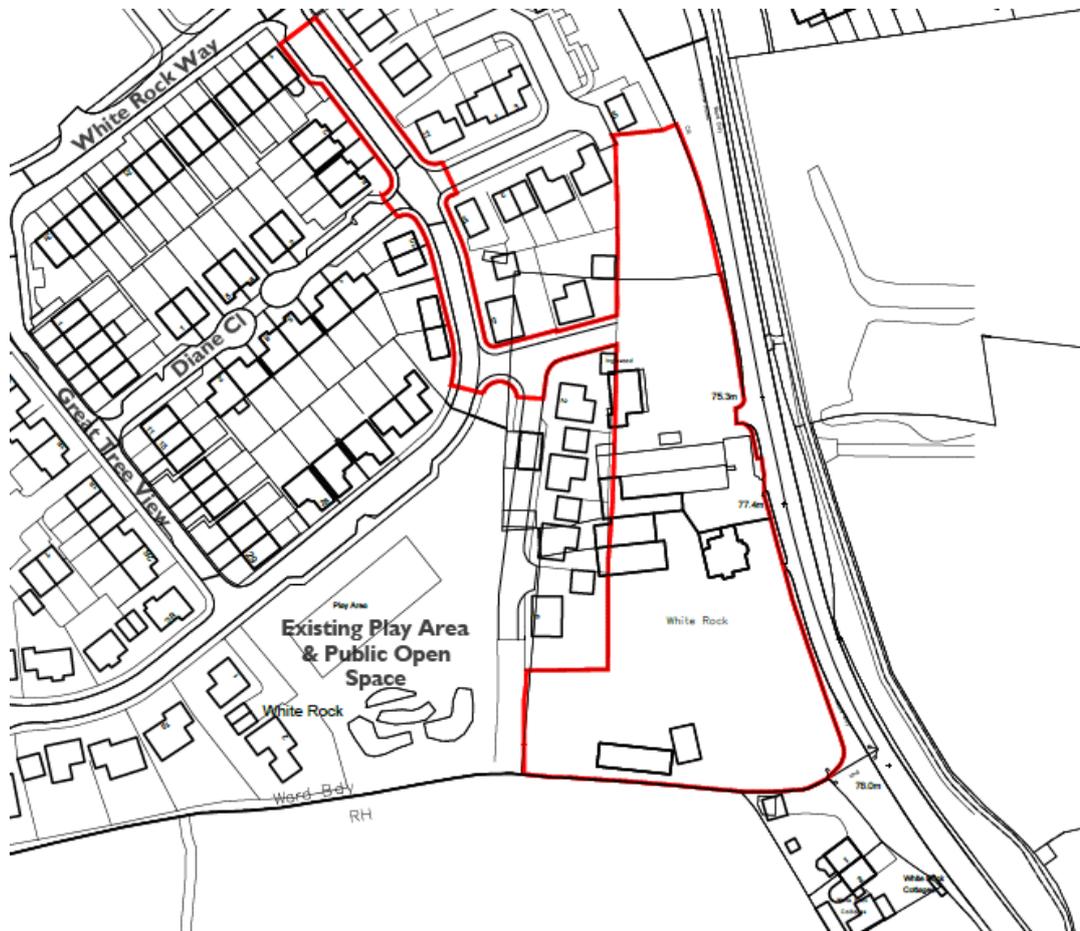


Application Address	Site	Land To East Of Limekiln Close, Paignton
Proposal		Outline application for up to 25 dwellings and associated works. Details of access to be determined with all other matters reserved
Application Number		P/2022/1173
Applicant		Abacus Projects Ltd and Deeley Freed Estates Ltd
Agent		Cushman and Wakefield
Date Application Valid		26.10.2022
Decision Due Date		25.01.2023
Extension of Time Date		30.09.2023
Recommendation		<p>Approval Subject To;</p> <p>The completion of a Section 106 Legal Agreement to secure the heads of terms as outlined, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.</p> <p>The conditions as outlined, 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		Major Development.
Planning Case Officer		June Pagdin

**Location Plan**

See next page



## **Site Details**

The application site is a triangular plot between the Brixham Road to the east and the rear of residential properties in Limekiln Close and Diane Close, White Rock. The proposed development site measures approximately 177m from north to south and an average of 46m in width east to west and measures approximately 0.78Ha. The application site also includes the section of highway that connects the site to White Rock Road (which is due to be adopted as public highway).

The eastern boundary of the site abuts the recently widened Brixham Road. The west and north boundaries abut the rear boundaries of the gardens to houses in Limekiln Close and Diane Close. The southern boundary of the site is marked by existing hedges. The southern boundary runs along the northern edge of a recently planted woodland area provided as part of White Rock development. The south western corner of the site abuts a track and open public space in the White Rock development. The south eastern corner abuts land in residential use at White Rock Cottages.

There is currently no vehicle access to the application site. The spur off Limekiln Close is closed off with fences installed by the owners of adjacent properties. The site boundary includes the sections of Limekiln Close and White Rock Road, which connect to the adopted highway on White Rock Way. Highway adoption of these roads is the subject of Section 38 agreements which are pending adoption.

There is no access from Brixham Road. Brixham Road has been widened and its newly aligned boundary with the site is shown on the submitted site location plan and would not encroach upon the application site.

On the opposite side of Brixham Road is a shared cycle and footway and the grounds of White Rock Primary School.

The Torbay Local Plan identifies the application site as part of the wider White Rock Site (SDP3.5). The White Rock Development is the subject of Policy PNP21 in the Paignton Neighbourhood Plan. The White Rock Area has planning permission for 350 dwellings, which is being built out.

The current application site was reserved for a future road access from Brixham Road to land to the south. That proposal has not been implemented and is now unlikely to be used for that purpose due to the land directly to the south having been planted with trees as ecological mitigation works for the White Rock development.

The application site is part of the Inglewood development site where planning permission for 373 dwellings was granted on appeal (P/2017/1133 as varied by P/2022/0112). The Master Plan for the Inglewood development identifies a pedestrian and cycle route (Northern Access Route (NAR)) running through the current application site from the southern boundary to the spur of Limekiln Close to the northwest of the site. A concurrent application (P/2023/0143) has been submitted to provide an alternative NAR route running to the west of this application site. The alternative route would join Limekiln Close at its southern spur. There is currently no pedestrian access into the site.

The application site has been included in the HELAA update exercise 2022/23 (Reference Number 21P079) to provide an estimated 19 dwellings.

### **Description of Development**

This application seeks outline planning permission for up to 25 dwellings and details of site access with all other matters (layout, scale, appearance and landscaping) reserved.

The indicative details submitted with the application for 25 dwellings seeks to demonstrate that the level of development proposed could be appropriately achieved on the site. This includes:

- Masterplan (0779–1004B) – shows a potential residential layout along a linear road with dwellings on the western side of the site, a cluster at the south end, a spur to the north and two on the eastern edge. Buildings are shown as a mix of detached, semi-detached and short terraces. Off-road and garage parking layouts and garden divisions are indicated.
- Access and Movement Plan (0779–1005B) and Transport Note and Travel Plan (amended) – shows vehicle access from the end of the spur off Limekiln Close to the north west of the site. The route would be a cul-de-sac running south with an adopted shared surface with short spurs at the southern end and to the north as shared unadopted surfaces. Pedestrian access is proposed at two points; one at the vehicle access where the footway surface would be separate from the roadway for a short section. The second at the south west corner of the site, would be separate from the unadopted shared surface that would serve the houses in this part of the site.

Other documents submitted are:

- Building Heights Plan (0779–1006B) - two-storey with pitched roofs, and single storey garages.
- Green Infrastructure Plan (0779–1007B) - retained and enhanced hedgerows along the eastern and southern site and a bat buffer along the southern boundary.
- Site Sections (0779–1008B) - two-storey with pitched roofs.
- Access and Design Statement

- Affordable Housing Statement - identifies that 30% of units would be affordable and policy compliant in terms of tenure.
- Sustainability and Energy Statement
- Acoustic Report
- Lighting Strategy
- FRA and Drainage Scheme
- Land Contamination Report
- Tree Survey and Report
- Arboricultural Impact Assessment
- Tree Protection Plan
- Technical Highways Notes -swept paths and adoption plans related to indicative layout
- Ecological Assessment
- Ecological Habitat Management Note
- BNG Baseline Metric and Outline scheme for BNG (on-site and off-site mitigation).

### **Pre-Application Enquiry**

Informal pre-application discussions on this site were undertaken as part of a PPA for the White Rock Area. The site is being considered under the HELAA update 2022/23.

### **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 Paignton Neighbourhood Plan (PNP)

#### **Material Considerations**

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

### **Relevant Planning History**

#### **White Rock**

**P/2011/0197 (Outline)** : Mixed Use Development of 39 Hectares of land at White Rock, Paignton to construct up to 350 dwellings, approximately 36,800m<sup>2</sup> gross employment floorspace, a local centre including food retail (up to 1652m<sup>2</sup> gross) with additional 392m<sup>2</sup>A1/A3 use and student accommodation, approximately 15 hectares of open space, a sports pavilion and associated infrastructure and engineering works to provide access, drainage and landscaping (Outline Application). Approved with Legal Agreement 29.04.2013.

#### **Lime Kiln Close Reserved Matters**

**MRM – P/2014/0071** Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197. Approved 16.May.2014.

MRM – P/2015/1061 Approval of appearance, landscaping, layout and scale in relation to 38 dwellings and associated development. Reserved Matters for P/2011/0197 (Variation of condition P1 of P/2014/0071). Withdrawn 18.05.2017.

NMA – P/2014/0852 Non material amendment to P/2014/0071 - Changes to materials

### **Linden Homes RM**

MRM - P/2013/1229 Approval of reserved matters to P/2011/0197. Appearance, landscaping, layout and scale in relation to 310 dwellings and associated development.

NMA – P/2014/0853 Non material amendment to P/2013/1229- Changes to materials to reflect materials schedule and addition of a conservatory on plot 314.

### **Inglewood**

P/2017/1133: Outline application for residential led development of up to 373 dwellings (C3) together with the means of vehicular and pedestrian/cycle access together with the principle of a public house (A3/A4 use), primary school with nursery (D1), internal access roads and the provision of public open space (formal and informal) and strategic mitigation. The proposal includes amendments to Brixham Road, Long Road junction and Windy Corner junction. Details of access to be determined with all other matters reserved. Refused. Allowed on Appeal 26.04.2021. Subject to Legal Agreement.

P/2022/0112: Variation of Appeal Conditions relating to application P/2017/1133 MOA. Conditions: 1 - Approved Plans, 9 - Landscaping Scheme, 13 - Ecology Land Management, 14 - Details of Habitat Boxes & Wildlife Info Boards, 21 - Works to Public Highway, 27 - s278 Agreement, 33 - Identification of School Land/Playing Fields. Approved 20.05.2022.

P/2022/1119: Major Reserved Matters application relating to outline consent P/2022/0112 for approval of (i) layout, (ii) scale, (iii) appearance, (iv) landscaping for the construction of 373 dwellings (Use Class C3), provision of serviced land for primary school and nursery school, internal access roads including vehicular and pedestrian/cycle access, the provision of public open space (formal and informal) and strategic mitigation. Approved 04.04.2023.

### **Summary of Representations**

Neighbour letters were sent out on 07.11.2022. Site notices and a newspaper advertisement were displayed on 09. 11.2022.

19 objections have been received (from eleven addresses). A summary of concerns is set out below.

Reasons for objection relevant to this outline application with details of access:

- Schools and doctors oversubscribed locally
- More pressure on existing public open space
- Government housing targets imposed on local community
- Prominent on higher level land
- Dwellings unhealthy close to Brixham road eg noise
- Loss of foot/cycle link to the school and shops/local facilities -active travel adversely impacted - leaves houses isolated
- A safe link needs to be provided
- The road is not wide enough for safety
- Limekiln Close is not wide enough for two-way traffic
- The proposed link would interfere with visibility and garage access to 2 Limekiln Cl

- Increased traffic noise and fumes
- Parking in the area will increase
- Inadequate parking indicated on site
- Proposed Travel Plan is weak
- Noise, dust and disturbance from construction work -impact on health
- Loss of property value
- Social housing will affect property values.
- overdevelopment
- Existing houses will be overlooked and loss of privacy
- 2.5 storeys is too high
- Loss of light and outlook
- development would destroy habitat of protected species: bats, hedgehogs and slow worms resident on the site
- bird life on site will be lost
- Nature areas should be restored
- Light pollution
- loss of trees (over 20) is not Carbon Neutral
- will lead to anti-social behaviour
- Parking overspill onto neighbouring roads
- Drainage issues in area
- Application was not advertised. (Site Notices were posted in Limekiln Close)

Reasons for objection related to other matters:

- Construction of White Rock leaves mud stains on properties
- Pavements and roads not finished in White Rock
- Noise and disturbance from ongoing construction
- Vehicles have disregard for speed limit on Brixham Road
- Current development not completed yet
- Loss of agricultural land.
- When house purchased, there were assurances that no building would take place behind

## **Summary of Consultation Responses**

### **Paignton Neighbourhood Forum**

No response received.

### **Broadsands, Churston and Galmpton Neighbourhood Forum**

No response received.

### **South Hams District Council**

**12.04.2023:** Officers have now reviewed the proposal and confirm that South Hams District Council has no comments to make on the application.

**03.07.2023:** With regards to the BNG Strategy, the planning history of the site where the offsite planting is to be carried out has only one application for a wildlife building (2018) [the bat house]. Providing the final BNG strategy incorporates native species and reflects the landscape character of the surrounding area, no objections from South Hams District Council.

### **Torbay and South Devon NHS Foundation Trust 23.11.2022 and 06.04.2023**

Further to NPPF and Torbay Local Plan Policies SS11 and SC1 for a Healthy Torbay, the TSDFT is operating at full capacity. The proposed development would potentially create

a long-term impact on the Trust's ability to provide safe, accessible and sustainable service delivery to current and new residents. Contributions are sought to mitigate this direct impact and compliant with CIL Regulation 122 and Appendix G the amount sought for 25 dwellings is 10,945 to be secured through a s106 agreement.

#### **Historic England 16.11.2022 and 27.03.2023**

We suggest that you seek the views of your specialist conservation and archaeological advisers. It is not necessary to consult us on this application again, unless there are material changes to the proposals. However, if you would like advice from us, please contact us to explain your request.

#### **Devon County Council Historic Environment 24.03.2023**

No objection. Looking at the extent of previous development within the site, and also the evidence from archaeological evaluation of the Inglewood/White Rock site to the south, I do not think that the level of archaeological potential warrants any further archaeological work.

#### **Torbay Council Housing Strategy and Enabling Officer 14.12.2022**

The applicant has confirmed within the submitted Planning Statement that the development will provide 25% affordable housing in accordance with the Council's preferred tenure mix and in accordance with other prevailing requirements such as accessibility standards. As such the application is compliant with Policy H2. The policy requirements should be secured by way of section 106 agreement.

#### **Community Safety 29.03.2023**

No objections subject to the inclusion of a condition securing a Construction Management Plan.

#### **Ecology Advisor (Devon County Council)**

**07.12.2022:** Further information required prior to determination.

Dark Landscape Corridors for Bats - a 10m grassy corridor is required adjacent to flight lines. Plans show 7m justification or amendment required. Details of composition of ecological buffer to south and management responsibility -part falls outside the site boundary. Management responsibility for maintaining low lighting levels. Further mitigation may be required upon receipt of requested information.

A CEMP will be required at RM stage. A LEMP will be required at RM stage. Tree Protection fencing will be required and may require further mitigation upon receipt of requested information. Request condition that LEMP will include habitat creation, species specification and management.

Request condition that no external lighting be installed without permission and implement in accordance with the Ecological Impact Assessment.

GBH – European Protected Species Licence required re -potential loss of 3 roosts. Proposal must meet derogation tests. Proposed mitigation - bat house and bat roost boxes – details of design to be secured at reserved matters stage.

Dormice and ciril buntings - further information required – previous survey findings. Further mitigation may be required.

Newt relocation and on-site habitat required in LEMP and in accord with EIA.

Restrict vegetation clearance to outside of bird nesting season. Repeat badger survey required before any site works commence. Hedgehog boundary plan to be submitted at RM stage.

BNG: A baseline metric is required for this outline application and an indication that a BNG can be achieved. RM's will need to include full BNG metric.

Invasive species - CEMP at RM stage and in accordance with the EIA

**27.06.2023:** HRA - Content with the justification provided by the applicant and the conclusions of the HRA that there would be no adverse impact on habitats of protected GHBs and the South Hams SAC subject to proposed mitigation and mitigations already carried out in vicinity.

BNG – No objection to the proposed 10% biodiversity net gain off-site – this will need to be secured through the planning process. Recommends conditions to secure detailed biodiversity metric and a LEMP (for on-site and off-site lands for 30yr period) at RM stage.

### **Torbay Council Ecology Officer 15.05.2023**

This application will require ecological mitigation. The effectiveness of ecological mitigation relies on appropriate monitoring. The Torbay Planning Contributions and Affordable Housing SPD states that where mitigation measures or compensation land are necessary to address the ecological impacts of a development and to secure a net gain in biodiversity, the Council will require a monitoring contribution. This contribution is required to enable a suitably qualified ecologist to ensure that the mitigation measures or compensation land has been implemented appropriately post development, are being maintained effectively, and to identify any remedial works where necessary.

It is anticipated that the ecological mitigation measures associated with this development would give rise to a need for one full day of monitoring per annum, to assess the Greater Horseshoe bat mitigation, offsite habitat creation and linkages to the wider site. Monitoring would be carried out on years 1, 3, 5, 10, 15, 20, 25 and 30 of the development (8 occasions). Charged at a rate of £300 per day, this results in the requirement for a monitoring contribution of £2,400.

### **Natural England**

**29.11.2022:** A Habitats Regulation Assessment is required. The development is within the Greater Horseshoe Bat Sustenance Zone and Landscape Connectivity Zone of the South Hams Special Area of Conservation. Your HRA should assess whether the proposal could result in impacts on greater horseshoe bat roosts or foraging and commuting routes, for example by removing lengths of hedgerow or from artificial lighting. We advise that you follow the detailed guidance in the *South Hams SAC – Greater horseshoe bat Habitats Regulations Assessment Guidance* (October 2019).

Impacts should be avoided wherever possible, for example by retention of hedgerows and through restricting lighting. The Institute of Lighting Professionals has produced practical guidance on considering the impact on bats when designing lighting schemes - Guidance Note 8. Bats and 1. Artificial Lighting. They have partnered with the Bat Conservation Trust and ecological consultants to write this document on avoiding or reducing the harmful effects which artificial lighting may have on bats and their habitats. Where impacts on bat habitat cannot be avoided, a detailed HRA may be required and surveys may be necessary, as set out in the guidance. Any mitigation measures deemed necessary must be secured through planning conditions or obligations.

**03.05.2023:** Further information required: an assessment of the adequacy of the greater horseshoe bat surveys in accordance with best practice guidance. If deemed necessary, additional survey data.

**27.06.2023:** HRA Re-consultation with NE is not necessary provided that the LPA Ecologist is satisfied with the justifications provided by the applicant.

**04.08.2023:** The Appropriate Assessment has been revised. We note that justification has been provided by the applicant to support the level of ecological survey work in this application, and that your Council's Ecologist is content with this reasoning. The AA has been revised and concludes that Torbay Council is able to ascertain that the proposal will not result in adverse effects on the integrity of the South Hams Special Area of Conservation (SAC). As competent authority, it is your responsibility to be accountable for any such conclusions. As such, Natural England advises that we concur with the assessment conclusions, providing that all mitigation measures specified in the AA are appropriately secured by conditions in any planning permission given.

### **Arboriculture and Green Infrastructure Manager (Swisco)**

**20.12.2022**

#### Arboriculture

The arboricultural information is not sufficient to enable an informed decision to be made. The categorisation of the trees in the submitted Tree Constraints Plan is agreed with. The Design and Access statement in section 2.5 identifies two key pine trees for retention. Category B Walnut should be considered a constraint and be retained in accord with BS5837. Robust justification will be required for the removal of the Walnut.

The removal of the C category trees is acceptable.

In addition, a tree protection plan will be required to ensure that retained trees and hedges are adequately protected during the lifespan of the development.

The green infrastructure plan lacks sufficient detail with which to make an informed decision. The green infrastructure/landscape plan will need to show that the mitigation is sufficient to offset the vegetation loss this should be a multidisciplinary approach with input from an ecologist.

Roadside boundary - is the 5m ecology corridor able to be guaranteed owing to the proposed roadworks going ahead in the early part of 2023.

#### Open spaces contribution.

We would be looking for open spaces contributions as per the Adopted SPD.

**05.04.2023:**

The Tree Survey should accurately represent the tree population on the site. Welcome retention of Walnut (G13.3.). Ground condition remediations within its RPA are required. We would be looking for open spaces contributions as per the Adopted SPD.

### **Waste and Recycling Officer (Swisco) 18.04.2023**

Details of recycling and waste storage arrangements are to be provided at the reserved matters stage, request for a planning condition on waste and recycling with the arrangements being agreed before occupation. The proposed dwellings will need individual containers 240 Litre bin for refuse; 2 x 55 Litre recycling boxes; blue bag and a food waste bin. An opt-in garden waste collection (240L bin) is available to residents.

TC collection vehicles will not drive onto unadopted surfaces without a formal indemnity in place and residents would need to bring waste and recycling to the adopted highway for collection.

A swept path analysis has been completed but the height of the vehicle used for the tracking is lower than the ones TC uses. This is unlikely to cause a problem at this development but attach the dimensions of our refuse and recycling collection vehicles.

Request waste management contributions for this development: £90 per dwelling for provision of bins and £72 per dwelling towards collection service vehicles. As per the table in SPD.

**02.08.23:** No further comments. (Revised swept paths submitted).

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

**28.11.2022:** The application is accompanied by an FRA and drainage strategy. The strategy identifies discharge of SWD using infiltration in the form of a soakaway and infiltration testing has been undertaken at the proposed location of the soakaway. Some details have been provided but additional information is required on pipe lengths, gradients and the impermeable areas draining into each pipe length. This information is required prior to determination.

**09.05.2023:**

Further to your email dated 20th April 2023 providing additional surface water drainage details for the above development, I can confirm that providing the surface water drainage is constructed in accordance with the submitted hydraulic design and drawings, I have no objections on drainage grounds to planning permission being granted for this development.

#### **South West Water 08.11.2022 and 27.03.2023**

No objection subject to details of surface water drainage being submitted for prior approval and would further comment that there are public water mains crossing the site. The applicant/agent is advised to contact South West Water if they are unable to comply with our requirements with regards to Asset Protection, Clean Potable Water, Foul Sewerage Services and Surface Water Services.

**16.08.23** South West Water is able to provide clean potable water and provide foul sewerage services. Surface Water run-off proposals to discharge into the ground (infiltration) is acceptable and meets with the Run-off Destination Hierarchy.

#### **Police Designing Out Crime Officer 14.11.2022**

No objection. Advises of the Building Regulation requirements for ADQ and recommends Secured by Design suppliers.

##### Design

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

##### Access and movement (Permeability) –

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

Pathways where possible, should not be designed so they run directly adjacent to rear or side boundaries of dwellings or close to doors and windows as this has proven to generate crime and ASB. It would be recommended there is a buffer between the access path and dwelling's boundary at the southern point of the development. The rear boundary treatment could have a buffer zone with defensible planting. Where the path meets the side and front curtilage of the property there should be a boundary treatment of 1.2m high which could be as an example railing or a small hedging which clearly demarcates between private and public land.

##### Structure – (Design & Layout) –

Places that are structured so that different uses do not cause conflict

##### Surveillance (Natural, Formal & Informal) –

Places where all publicly accessible spaces are overlooked.

##### Ownership –

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

##### Physical protection –

Places that include necessary, well-designed security features as required by ADQ and SBD Homes 2019. Rear boundary treatments must be robust and attain a minimum height of 1.8

m. If greater surveillance is required, the solid boundary treatment could be reduced to 1.5m with a trellis topping of 0.3m or 0.6m. Where gates are installed for access into private rear gardens these should be the same height of the adjoining boundary treatment, robustly constructed and be lockable from both sides, by means of a key for example.

Access into the ecology/landscape buffer zones should be gated to prevent access to the rear and side of private boundary treatments. Access should only be for authorised persons such as maintenance staff.

#### Activity –

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

#### Management and maintenance –

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

#### Parking

Tandem parking should be avoided as it is likely that from a practical and convenient point of view only one of the spaces will be used which will encourage unplanned parking elsewhere. The 'elsewhere' has real potential in creating vehicle and parking related problems which the police can spend a lot of time dealing with.

### **Highway Authority (Swisco) and Transport Planning**

Received 24.01.2023: Based upon the information submitted at the time of writing, the Highway Authority requires further information to ensure that acceptable highway safety can be achieved and that there is not a severe impact on the highway network. In order to alleviate concerns from the Highway Authority the applicant will be required to provide the following:

- Visibility splays in both the primary and secondary directions should be provided for the site access;
- Submit a Highway Adoption Plan for the site to illustrate adoption of the western boundary verge of the site and extend the shared surface through the development to connect to Limekiln;
- Further information relating to the location of cycle parking; and
- A review of PIC data for the latest 5-year period

#### **07.06.2023:**

The submitted Technical Note demonstrates that visibility splays are acceptable. Highway Adoption Plan not submitted- one will be required. Cycle stores maybe in rear gardens unless there is no side/rear access – in such cases storage must be at the front of the property. Collision data – operational safety issues not exacerbated by the proposed development. Swept paths should not overrun private (unadopted) surfaces as at south end of site – swept path analysis requires amendment. The strategic pedestrian/cycle way for Inglewood (Northern Access Route) must be constructed to adoptable standard (and LTN1/20) with sufficient lighting and minimum of 3m wide. Recommend connection to White Rock Play Area.

#### **25.07.2023:**

The updated swept path analysis for the indicative road adoption scheme is acceptable. With regards to design of the junction, the principles of Manuals for Streets would apply to any traffic calming and visibility splays (max boundary heights of 600mm within a visibility splay). Detailed drawings would be required with details of Layout.

### **Sustainability Officer 03.04.2023**

I have reviewed the Energy and Sustainability Statement for the above application. I have focussed on the requirements to meet SS14 and ES1 of the Local Plan only. Comments that Torbay Council has committed to becoming carbon neutral by 2030 (supersedes 50 % reduction commitment made in 2014). New Building regulations must be met and preferably exceeded. Need commitment to passive design. Homes should be constructed

to be Net zero carbon heat ready. Need a commitment to renewables actually being installed and used.

Request a condition requiring a detailed energy and sustainability statement at the reserved matter stage(s). This will need to outline the specific details that will be incorporated into the site to meet Policy SS14 and ES1.

### **Wales and West Utilities 27.03.2023**

Wales & West Utilities have no objections to these proposals, however our apparatus may be at risk during construction works and should the planning application be approved then we require the promoter of these works to contact us directly to discuss our requirements in detail. Should diversion works be required these will be fully chargeable.

### **National Grid**

No objection. There are no National Grid assets in the area.

### **Planning Officer Assessment**

1. The Principle of Development,
2. Design and Visual Impact,
3. Residential Amenity,
4. Highways Access and Safety,
5. Landscape and Green Infrastructure
6. Ecology and Biodiversity,
7. Flood Risk and Drainage,
8. Low Carbon Development,
9. Affordable Housing,
11. Housing Supply.

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

The proposal is for outline planning permission for up to 25 residential dwellings on the land. The relevant policies of the Development Plan are Policies SS1, SS2 and H1 of the Torbay Local Plan, Policies PNP21 of the Paignton Neighbourhood Plan and the NPPF.

Policy SS1 identifies White Rock as a Strategic Delivery Area and a sustainable location for future growth. Policy SS2 identifies White Rock as Future Growth Area (SDP3.5 White Rock). The application site forms part of the Future Growth Area where there is a presumption in favour of sustainable development.

Policy SS3 sets out that planning applications that accord with the policies of the Local Plan and Neighbourhood Plan will be approved.

The application site is part of the wider White Rock development site identified in the Paignton Neighbourhood Plan (Policy PNP21) for employment and housing development, enhancement of South Devon College, ecological assets and community uses .

While the application site has not been identified as a specific allocation in the Torbay Local Plan 2012-2030 or the Paignton NP for additional units, the proposal to provide housing on this site is, in principle, one that is in accord with the Policies of the Torbay Local Plan and the Paignton Neighbourhood Plan.

Policies SS12 and SS13 set out the Council's intention to maintain a rolling five-year supply of deliverable sites. Policy H1 of the Torbay Local Plan states that proposals for new homes within the Strategic Delivery Areas will be supported subject to consistency with

other Policies of the Plan and subject to nine criteria, notably including the need to provide a range of homes to meet the objectively assessed needs and maintain a rolling 5-year supply of deliverable sites.

It is relevant to appreciate that the Council cannot currently demonstrate a 3 or 5- year housing land supply and for decision making this means that the policies most important for determining applications for housing in the Neighbourhood Plan and the Local Plan (site allocations) are considered to be out of date. The policies, therefore, should be afforded limited weight within the current decision-making process. In terms of determination of applications for housing the 'tilted balance', as set out in Paragraph 11 of the NPPF, 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 summary, while the site may not be specifically allocated in the Neighbourhood Plan, it falls within a Strategic Delivery Area and accords in principle with the Policies of the Torbay Local Plan and the area designation in the Neighbourhood Plan of the White Rock Area.

The site has been put forward in the HELAA review 2022/23 (Site reference number 21P079) for residential use with a yield of 19 units. It is graded yellow (minor constraints). The outcome of this review is pending.

Due to the reasons stated above the principle of residential development on this site is accepted, when considering strategic policies SS1, SS2 and SS12 of the Torbay Local Plan and Policies PNP1 and PNP21 of the Paignton Neighbourhood Plan, and the Development Plan as a whole.

The Local Plan Policies set out criteria that must be met to achieve satisfactory sustainability and design. In this location Policy SS2 requires developments to provide a bespoke mitigation plan for the Greater Horseshoe Bats to demonstrate sustaining an adequate area of non-developed land for local foraging and flyways. Developments are required to deliver a range of housing types including family and affordable housing, links to services, facilities, leisure, integrated green infrastructure and high-quality design including sustainability and energy efficiency. The principle is, therefore, subject to other material considerations, which will be discussed in more detail below.

## **2. Design and Visual Impact (Layout, Scale and Appearance)**

The application seeks consent for the location of the proposed access, being in outline with all other matters reserved for future consideration. The submitted information does include an indicative site layout and potential likely character and appearance of the development. It is necessary to consider whether the submitted detail indicates and ultimately provides sufficient comfort that the amount of development (up to 25 dwellings) could be appropriately achieved in terms of its layout, design and character, without undue visual impact.

The NPPF states (Paragraph 126) that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve and furthers that good design is a key aspect of sustainable development. Several expected design outcomes follow in Paragraph 130 and the Framework furthers, in Paragraph 134, that development that is not well designed should be refused.

There is consistency with the NPPF across Local Plan Policies SS2 (Future Growth Areas), SS11 (Sustainable communities) and DE1 (Design). Policy SS2 seeks development to integrate with existing communities and reflect landscape character, Policy SS11 states

that development must help to create cohesive communities within a high-quality built and natural environment. The policy also includes expectations for development to help develop a sense of place and local identity, deliver development of a type, scale, quality, mix and density appropriate to its location, and protect and enhance the natural and built environment. Policy DE1 states that proposals will be assessed against their ability to meet design considerations such as whether they adopt high quality architectural detail with a distinctive and sensitive palette of materials and whether they positively enhance the built environment.

Design outcomes are also prominent within the Paignton Neighbourhood Plan with PNP1 (Area Wide) including reference to enhancement of local identity, PNP1(a) citing the importance of development responding positively to its context when in the Rural Character Area, PNP1(c) again identifying the importance of strengthening local identity, and PNP21 (White Rock) expresses the importance of sensitive development within its context.

### **Scale and density**

The site area is 0.78Ha. The proposal for 25 units on the site would result in a density of 32 dwellings per Hectare. This is a reasonable density for an urban site. However, the details of layout and appearance provide a clearer indication of whether a proposal can be accommodated on a site.

The indicative masterplan demonstrates a typical domestic scale. All buildings are two-storeys with pitched roofs. One building appears to offer accommodation within the roof, with rooflights (not dormer windows).

Site Sections illustrate the two-storey nature of the development would be feasible. With slab levels following the incline of the land, the roofline would step down towards the north and east. The line of houses at the south end of the site would be on the highest land but inset from the southern boundary by approximately 12-16m. Enhanced tree planting would be required to screen the upper floors from the woodland area and from Brixham Road.

The surrounding housing in Lime Kiln Close and at White Rock Cottages are two-storeys high and the indicative proposal demonstrates that the scale of buildings could be accommodated in buildings of appropriate heights.

### **Layout**

The application is supported by an Indicative Masterplan that presents how the amount of development could be laid out. The site is bordered by residential properties to the north (Diane Close) and west (Limekiln Close), Brixham Road to the east and woodland to the south. The layout provides a single vehicle access and no-through road with culs-de-sac at the north end and south end. The dwellings are mainly positioned on the western side of the site but five are positioned on the east side, bordering the Brixham Road, albeit separated by a proposed new hedgerow. The properties are shown as two storey – amended proposals have omitted two-and-a-half storey houses (rooms in the roof) due to potential impact on the existing properties in Limekiln Close.

The layout indicates that car parking would be provided together with garages to meet the requirement for two spaces per dwelling (assuming they are houses and not flats). The layout also indicates gardens for most properties of around the 55sqm set out in the Torbay Local Plan. However, the four units to the northern end have smaller gardens. These gardens and three at the south end abut the boundary with Brixham Road, which raised concerns about ambient noise (see amenity section of this report).

The suggested distances between properties are generally 20m or more for directly facing

elevations. Due to the indicative nature of the outline proposals, it is not definite that the distances between facing windows are acceptable. The suggestion of planting within private gardens to reduce sight lines is illustrative and not easily secured or maintained and should not be relied upon. Satisfactory distance and orientation are more reliable resolutions of intervisibility issues. These would depend upon room positioning and window orientation, which would be assessed at Reserved Matters stages.

In terms of the character, the layout presents a mainly semi-detached form of development with slightly staggered building lines along the internal roads. These elements present a suburban form of development that responds to the context.

All matters considered the indicative layout and arrangement of building and landscaped areas is considered acceptable.

### **Appearance (form and materials)**

The indicative masterplan presents a suburban layout. The appearance of semi-detached and detached properties of uniform type is predominant with one or two variations on corner plots. The dwellings generally have ridged roofs but with occasional hipped roofs and one apex. Materials would be determined at Reserved Matters stage.

Based on the indicative information provided, the proposed development is, for the reasons above, considered to demonstrate the potential to provide a satisfactory form of development in terms of layout, in accordance with Policies SS2, SS3, H1 and DE1 of the Torbay Local Plan, Policies PNP1 and PNP21 of the Paignton Neighbourhood Plan and the NPPF.

### **3. Residential Amenity**

The Torbay Local Plan contains policies to ensure that appropriate residential standards are achieved in residential schemes, including size standards, through Policy DE3, and that development meets the needs of residents and enhances their quality of life, through Policy SS11. The Paignton Neighbourhood Plan, in Policy PNP 1(d) (Residential Development), presents guidance on supporting elements required for residential units and 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.

#### Future Occupiers

The quality of the future residential environment is assessed in terms of the size and quality of the internal living spaces, the levels of outlook and natural lighting afforded key habitable rooms, levels of privacy, along with the quality of outdoor spaces and access to waste, cycle and car parking facilities, which are all integral elements for household developments. The aspiration is to secure a good level of amenity for future residents.

The submitted Design and Access Statement indicates that these would be 2 and 3-bedroom houses. The housing mix and number of bedrooms, however, is not defined in the description of development and could vary at Reserved Matters stage. The submitted layout is indicative and therefore the compliance of the scheme with policy design expectations cannot be fully assessed at this stage. The layout indicates amenity areas and parking facilities, which appear, on average, to be in accordance with the standards in the Torbay Local Plan. The distances between properties are generally acceptable. There may be some natural overlooking of gardens, but this is commonplace within residential environments and there are no unacceptable, i.e. overly dominant, relationships. In terms of the internal living spaces all houses and flats are indicative at this stage and would be assessed in detail at Reserved Matters stage.

In terms of ancillary elements of parking, cycle parking and waste storage, details would be sought on the location and form of cycle parking and bin storage to meet required standards at reserved matters stage.

### Noise

The NPPF requires development to avoid noise giving rise to significant adverse impacts on health and the quality of life. The recommended NPSE Policy reinforces this approach and aims for developments to mitigate and minimise adverse impacts on health and quality of life. Expected internal and external noise levels are set out in BS 8233:2014. Noise levels should not exceed 35dB in living rooms and 30dB at night in bedrooms. For external amenity spaces this figure is 50dB and, in locations close to strategic roads, 55dB.

The application site is adjacent to the Brixham Road, a busy "A" Road, which provides a link between Brixham and the rest of the Torbay area and beyond. An acoustic report was submitted, which assessed the impact of noise from the local road network (including recent capacity increases and speed reductions on Brixham Road) on the residential environment of the site.

The report concluded, in Section 8, that it would be necessary to design the fabric and ventilation of the proposed dwellings to control the levels of internal environmental noise internally to meet the BS levels (insulation on elevations, glazing and extraction vents). Section 9 shows that the amenity areas of 8 dwellings on the Brixham Road side of the site would have noise levels over 55dB during day times. With regard to external spaces, the report recommended the installation of 2-metre-high (10kg/m<sup>2</sup>) fences to reduce noise levels in amenity areas down to 55-60dB.

It is recommended that a condition is applied requiring the internal and external noise levels to comply with BS standards and for details of mitigation measures to achieve those standards be submitted at RM stage and evidence that the levels are achieved be submitted prior to first occupation.

Subject to conditions as suggested the proposed residential environment is considered acceptable for all future users and would accord with Policies SS11, DE1 and DE3 in the Torbay Local Plan, PNP1(d) of the Paignton Neighbourhood Plan, and advice contained within the NPPF regarding creating good quality living environments.

### Neighbouring occupiers

The construction phase would have some temporary impacts on the amenity of neighbouring occupiers. However, such impacts can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts through the use of a planning condition.

Concerns were expressed by neighbouring occupiers over the following:

- Noise, dust and disturbance from construction work -impact on health
- Loss of property value
- Social housing will affect property values.
- will lead to anti-social behaviour
- overdevelopment
- Existing houses will be overlooked and loss of privacy
- 2.5 storeys is too high
- Loss of light and outlook
- No2 Limekiln Close's garage is close to the access

The concerns expressed over Highway, parking and ecological impacts are considered in Sections 4, 5 and 6 of this report.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through restricting hours of construction and agreeing processes to limit delivery and construction movement and parking impacts through the use of a planning condition.

The proposed residential use aligns with the residential uses nearby and the additional dwellings would not result in undue noise or general disturbance for existing occupiers in the area.

Details of the scale and appearance would be established within future reserved matters applications, but the indicative layout and sections illustrate that the scale of residential development proposed would be unlikely to result in significant loss of outlook or natural light. The properties are expected to be set at appropriate distances from the rear elevations of houses in Limekiln Close. The indicative layout shows that most facing elevations are 20m apart. Details of the layout and windows positions would be submitted as part of reserved matters applications and the issue of privacy and avoidance of overlooking would be fully assessed at that stage. It is noted that the applicants have provided an amended indicative building heights plan, which removes any buildings over two storeys, in order to avoid over-dominant relationships between dwellings within the site and with dwellings on the adjacent land in Limekiln Close. There is likely to be some natural overlooking of gardens, but this is a common situation within residential environments and there are no unacceptable, i.e. overly dominant, relationships in the indicative scheme. The submitted proposal is therefore considered to demonstrate a reasonable level of amenity for future and existing occupiers.

In the absence of more detailed information relating to building levels, the siting of openings within the proposed buildings, and other information concerning the proposal's layout, appearance and scale, it is not possible at this time to ultimately determine the acceptability of the proposal in these respects. These matters will need to be addressed at the reserved matters stage, and a range of conditions are recommended to ensure that adequate details are submitted for the Council's consideration. These include details such as boundary treatments, refuse storage, landscaping, and so on. However, based on the indicative masterplan and supporting information currently submitted, it appears that a development of up to 25 dwellings could, in principle, be achieved at the site in terms of its layout, appearance, scale, and the associated impacts on visual and residential amenity.

In summary, and subject to conditions, the proposed access arrangements and indicative layout and supporting information are considered to demonstrate the potential to provide a satisfactory form of development, in terms of protecting the amenities of adjacent occupiers or the school, in accordance with Policies DE1 and DE3 of the Torbay Local Plan, Policy PNP1 of the Paignton Neighbourhood Plan and the NPPF.

#### **4. Highways Access and Highway Safety**

The NPPF guides that in assessing sites that may be allocated for development in plans, or 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; and *c)* 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 108). It also furthers (Para 109) that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Policy TA2 of the Torbay Local Plan states that all development should make appropriate provision for works and/or contributions to ensure an adequate level of accessibility and safety, and to satisfy the transport needs of the development. For major developments this means that a good standard of access for walking, cycling, public and private transport should be provided.

The site falls within the Western Corridor area identified in the Paignton Neighbourhood Plan (PNP22). In this area development proposals are required to enable or provide active travel facilities, wherever achievable. The policy seeks to secure safe and continuous cycling and pedestrian pathways to schools, employment areas and across countryside. Area-Wide policies require that sustainable modes should be encouraged and that suitable parking and cycle facilities be provided within residential developments.

### **Site Access**

The Outline application seeks approval of the proposed Site Accesses for vehicles and other forms of transport e.g. walking and cycling.

### Vehicle Access

With regards to vehicle and cycle access, the development would be served by a single new access from the end of the spur of Limekiln Close into the north west of the site. The Councils' Highway Engineers and Strategic Transport Officer have considered the junction position and supporting transport information and has raised no objections in principle in relation to the proposed vehicular access arrangements. However, they have requested that a highways adoption plan be submitted. An indicative road adoption plan for the illustrative masterplan was submitted. This was acceptable. A road adoption plan can be secured by condition further to Reserved Matters details for layout and this is recommended.

### Pedestrian Access

With regards to pedestrian access, two points are proposed: the first as for vehicles, in the north west of the site, the second in the south west of the site. The Highway and Strategic Transport Teams have requested that this be secured by condition to be 3m wide and connect into the Northern Access Route for Inglewood.

### Visibility splays

The proposed site access would continue a straight section of Limekiln Close, which is due to be adopted as public highway. The proposal is for the access road from this point to be adopted. It would, therefore, need to be designed and constructed to adoptable standards, including visibility splays for vehicles and pedestrians turning into the parking and garage spaces near to the access point. At present the access has been closed off with a 2m close boarded fence. This would need to be removed and the appropriate visibility splays provided.

The original Highways comments requested visibility splays for the site access. The visibility splay drawings in the submitted Highways Technical Note (KTC February 2023) demonstrate 2.4m x 43m splays at the junction of Limekiln Close and White Rock Way. These are measured against the technical standards in the Design Manual for Roads and are considered acceptable by the Highways Department.

The occupants of No 2 Limekiln Close have a garage positioned near to the boundary of the site adjacent to the proposed vehicle access point to the site. They have expressed concern about the speed and visibility for cars entering and leaving the site not having adequate visibility of the garage manoeuvring and forecourt area for No 2 (and vice versa). It would be reasonable to request a scheme of traffic calming measures to ensure that a safe junction design including appropriate visibility splays are achieved for this garage

entrance and that traffic is appropriately slowed down on this stretch of the road to enable the occupants to continue to use their garage safely. This can be secured by a condition requiring a scheme to be submitted as part of the Reserved Matters application for site layout.

The amended indicative masterplan removed two car parking spaces which would have opened onto the access road in the vicinity of that garage. It is anticipated that vehicles would be proceeding at a low speed at this point. Highways have not objected to this proposed indicative arrangement. However, detail of the road layout and any traffic management scheme would be required at Reserved Matters stage for the site layout and would be required to meet the standards in Manual for Streets.

### PICS

The applicant provided PICs data and the Highways Department considers that there are no operational safety issues that would be exacerbated by the proposed development.

### Sustainable Transport contributions

The development would generate net additional trips and, therefore, gives rise to a need for contributions to sustainable transport further to the Planning Obligations SPD. Contributions are used towards sustainable transport and highway works that improve road safety, promote active travel or improve capacity/accessibility of public transport. The requested amount for this development would be based on the number and size of the dwellings as set out in Table 4.2 of the SPD. This contribution can be secured through a Section 106 agreement and this is recommended.

### Parking

Policy TA3 and Appendix F of the Local Plan states the minimum dimensions for parking spaces, including garages.

The submitted Design and Access Statement and Highways Technical Notes set out that each dwelling would be provided with two car parking spaces either as garages or open spaces. These are shown on the indicative layout plans. Cycle storage would be provided within private amenity areas. This meets the requirement set out in Appendix F of the Torbay Local Plan and demonstrates the capacity of the site for the number of houses. The parking standard for flats is one per unit. Details of internal site layout and hard landscaping together with housing-size mix and layout would be the subject of reserved matters applications.

Neighbouring occupiers have expressed concern about the potential for overspill parking on the roads around the site. However, the outline indicative proposal demonstrates that the Council's parking standards could be met. Proposals submitted under Reserved Matters applications would be required to comply with those standards. As such, the outline proposal is unlikely to result in significant impacts on highway safety and convenience of neighbouring road users as a result of parking overspill.

The submitted documents set out that electric charging for one vehicle at each dwelling would be provided. Details can be sought to accord with Development Plan expectations, at reserved matters stage. This can be secured through a condition, as recommended.

### Loss of NAR - connection to Section 106

The approved route of the Northern Access Route a strategic permissive footway and cycle way linking Inglewood development site (school site, pub/restaurant and 373 residential dwellings) with White Rock shops, college and additional public transport links). The route is indicated in Planning Permission P/2017/1133 (Outline as varied by P/2022/0112) and P/2022/1119 (Reserved Matters). The approved route is shown on the approved plans

and its provision and maintenance are secured through the Section 106 Agreement for the outline permission. The approved route is required to be 3m wide and to accommodate pedestrians and cyclists and to be segregated (from cars). Full details of the NAR route (surface, lighting, drainage and construction) are sought through a condition on the Reserved Matters application.

The submitted scheme for this application does not propose making provision for the northern section of the NAR through the site. Therefore, an alternative route is required that meets the design parameters and Section 106 obligations for provision in perpetuity and ongoing maintenance.

The accompanying application P/2023/0143 is relevant. This proposes an alternative route for the northern section of the NAR, which runs to the west of this application site and connects into the end of the southern spur of Limekiln Close. An agreement of public easement across the various ownerships has been drafted and signed to secure the right of way for pedestrians and cyclists in perpetuity. Maintenance of the route has also been secured through that agreement.

Implementation of an acceptable alternative for this section of the NAR is required before the commencement of development on this application site, which would remove the possibility of providing the route through this site to the required standard (notably the width, gradients and surfaces and design principles of LTN1/20). This can be achieved through a condition securing implementation of the works in the relevant application for the alternative route (P/2023/0143) prior to commencement of site development (excluding ecological mitigation works) and this is recommended.

It is also recommended that a footway connection is secured between the NAR alternative route and the south west pedestrian access point to this application site prior to commencement of development on the site to ensure adequate connectivity to the surrounding open spaces. As that short connecting section would be outside this application site, this would need to be secured through a Grampian style condition (requiring the connecting works to be complete before another event such as development commencement).

### Internal Road Network

The Outline application seeks approval for site access. Site layout matters, including internal roads and paths, are reserved matters.

However, an indicative access and movement plan (0779-1005-B) has been provided. This shows that vehicles and pedestrians would have segregated surfaces at the site entrance but the short spur to the north and the longer spur to the south would be shared surfaces. These are shown as adopted (or adoptable standard) surfaces except for the short spur in the south west corner, which would be unadopted.

The proposed network is considered acceptable in principle. Consultation with Highways and Waste has raised points for clarification, such as swept paths for refuse vehicles being accommodated within the adopted highway and lighting. These are detailed considerations that can be secured at Reserved Matters stages. A road adoption plan and swept path diagram were submitted for the indicative masterplan layout. These were assessed by Highways and found to demonstrate acceptable waste and emergency vehicles access to all areas. Full details can be secured by condition to be provided with reserved matters applications for layout.

The proposal is considered to demonstrate an acceptable road layout.

The site has pedestrian entrances and segregated surfaces for short stretches at the north end and the south end. The centre of the site is shown as a shared surface. In these areas traffic speeds are normally restricted and the layout can contain design elements to achieve speed restriction. Details would need to be compatible with highway adoption standards at reserved matters stages.

Cycle access to the site would be principally from the northern access and shared surfaces. Access for residents of the site would be available from the south west corner.

### Travel Plan

A Travel Plan Statement has been submitted with the application (referenced P-2022-1173-5 and dated September 2022) The Statement outlines a strategy of providing cycle parking, a residents' travel information pack, one voucher towards a variety of active travel products (public transport tickets, cycles, fitness tracker) to value of 150 GBP per dwelling, a residents' notice board and information about car sharing networks.

It is recommended that the implementation and monitoring of the Travel Plan be secured through Section 106 obligations.

Considering the points above, and having regard to guidance contained within the NPPF, which states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe (Para 111), the proposal is, subject to securing sustainable transport financial obligations considered acceptable on highway and movements grounds, and in accordance with the Policy TA2 of the Torbay Local Plan, The Paignton Neighbourhood Plan and the NPPF.

The proposals, subject to conditions recommended above, are considered to present an acceptable scheme in terms of access and demonstrates an acceptable layout, in accordance with Policies DE1, TA1, TA2 and TA3 of the Torbay Local Plan, Policy PNP1(h) of the Paignton Neighbourhood Plan and the NPPF.

### **5. Landscaping, Green Infrastructure and Public Open Space**

Landscaping is a key component of placemaking and in a rural context is an important influencer of character. The importance of contextual and effective landscaping is highlighted within the NPPF within Chapter 12, Achieving well-designed places, as part of the drive towards delivering visually attractive development that also responds to and is sympathetic to local character (Paragraph 130). The NPPF also makes reference to the important contribution of trees to the character and quality of urban environments (aside benefits of adapting to climate change) and states that decisions should ensure that new streets are tree-lined, that other opportunities are taken to incorporate trees elsewhere in developments (such as parks and community orchards), and that existing trees are retained wherever possible.

At a local level the Development Plan seeks high quality landscaping in Policy DE1 and Policy C4 states that development will not be permitted where it would seriously harm protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. The policy also states that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

Policy PNP1(c) of the Paignton Neighbourhood Plan includes relevant references to development proposals, where possible, retaining existing natural features, and furthers that hedgerows should be provided to at least one boundary and also should include tree

planting.

The indicative masterplan layout provides for replanting of the hedgerow on the Brixham road boundary (which was thinned at the time of the Brixham Road widening works) to a width of 5m along the inside of the eastern boundary.

The submitted Tree Survey, Arboricultural Impact Assessment and Tree Protection Plans together with the Green Infrastructure Plan (0779-1007-B) show retention of a walnut tree near the site access and Austrian Pine trees on the south east corner of the site. All other trees are shown as removed. Compliance with principles of these documents can be secured through condition.

The Green Infrastructure (GI) Plan (0779-1007 - shows provision of an “Ecology Corridor” on the south boundary. The GI layout indicates this is hedgerow and grass. Part is within the application site. This area would need to be fenced off from the rear gardens of residential units to prevent encroachment by human activity and light spill into the corridor. Part of the Ecological Corridor is outside the site – on land to the south, which is covered by the LEMP for White Rock to be retained as woodland for bat foraging and flyway. A scheme for fencing and enhancement planting along the east and south boundaries with native species hedgerow and trees will be required at RM stage.

Planting within the street-scene would be required as part of detailed landscape plans at Reserved Matters stage. Off-site replacement planting is proffered in the Biodiversity Net Gain Strategy (see Ecology Section below). The provision, retention and maintenance of trees on adopted highway land and any new boundary planting on the garden/road interfaces would also need to be secured through reserved matters (landscaping) and a LEMP.

### **Public Open Space**

Residential developments are expected to provide play and open spaces wherever practicable. Local Plan Policy SC2 sets a framework for provision of new recreational development. Policy SS9 Green Infrastructure is also relevant and advocates links between open spaces and residential areas.

The scheme does not include play space or public open space. The Council’s Adopted Planning Obligations and Affordable Housing SPD does not require on-site provision in schemes of this size.

However, the site is very close to the children’s play area and open space in the White Rock area and the adjacent woodland walk. The Council’s Green Infrastructure Team have requested contributions to off-site open space provision in accordance with the Planning Obligations and Affordable Housing SPD (Dec 2022). Table 4.8 of the SPD sets out the rate of contribution dependent on the size of dwelling. These can be secured through s106 agreement for provisions and improvements in the vicinity of the site. This is recommended.

Subject to the recommended conditions and s106 obligations, the outline indicative scheme is considered to present a scheme that is consistent with the Section 12 of the NPPF, and would be consistent with Paras 126, 130 and 131. The landscaping is also considered acceptable and considered compliant with Policies DE1, C4 and SC2 of the Torbay Local Plan and Policy PNP1(c) of the Paignton Neighbourhood Plan and the NPPF.

## **6. Ecology and Biodiversity**

Policies NC1, SS2, SS8 and SS9 of the Torbay Local Plan PNP1, PNP1(a) and PNP21 of the Paignton Neighbourhood Plan and guidance within the NPPF require development to duly consider biodiversity and take opportunities for enhancement, proportionate to the context and development. Policy PNP21 d) seeks to improve the connectivity of local ecological and wildlife assets.

The key ecological issues relate to the use of the site by GHBs, along with considerations regarding reptiles (principally slow worms) and foraging badgers together with broader biodiversity enhancement aspirations.

An Ecological Impact Assessment (NPA 30.09.2022) was submitted with the application, which identified that:

- there may be a bat roost in a structure on the southern boundary
- the southern hedgerow is an important commuting route for GHB's.
- there was a slow worm population on site.

The report and addendum (Ref No. 115-P02 dated 05.06.2023) advocated the following mitigations:

- Retention of southern boundary hedgerow and an 8m ecology buffer (revised from 7m) along the south boundary,
- Restriction of light spill onto the southern hedge of 0.5lux maximum,
- Hedge protection fencing on this boundary to be erected prior to construction,
- New species-rich hedge along east boundary,
- Tussocky grassland and log piles at base of hedgerows,
- LEMP to set out sensitive management of habitats,
- Clearance of invasive species under guidance of Devon Wildlife,
- Demolish shelter with NE licence and
- Construct bat house,
- Dwellings to incorporate bat boxes,
- Tree protection fencing (see TPP),
- Avoid vegetation removal during March to August nesting season,
- Translocation of slow worms (this took place in advance of the Brixham Road widening works),
- Sensitive vegetation clearance and site construction,
- Boundaries to include gaps to prevent fragmentation of habitats,
- Update badger survey prior to construction.

A summary of these measures is indicated on the Green Infrastructure Plan (0779-1007-B).

A Lighting Assessment was submitted (Hydrock, Ref No 25884-HYD-XX-XX-RP-E-0001, dated 14 March 2023) with regards to ecological impacts, principally minimising light spill onto the hedgerows on the south boundary and neighbouring residential properties. The recommendations are for street lamp columns to be 4m max height, lights to be LED, warm white and part-night lighting scheme (off between 12midnight and 5.30am) and 2m high solid fences along the southern boundary. Compliance with these parameters and details of a lighting scheme can be required at Reserved matters stage through a condition. Additional measures along the eastern hedgerow are likely to be required.

A Habitat Regulations Assessment was requested by Natural England as the site has a potential bat roost and lies within a known flyway of the Greater Horseshoe Bat (GHB) associated with the South Hams Special Area of Conservation (SAC). DCC Ecologist concluded that subject to achieving the outlined mitigation through planning conditions the development would not have a likely significant effect on the South Hams SAC. The

Council's HRA has been submitted to Natural England for comment and Natural England support the findings, that subject to achievable mitigation the proposal is considered acceptable with the conclusion of no likely significant effect.

With regards to slow worms, much of the site was cleared to facilitate highway works to the Brixham Road to the east of the site in autumn of 2022. The slow worm population was translocated under guidance from Devon Wildlife Consultants. The process is set out in NPA's Habitat management Note (Received 24.04.2023 and referenced P 2022-1173-7). NB the final site compound proposals in the CEMP and CMP for Inglewood highway works (Ref No CN/2022/0079) did not include this application site.

Policy NC1 of the Torbay Local Plan and the NPPF seek biodiversity net gain on development sites. The Council's Ecology Advisor requested a biodiversity baseline metric (from prior to any vegetation clearance on the site) and a biodiversity net gain strategy for this outline application. These were submitted in June 2023.

#### Biodiversity Net Gain Strategy (116 BNG Strategy P01)

- to achieve net gain through on-site mitigation (as shown on the GI Masterplan - 0779-1007-B) and
- off-site mitigation on part (0.6Ha) of a field adjacent to White Rock to be changed from winter feed crop (kale and grazing) to 50% Other neutral Grassland and 50% Mixed Native Scrub and 4 native trees. NB this field is not part of the Ecological Mitigation works for either White Rock or Inglewood developments.

Biodiversity Baseline Metric – (Referenced P-20232-1173-8) is based on the outline strategy and illustrates the following:

- a loss of habitat units on the site, to be addressed through off-site works,
- a net gain in hedgerows on the site.
- Overall, there would be a net gain of 28% in habitats and 87% in hedgerows.

Future reserved matters can be conditioned to include detailed measures to enhance biodiversity in accordance with the Outline BNG Strategy.

The Council's Ecology Advisor has concluded that there is no reason for refusal of the planning application on broader ecological grounds provided the proposals are implemented and maintained in accordance with the ecology documents that have been produced.

To ensure protected species and habitats would not be unduly harmed and that biodiversity aspirations could be met, in accordance with guidance contained within the NPPF and the Development Plan, notably policies SS8, SS9, NC1, C4 of the Local Plan and PNP1, PNP1(a) and PNP21 of the Paignton Neighbourhood Plan. the following conditions are, therefore, recommended:

1. No vegetation clearance or demolition during bird nesting season
2. a pre-commencement repeat badger survey and mitigation/compensation measures
3. boundary plan within RMs - ecological mitigation/enhancement measures included
4. RMs shall include a detailed Lighting Scheme (protect southern and eastern hedgerows)
5. A Construction Environmental Management Plan (CEMP) lighting and other measures of environmental protection during the construction phase.
6. A Landscape and Ecological Management Plan (LEMP) habitat creation, species specification and management of on-site and off-site land.
7. in accord with Ecological Impact Assessment – light control, ecology buffers on boundaries, bat house adjacent to the southern hedgerow, habitat creation.
8. Obtain bat licence from NE
9. RMs to include bat roosting boxes in buildings

10. Restrict external lighting within plots.
11. An ecological monitoring strategy shall be submitted for approval.
12. RM's shall include re-submission of BNG proposals and a BNG Metric calculation to secure a net gain over pre-site clearance condition.

It is anticipated that the ecological mitigation measures associated with this development would give rise to a need for one full day of monitoring per annum, to assess the Greater Horseshoe bat mitigation, offsite habitat creation and linkages to the wider site. Monitoring would be carried out on years 1, 3, 5, 10, 15, 20, 25 and 30 of the development. Charged at a rate of £300 per day, this results in the requirement for a monitoring contribution of £2,400. This can be secured through a s106 planning obligation.

### Derogation Test

The authority must consider whether the proposal meets the three derogation tests of the Conservation of Habitats and Species Regulations 2017 (as amended), and accordingly whether Natural England are likely to grant a Bat Mitigation Class Licence which would permit the proposal to lawfully proceed, should one be applied for. The tests are sequential. The third test I have concluded below.

- i) There must be 'no satisfactory alternative';*
- ii) The consented operation must be for 'preserving public health or public safety or other imperative reasons for overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment';*
- iii) The action authorised 'will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range'.*

With regards to the first test "a satisfactory alternative" is a scheme that delivers the objective that the project is seeking to deliver in a way which is less damaging to European sites when compared to the original proposal. The project proposes provision of 25 residential dwellings. No other satisfactory alternative sites have been put forward to make this provision.

With regards to the second test, the Council is required by the Secretary of State to ensure sufficient housing land to meet the objectively assessed need for a five-year supply of housing. Torbay Council currently has a 2.52-year supply. The site would contribute to meeting the identified need, which is a public interest of significant weight with social and economic benefits. Given the context of housing land supply, the proposal is considered to be an overriding public interest and to meet the first two derogation tests.

With regards to the third test, the DCC Ecologist considers that, given the mitigation and compensation measures included within the Ecological Impact Assessment and the Biodiversity Net Gain Strategy, the third test of the Habitats Regulations is satisfied. It is reasonable to conclude that Natural England would grant an EPS licence for this development, should one be sought.

Subject to the recommended conditions and planning obligations, the development is deemed to accord with policies SS8, SS9 and NC1 of the Torbay Local Plan and policy PNP1(c) and PNP21 of the Paignton Neighbourhood Plan.

### **7. Flood Risk**

Policy ER1 of the Local Plan states that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, and ensure the risk of flooding is not increased elsewhere. The Paignton Neighbourhood Plan offers similar plan-wide aspirations in Policy PNP1(i).

The site sits in an area with a low risk of flooding (Flood Zone 1) and is not subject to surface water flooding. The site is within a Critical Drainage area as designated by the

Environment Agency.

A Flood Risk assessment has been submitted with the application and accompanying surface water drainage scheme that would discharge surface water using infiltration to a soakaway. Supplementary drawings and information regarding pipe lengths and gradients and the areas discharging to each pipe length were submitted at the request of the Drainage Team. The proposed design aligns with the layout of the site in the Indicative Masterplan

The Council's Drainage Engineer has reviewed the proposed surface water proposal and does not object. Subject to implementation in accordance with the submitted information, the scheme is considered to be designed in order that there is no risk of flooding to property on the site or increased risk of flooding to property or land adjacent to the site (for critical storm events plus 50% for climate change).

South West water had no objection subject to details of surface water drainage being submitted for prior approval. They comment that there are public water mains crossing the site and advise the applicants to contact them as necessary with regards to these assets.

Subject to a condition requiring implementation in accordance with the approved Drainage Strategy or other to be agreed in writing with LPA, the scheme accords with Policies ER1 and ER2 of the Torbay Local Plan and policy PNP1(i) of the Paignton Neighbourhood Plan.

## **8. Low Carbon Development**

The NPPF states that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

Policy SS14 of the Local Plan 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 all major development proposals to make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities.

Paignton Neighbourhood Plan Policy PNP1(f) states that new development should aim to achieve where appropriate and subject to viability:

- i) the latest developments in sustainable construction and water management technologies that mitigate and adapt to climate change;
- ii) the use of reclaimed materials and natural finishes;
- iii) include soft landscaped areas for natural drainage of rain water, and compensate fully for any existing soft area lost to development;
- iv) on-site renewable energy generation to achieve 20% of subsequent in-use requirement wherever possible. Solar arrays will be encouraged where they do not adversely affect residential amenity or a vista of landscape value...;
- v) connecting cycleways and footpaths where development involves new road infrastructure.

Low carbon and energy aspirations are considered in the submitted Energy and Sustainability Statement (D. Evans October 2022, Referenced No P2022-1173 -3). It illustrates how the proposed development could be designed using the Energy Hierarchy

principles to deliver carbon dioxide savings using a fabric-first approach with passive design, high efficiency boilers, high efficiency lighting and on-site renewables. However, the report does not make specific calculations of carbon reduction or specific commitments to any identified design solutions. The statement has been overtaken by the Council's commitment to become carbon-neutral by 2030, which is a material planning consideration, and the current Building Regulations. It does not fully acknowledge the Future Homes standards to be introduced in 2025.

The Council's Climate Emergency Officer has commented that the scheme requires commitment from the applicants through a detailed energy and sustainability statement and has requested a condition to secure commitments at reserved matters stage to conserve energy, avoid overheating, make efficient use of energy and water and to use on-site renewable energy technology in accordance with the Local Plan and Neighbourhood Plan. This shall include detailed plans of where the renewable energy sources would be located and calculations of the power demand and generation.

Therefore, a condition is recommended to secure at reserved matters application relating to the proposal's layout, scale and appearance, the above details of energy efficiency measures and sustainable construction.

The proposal is considered, subject to an appropriate planning condition, to have the potential to deliver on the low-carbon aspirations of the Development Plan and the NPPF.

## **9. Affordable Housing**

Affordable housing provision should be secured from this development in accordance with Policy H2 of the Torbay Local Plan, which states that for development of greenfield sites for schemes of 15-29 dwellings that 25% of the units should be affordable housing. At 25% the scheme is expected to secure 5 affordable units.

The provision should be secured via a S106 with elements of the provision, such as location, size and tenure mix, being agreed through the reserved matters stage when the form and layout is progressed beyond the current indicative stage. Tenure will be expected to be in accordance with Policy H2 (1/3 social rented housing, 1/3 affordable rent and 1/3 shared ownership housing). The amenity for future residents will be expected to be to the same standards as for market housing.

The submitted Planning Policy and Affordable Housing Statement sets out, in Section 5, a commitment to provide 25% of dwellings as affordable units in accordance with the Policy H2, including the tenure specification.

In addition to the requirements of the Legal Agreement a planning condition is recommended to secure that all applications for reserved matters relating to the proposal's layout and scale shall include a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority, which shall include information about the siting, size, and tenure type of the affordable units.

The Council's Housing Delivery Officer supports the proposal in terms of an affordable housing offer.

## **11. Housing Supply**

The Council cannot currently demonstrate a 3- or 5-year housing land supply, as sought by Government. The five-year supply position represents a significant shortfall and must be treated as an important material consideration weighing in favour of the proposal.

Considering the housing supply position, it is advised that in determining the application,

the presumption in favour of sustainable development at Paragraph 11 of the NPPF must be applied. Paragraph 11 of the NPPF outlines that decisions should apply a presumption in favour of sustainable development, which means approving development proposals that accord with an up-to-date development plan without delay.

It is concluded within this report that the development accords with the Development Plan when considered as a whole and hence there is support for the grant of permission, in-line with the guidance within the NPPF (Para 11). Were Members of a different judgment and were to consider the proposal to conflict with the Development Plan it should be noted that the absence of a 3- or 5-year housing supply principally sets a higher benchmark to resist development. In such a circumstance development should only be refused where any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

## **12. Health and Wellbeing**

Policy SC1 requires development to contribute to the health and well-being of the community helping to deliver healthy lifestyles and sustainable neighbourhoods proportionate to the scale of the proposal. In particular, Policy SC1.3 seeks improvement to access to medical treatment services including healthcare clusters.

The NHS Trust was consulted on this application and has responded that health care services in the vicinity are under great pressure. The proposed development would potentially create a long-term impact on the Trust's ability to provide safe, accessible and sustainable service delivery to current and new residents. The proposal does not include the provisions of facilities to address this impact. Contributions are, therefore, sought to mitigate this direct impact and the amount sought is £521 per dwelling (£10,945 for 25 dwellings). This can be secured through a s106 agreement to accord with Policy SC1.3 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 development is recognised as an important driver of economic growth and there would be economic benefits to the construction industry from the proposed development. The development would see the use of land within a designated growth area. Once the development is occupied there would be an increase in the level of disposable income from the occupants some which would be likely to be spent in the local area and an increase in the demand for local goods and services.

There are no adverse economic impacts that would arise from this development. In respect of the economic element of sustainable development the balance is considered to be in favour of the development.

### **The Social Role**

The principle social benefit of the proposed development would be the provision of additional housing, including 5 Affordable Housing units. Given the NPPF priority to significantly boost the supply of housing the additional dwellings to be provided must carry significant weight in this balance, with the benefit heightened by the inclusion of 25% of the units being Affordable units. The social impacts of the development weigh in favour of the development.

### **The Environmental role**

With respect to the environmental role of sustainable development the development is supported by drainage, landscaping and ecological and Biodiversity Net Gain measures to mitigate impact, as detailed in this report. It is concluded that the environmental impacts of the development weigh neutrally within the planning balance.

### **Sustainability Conclusion**

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

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

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

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

### **Local Finance Considerations**

#### **CIL**

Not applicable to this major development as set out in the Council's CIL Charging Scheme.

#### **S106**

The following are draft heads of terms for a legal agreement, which should be completed prior to a planning consent being listed. Triggers and instalments in relation to the proposed financial contributions are to be agreed as part of the detailed negotiation of the legal agreement. It is recommended that authority to progress and complete the legal agreement be delegated to officers.

- 25% Affordable Housing (5 units),
- NHS health and wellbeing contribution at £521 per dwelling,
- Sustainable Transport Contributions in accordance with the adopted SPD,
- Green Space and Recreation off site contributions in accordance with SPD,
- Biodiversity Net Gain and ecological mitigation to be provided on-site and off-site prior to commencement of development,
- Ecological Monitoring fee (£2,400),
- Education - contributions in accordance with the adopted SPD,
- Lifelong Learning Contribution in accordance with the adopted SPD,
- Waste and recycling Contribution in accordance with the adopted SPD.
- Connecting foot and cycle path between the south west access point of the site and the surface of the NAR (shown in Plans for P/2023/0143) provide before first occupation.
- Travel Plan Implementation and monitoring (£1,500)
- Administration and Monitoring charge of 5% (towards cost incurred by the Council in monitoring compliance, collection , allocation and expenditure of contributions).

### **EIA/HRA**

**EIA:**

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

**HRA:** The application site is within a strategic flyway/sustenance zone associated with the South Hams SAC. A Habitat Regulations Assessment/Appropriate Assessment has been carried out for this development. The proposed development is unlikely to have a significant effect on the South Hams SAC. Natural England have been consulted and concur with the Council's conclusions, subject to securing the proposed mitigation measures.

**Planning Balance**

The planning assessment considers the policy and material considerations in detail. It is considered that the scheme in terms of addressing the Development Plan aspiration to provide housing would produce a significantly positive impact overall and help with the supply of much needed housing.

The impacts of the scheme are not unacceptable, subject to the planning conditions and obligations detailed below, and bearing in mind that a number of elements, including the layout, scale, appearance and landscaping for the development will need to be the subject of reserved matters applications.

**Conclusions and Reasons for Decision**

The White Rock area is identified for housing within the Development Plan and the proposal would create additional dwellings within the overall area of White Rock and not render the approved outline permissions for White Rock (P/2011/0197) unimplementable,

Concerns regarding the impact upon the Greater Horseshoe Bats and flooding are resolved to the satisfaction of the statutory consultees on these matters.

The Highway Authority does not object to the proposed vehicle access and its impact upon the road network. However, details would fall to be assessed under Reserved Matters applications.

The impacts upon the character of the area, landscape and amenity of neighbouring residential occupiers have been assessed as far as is possible at outline stage. The impacts are not considered significant. However, details would fall to be assessed under Reserved Matters applications.

In-line with the above conclusions and the assessment within this report, the proposals are considered to be in principle accordance with the provisions of the Development Plan and to demonstrate that an acceptable scheme can be accommodated on the site. The NPPF states that development proposals that accord with an up-to-date development plan should be approved without delay.

Due to the level of accordance with the Development Plan and in the absence of material considerations that weigh sufficiently against the proposal, the Officer recommendation is one of approval, subject to suitable conditions, and securing a Section 106 Agreement to secure the identified heads of terms in line with adopted policy.

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

The NPPF guides that decisions should apply a presumption in favour of sustainable development and for decision making that means approving development proposals that accord with an up-to-date development plan without delay. For housing proposals within situations where the local planning authority cannot demonstrate a five year supply of deliverable housing sites, the NPPF guides to granting permission unless the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits (25 dwellings and 25% affordable), when assessed against the policies in the NPPF when taken as a whole. Subject to the recommended conditions and planning obligations, there are no impacts on protected areas or assets of particular importance to provide a clear reason for refusal.

### **Officer Recommendation**

Approval: Subject to;

1. The completion of a Section 106 Legal Agreement to secure the heads of terms above, in accordance with the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, on terms acceptable to Officers.
2. The conditions outlined below, with the final drafting of conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency,
3. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.

### **Conditions**

#### **Standard Time Limit:**

That in the case of any reserved matter, an application for approval must be made not later than the expiration of three years beginning with the date of the grant of outline planning permission; and

That the development to which this permission relates shall be begun not later than five years from the date of this permission or not later than two years from the date of the approval of the last of the reserved matters to be approved.

Reason: To comply with Section 91 of the Town and Country Planning Act, 1990.

#### **1. Reserved Matters**

Details of the reserved matters set out below (herein after called the “reserved matters”) shall be submitted to and approved in writing by the Local Planning Authority in accordance with the above time limits:

- (i) layout,
- (ii) scale,
- (iii) appearance(including schedule of external materials to include hard-surfaced areas); and
- (iv) landscaping (to include soft landscaping, boundary treatments, screening and all means of enclosure)

The details of the reserved matters shall be consistent with the details submitted and approved pursuant to the outline consent.

Approval of all reserved matters shall be obtained from the Local Planning Authority in writing before any development is commenced, and the development shall be

undertaken in accordance with the approved reserved matters. The details of reserved matters shall in general accord with the Green Infrastructure Plan (0779-1007-B).

Reason: To enable the Local Planning Authority to control the development in detail and to comply with Section 92 of the Town and Country Planning Act 1990 (as amended).

## **2. CMP**

No development (including ground works) or vegetation clearance works shall take place until a Construction Method Statement for the development has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:

- (i) The parking of vehicles of site operatives and visitors.
- (ii) Loading and unloading of plant and materials.
- (iii) Storage of plant and materials used in constructing the development.
- (iv) The erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- (v) Wheel washing facilities.
- (vi) Measures to control the emission of dust and dirt during construction.
- (vii) A scheme for recycling/disposing of waste resulting from construction works, with priority given to reuse of building materials on site wherever practicable.
- (viii) Measures to minimise noise nuisance to neighbours from plant and machinery. Construction working hours, for the principal access onto Brixham Road and first phase of residential development shall be from 07:30 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays and at no time on Sundays or Bank Holidays, unless otherwise agreed in writing by the Local Planning Authority
- ix) Details of how lighting will be controlled during the construction phase of development.

The approved Statements shall be adhered to throughout the construction period of the phase of the development that they relate to.

Reason: In the interests of highway safety and the amenities of surrounding occupiers during the construction of the development further to Policies TA2 and DE3 of the Torbay Local Plan 2012-2030. This needs to be a pre-commencement condition to ensure that the impacts of construction on neighbour amenity and highway safety and convenience are mitigated from the outset of development.

## **3. CEMP**

No development (including ground works) or vegetation clearance works shall take place for any part of the development until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall be prepared in accordance with specifications in clause 10.2 of BS 42020:2013 (or any superseding British Standard) and shall include the following:

- (i) Risk assessment of potentially damaging construction activities.
- (ii) Identification of "biodiversity protection zones".
- (iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce environmental impacts during construction.

- (iv) The location and timing of sensitive works to avoid harm to biodiversity features. This includes the use of protective fences, exclusion barriers and warning signs, covering of trenches at night, impermeable boundaries to include hedgehog holes.
- (v) removal of invasive species.
- (v) The times during construction when specialist ecologists need to be present on site to monitor works to ensure compliance with the CEMP, and the actions that will be undertaken.
- (vi) Responsible persons and lines of communication.
- (vii) The role and responsibilities on site of an ecological clerk of works or similarly competent person.
- (viii) Details of how lighting will be controlled during the construction phase of development to achieve darkness at sunrise and sunset and spillage of less than 0.5Lux.

The approved CEMP shall be adhered to and implemented throughout the construction period of the development, strictly in accordance with the approved details.

Reason: To ensure that all existing trees and hedges and new planting on the site and on adjacent sites and off-site ecological mitigation works are adequately protected while development is in progress, in accordance with Policies C4 and NC1 of the Torbay Local Plan 2012 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the impacts of construction on biodiversity and habitats are mitigated from the outset of development.

#### **4. LEMP**

The reserved matters applications for Layout and Landscape matters shall include a Landscape and Ecological Management Plan (LEMP) for the development . The LEMP shall be consistent with the principles established in the Green Infrastructure Plan and the Ecological Assessment (NPA 10874 114, NPA, 30<sup>th</sup> September 2022) and Ecology Addendum (115 P02, NPA, 5<sup>th</sup> June 2023).

The LEMP shall include:

- details of habitat creation, including an 8m buffer on the south boundary and 5m buffer on the east boundary of the site,
- species specification and
- management of on-site and off-site land.

The LEMP shall include an implementation strategy and timetable for implementation and maintenance for a 30-year period.

The development shall be implemented in accordance with the approved LEMP and with the approved timetable for the duration of the agreed management plan period.

Reason: To ensure that all existing trees and hedges and new planting on the site and on adjacent sites and off-site ecological mitigation works are adequately protected and maintained, in accordance with Policies C4 and NC1 of the Torbay Local Plan 2012 and the National Planning Policy Framework.

#### **5. Tree Protection during construction**

No development (including ground works) or vegetation clearance works shall take place for any phase of the development until a Tree Protection Plan for that phase has been submitted to and approved in writing by the Local Planning Authority. This information shall be prepared in accordance with BS 5837:2012 (or any superseding British Standard) and include details of tree protection fencing, which must be erected prior to the commencement of the development and retained until the completion of the development in the phase of the development that they relate to. No vehicles, plant or materials shall be driven or placed within the areas enclosed by the fences.

The approved Tree Protection Plans shall be adhered to throughout the construction of the development.

Reason: To ensure that all existing trees and hedges on the site and on adjoining sites are adequately protected while development is in progress, in accordance with Policy NC1 of the Torbay Local Plan 2012 and the National Planning Policy Framework. This needs to be a pre-commencement condition to ensure that the impacts of construction on biodiversity and habitats are mitigated from the outset of development.

## **6. Landscaping Scheme.**

Full details of both soft and hard landscape works should be submitted as part of application(s) for reserved matters approval as required by Condition 1. The landscaping details to be submitted shall include:

- a) existing and proposed finished levels and contours,
- b) trees and hedgerow to be retained;
- c) planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing;
- d) hard surfacing;
- e) means of enclosure and boundary treatments;
- f) Any other structures (such as furniture, refuse or other storage units, signs, lighting).

Reason: In the interests of visual amenity and in accordance with Policies DE1 and C4 of the Adopted Torbay Local Plan 2012-2030, Policy PNP1(c) of the Paignton Neighbourhood Plan and the guidance contained in the NPPF.

## **7. Bird Nesting and Vegetation Clearance**

No tree works or felling, cutting or removal of hedgerows or other vegetation clearance works shall be carried out on the site during the bird breeding season from March to September, inclusive. If this period cannot be avoided, these works shall not be undertaken until a statement of the reasons for non-avoidance has been submitted to and approved in writing by the Local Planning Authority. The works shall not be undertaken except in the presence of a suitably qualified ecologist. If breeding birds are found or suspected to be present on the part of the site the subject of such works, the works will not be permitted until the ecologist is satisfied that such breeding is complete.

Reason: To prevent harm to nesting birds in accordance with policy NC1 of the Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

## **8. Ecological Measures**

The development shall be carried out in accordance with the recommendations set out in the submitted Ecological Impact Assessment (NPA 10874 114 P01) and the Green Infrastructure Plan (Drawing number 0779-1007B). These measures shall include:

- i) an 8m ecology buffer on southern boundary and a 5m ecology buffer on the

east boundary,

- ii) a bat house adjacent to the southern hedgerow,
- iii) tussocky grass and wood piles adjacent to the hedgerows,
- iv) bat roosting tubes/boxes in dwelling houses,
- v) hedgehog gaps in fences.
- vi) prior to commencement of any site works or clearance, a repeat survey for the presence of badgers on the site and surrounding habitat with associated mitigation/compensation measures.

The measures shall not be discharged until a qualified consultant ecologist confirms implementation in writing to the Local Planning Authority.

The Developer must obtain Licence from NE prior to commencement of clearance, demolition or other works to the structure on southern boundary.

Associated reserved matters applications shall include proposals to include bat roosting boxes in the design of the buildings and details of the location and design of the bat house.

Reason: In the interests of protecting and maintaining the habitat of legally protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

## **9. Ecological Monitoring**

Prior to the first occupation or use of the development hereby permitted, a Greater Horseshoe Bat (GHB) and Cirl Bunting Monitoring Strategy shall be submitted to and approved in writing by the Local Planning Authority in order to provide early warning of any change in site conditions (such as those brought about by loss of suitable habitat features or adverse light spill) that are likely to impair or disturb GHBs using the bat mitigation measures on the site (including the dark bat corridors and foraging areas); and to put in place remedial measures to avoid harm to these species. The Monitoring Strategy shall include the following:

- (i) Aims and objectives of monitoring to match the stated purpose.
- (ii) Identification of adequate baseline conditions prior to the start of development.
- (iii) Success criteria, thresholds, triggers and targets against which the continued effectiveness of the bat mitigation measures can be judged.
- (iv) Methods for data gathering and analysis.
- (v) Location of monitoring/sampling points.
- (vi) Timing and duration of monitoring.
- (vii) Responsible persons and lines of communication.
- (viii) Review, reporting, intervals of reporting and where appropriate, publication of results and outcomes.

The Monitoring Strategy shall be implemented as approved. A report describing the results of monitoring shall be submitted to the Local Planning Authority at intervals as identified in the Monitoring Strategy. The report shall set out where the results from monitoring show that site conditions are changing and what remedial action is required to ensure the mitigation measures remain effective. The remedial action shall be agreed with the Local Planning Authority and implemented in full.

Reason: In the interests of protecting and maintaining the habitat of legally protected species in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030 and the guidance contained in the NPPF.

#### **10. Lighting Scheme as part of RM's**

Prior to above-ground development a Lighting Scheme to maintain "dark areas" on the southern and eastern boundaries of the site and on surrounding sites shall have been submitted to and approved in writing by the Local Planning Authority demonstrating compliance with the principles established in the submitted Lighting Statement (Hydrock, Ref No 25884-XX-XX-RP-P03, dated 14.03.2023).

The Scheme shall include the location and specification of all external lighting. The Lighting Scheme shall be implemented as approved prior to the occupation of the dwellings and thereafter maintained as approved. Should any of the external lighting become damaged or defective and need replacement it shall be replaced with external lighting of no brighter specification.

The Lighting Scheme shall include:

- (i) An evidence-based assessment of light levels of the proposed development, including buildings, vehicle headlamps and street lighting, comprising a written report and accompanying drawings of the site with the levels of predicted illuminance and light spill in and adjacent to the "dark areas" shown by appropriate isolines.
- (ii) Evidence to demonstrate that a light-spill no higher than 0.5 lux will be achieved within the "dark areas".
- (iii) Where ii) is achieved either fully or in part through landscaping, details of the landscaping and its management to ensure it will maintain the "dark areas" for the lifetime of the development. These details shall be incorporated into the Detailed Landscaping Schemes and Landscape and Ecological Management Plans where applicable.

No additional outdoor lighting shall be installed on the site without the prior written approval of the Local Planning Authority.

Reason: In the interests of biodiversity and residential amenity, in accordance with Policies SS8, NC1 and DE3 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

#### **11. External lighting on resident plots.**

No external lighting shall be installed at any time at the application site without the written permission of the Local Planning Authority.

Reason: In the interests of biodiversity and residential amenity, in accordance with Policies SS8, NC1 and DE3 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF.

#### **12. Biodiversity Net Gain measures**

No development or vegetation clearance shall take place on the site until a scheme of measures to achieve a Biodiversity Net Gain over the Base Metric hereby approved has been submitted to and approved in writing by the Local Planning Authority. The metric calculation shall include the assessment principals that have informed the proposals and shall use the most up-to-date DEFRA metric and associated guidance documents to secure a minimum 10% net gain over 30 years.

The approved measures shall be implemented in full prior to the commencement of the development, unless a phasing strategy has otherwise been agreed in writing, and shall be permanently managed and maintained at all times thereafter in accordance with the approved details.

Reason: in the interests of biodiversity, in accordance with Policies SS8 and NC1 of the Torbay local Plan 2012-2030, the Paignton Neighbourhood Plan and the NPPF. This needs to be a pre-commencement condition to ensure that the impacts of the development on biodiversity and habitats are mitigated from the outset of development.

### **13. Highway Works - adoptable network plan**

A plan showing the proposed adoptable highway network within the development shall be submitted with all reserved matters applications for layout. The plan shall demonstrate where connections will be made to other areas within and beyond the site. Development shall take place in accordance with the approved details. No dwellings hereby approved shall be occupied until the roads serving them have been constructed to adoptable standards as defined in the Council's Highways Design Guide for New Developments or are the subject of an agreement with the Council made pursuant to s38 of the Highways Act 1980.

Reason: To ensure adequate access is provided to the development in a timely manner in the interests of highway safety further to Policies TA1 and TA2 of the Torbay Local Plan 2012-2030.

### **14. Traffic management scheme and visibility**

A traffic management scheme, junction design and Road Safety Audit for the site access shall be submitted with all reserved matters applications for layout. The scheme shall include traffic calming measures to ensure safe vehicle speed at the access point from Limekiln Close and visibility splays in accordance with Manual for Streets. The approved scheme shall be implemented prior to the first occupation of the development and maintained at all times.

**Reason:** In the interests of highway safety further to Policies TA1 and TA2 of the Torbay Local Plan 2012-2030.

### **15. NAR route – no construction until provided**

The development shall not commence on the site until the proposed shared pedestrian and cycle route, the subject of Planning application Reference Number P/2023/0143 and any variations under s73 or s96 the Town and Country Planning Act 1990 (as amended) of that application, has been implemented in full and made available for the free use of the public as a permissible route.

All reserved matters applications for Layout and Landscaping shall include proposals for a safe, 3m wide, pedestrian and cycle path connection from the south west area of the site to the aforementioned shared pedestrian and cycle route.

The approved measures shall be implemented in full prior to the first occupation of the development and shall be permanently managed and maintained at all times thereafter in accordance with the approved details.

Reason: To ensure adequate access is provided to the development and for developments in the area in a timely manner in the interests of highway safety further to Policies TA1 and TA2 of the Torbay Local Plan 2012-2030. This needs to be a pre-

commencement condition to ensure that the site accesses to the local road and path network are constructed in a timely manner from the outset of development.

#### **16. Flood Risk Drainage – in accordance with the submitted and approved FRA.**

As part of any reserved matters application a detailed surface water drainage scheme shall be submitted to and approved in writing by the Local Planning Authority.

The scheme shall demonstrate that the risk of flooding would not be increased and shall be in line with the design parameters outlined within the submitted and approved Flood Risk Assessment, (Clarkbond, Ref No E05706-P03 dated 03.03.2023, E05706 0001 P04 Drainage Strategy 1, E05706 0002 P04 Drainage Strategy 2 and E05706 0003 P01 Impermeable Areas).

No development (including ground works) shall take place on the site until a detailed surface water drainage scheme has been approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first occupation of the development and shall be subsequently maintained in working order thereafter.

Reason: To ensure that there are no increased flood risk, in accordance with Policies ER1 and ER2 of the Torbay Local Plan, the Paignton Neighbourhood Plan, and advice contained within the NPPF. This needs to be a pre-commencement condition to ensure that the impacts of construction on flood risk and drainage are mitigated from the outset of development.

#### **17. Affordable Housing**

As part of any application for reserved matters relating to site layout and scale of development, a scheme of affordable housing shall be submitted for the written approval of the Local Planning Authority. The submitted details shall include information about the siting, size, and tenure type of the affordable units and of any adaptable units. The development shall be undertaken in accordance with the approved details.

Reason: In accordance with Policy H2 of the Torbay Local Plan 2012-2030.

#### **18. Energy**

A detailed energy and sustainability statement shall be submitted with each reserved matters application pertaining to layout, scale and appearance. The statement shall identify the specific details that will be incorporated into the site including how the proposed development:

1. Conserves energy by reducing energy demand through siting and design. This includes the use of building orientation, layout and landscaping to optimise solar gain, ventilation and cooling
2. Uses energy efficiently within the fabric of the building
3. Uses on-site renewable technologies to achieve 20% reduction in carbon emissions
4. Minimises water consumption and run-off
5. Uses construction methods and materials to reduce carbon release
6. Minimises waste

The Statement shall be accompanied by detailed plans and elevations that demonstrate the incorporation of these details into the design of the development.

Reason: In the interests of sustainable development and in accordance with Policy PNP1 of the Paignton Neighbourhood Plan and Policy SS14 of the Torbay Local Plan 2012-2030.

#### **19. Acoustic Report – fencing, wall construction, windows**

As part of any reserved matters application a detailed acoustic assessment and mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority.

The assessment shall be undertaken in accordance with BS 8233:2014 and WHO 1999. The mitigation scheme shall be in line with the parameters outlined within the submitted Environmental Noise Assessment (Acoustic Consultants Ltd, Reference 9864/SL Rev C, dated 21.10.2022) and shall include consideration of building fabrics, fenestration and ventilation. The mitigation scheme shall demonstrate compliance with the guidance in BS8233:2014 with regards to noise levels to internal spaces and external amenity areas.

The approved scheme shall be implemented in full and tested and provided in full working order prior to the first occupation of the development and shall be maintained in that condition thereafter.

Reason: In the interests of residential amenity for future occupiers of the development in accordance with Policy DE3 of the Torbay Local Plan and advice contained within the NPPF.

#### **20. Contamination**

Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the Local Planning Authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

Reason: To ensure there is no risk of land contamination in accordance with Policy ER3 of the Torbay Local Plan and advice contained within the NPPF.

#### **21. Parking**

No dwelling shall be occupied until its allocated car parking space(s) and access thereto, as shown in the associated approved details of reserved matters, have been provided and made available for use. All other car parking spaces and access thereto, including any visitors parking, as shown in the associated approved details of reserved matters, shall be provided and made freely available for use prior to the occupation of the development that they serve. The parking space(s) and access thereto shall be kept permanently available for parking and access purposes thereafter.

Reason: In accordance with highway safety and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

#### **22. ECVP**

No dwelling shall be occupied until an electric vehicle charging point to serve that dwelling has been installed and made fully available in working condition and in accordance with details which shall firstly have been submitted to the Local Planning

Authority with, and approved under, the reserved matters application for layout and/or appearance for the associated phase of development.

Reason: In the interests of carbon reduction and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

### **23. RMs to include details of cycle and bin stores**

The details of reserved matters shall include details of cycle parking and bin storage/waste recycling facilities for the dwellings hereby permitted. The cycle parking shall be in accordance with Policy TA3 and Appendix F of the Torbay Local Plan 2012-30 and shall be secure, covered and located where it is well overlooked, wherever practicable, to reduce opportunities for crime. The relevant cycle parking and bin storage/waste recycling facilities shall be provided as approved prior to the first occupation or first use of the dwelling to which it relates and thereafter retained as such.

Reason: In the interests of reduction of carbon fuel usage and residential amenity, and in accordance with Policies DE3, TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030

### **Informative(s)**

01. 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**

#### **Torbay Local Plan**

SS1 - Growth Strategy for a prosperous Torbay  
SS2, Future Growth Areas  
SS3 - Presumption in favour of sustainable development  
SS8 - Natural Environment  
SS9 - Green Infrastructure  
SS11 – Sustainable Communities  
SS12 – Housing  
SS13 – Five-year housing land supply  
SS14 - Low carbon development and climate change  
SDP3 - Paignton North and Western Area  
H1 – Applications for new homes  
H2 – Affordable Housing  
TA1 - Transport and accessibility  
TA2 - Development access  
TA3 – Parking requirements  
C4 - Trees, hedgerows and natural landscape  
DE1 - Design  
DE3 - Development Amenity  
DE4 - Building heights  
NC1 - Biodiversity and geodiversity  
ER1 - Flood Risk  
ER2 - Water Management  
ES1 - Energy  
W1 - Waste management facilities  
W2 – Waste audit for major development and significant waste-generating developments

## **Paignton Neighbourhood Plan**

PNP1 – Area wide

PNP1(c) – Design Principles

PNP1(d) – Residential Development

PNP1 (f) – Towards a Sustainable Low-Carbon, Energy-Efficient Economy

PNP1(g) – Designing out Crime

PNP1(h) – Sustainable Transport

PNP1(i) - Surface Water

PNP21 – White Rock and nearby areas

PNP22 – Western Corridor

## **Supplementary Planning Documents**

Planning Contributions and Affordable Housing SPD, December 2022.