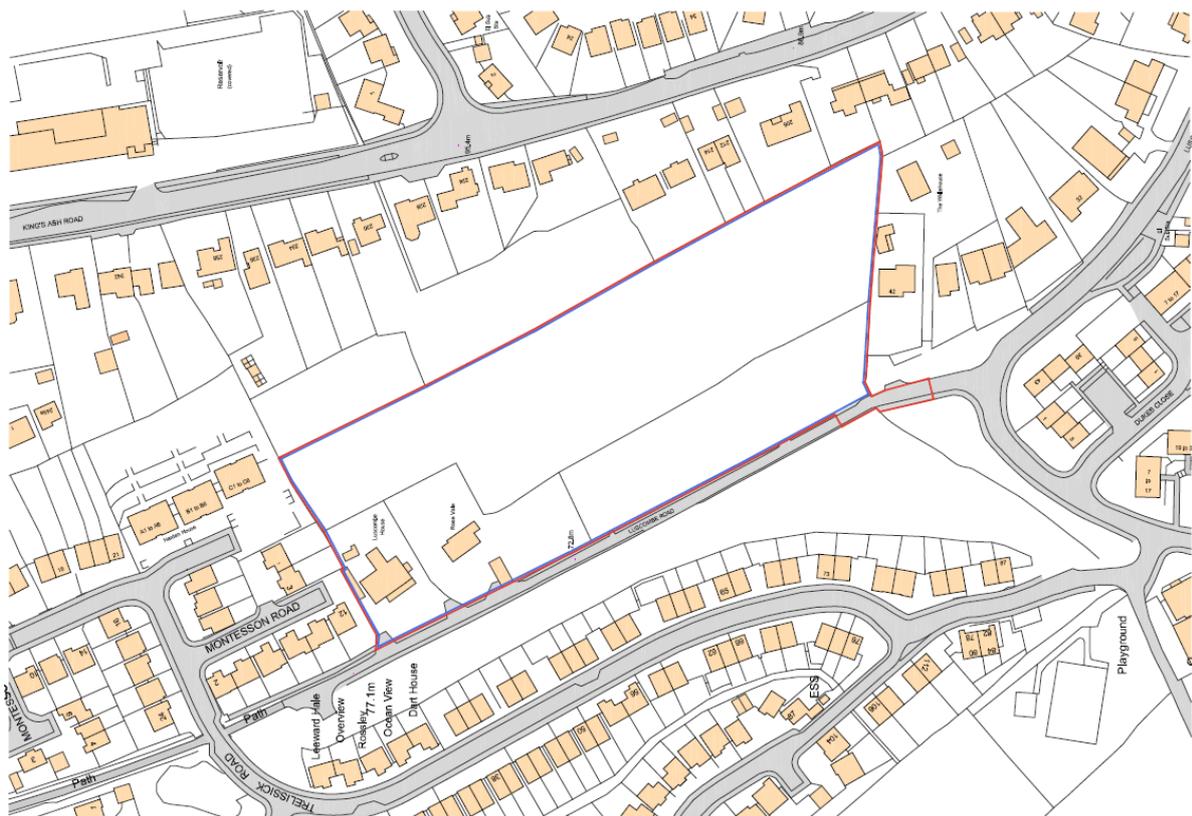


TORBAY COUNCIL

Application Site Address	Land off Luscombe Road, Paignton
Proposal	Reserved Matters pertaining to application P/2014/0938. Matters reserved: appearance, landscaping, layout and scale.
Application Number	P/2020/0360
Applicant	
Agent	Persimmon Homes Ltd
Date Application Valid	01.05.2020
Decision Due date	01.07.2020
Extension of Time Date	
Recommendation	Conditional approval
Reason for Referral to Planning Committee	Major Reserved Matters Application
Planning Case Officer	Mr. Alexis Moran



Site Details

This 1.5 hectare site was allocated for housing in the previous Torbay Local Plan (H1.13) and is identified as a potential site for allocation for the Paignton Neighbourhood Plan (Policy SDP 3) in the adopted Local Plan. It is located to the east of Luscombe Road and to the north of its junction with Queen Elizabeth Drive. Two dwellings originally occupied the north-west corner of the site (one of these has been demolished) and the balance of the site is rough pasture but was previously used for camping. It falls within an established residential area.

The site occupies the south east slope of a valley and it slopes quite steeply from north east to south west across the site. The site is bounded to the west by the Luscombe Road designated cycle route and the boundary is defined by a mature hedgerow of 'important' ecological value, part of the hedge row and bank have been removed and is now in the process of being replaced.

A South West Water main runs north to south across the site and requires a substantial 6 metre easement to be retained free of development. The site is located within Flood zone 1.

Detailed Proposals

This is a Reserved Matters application relating to appearance, landscaping, layout and scale of 68 dwellings. The submitted layout plan broadly follows the master plan submitted as part of the Outline Application P/2014/0938 and is unaltered from the previously approved Reserved Matters applications.

The application is part retrospective with works being undertaken under Reserved Matters permissions P/2018/0522 and P/2019/0291. However an increase to the highway level has resulted in the development being raised higher than the permission granted resulting in most of the buildings being between 0.15m & 1.95m higher than previously approved. This application seeks to gain permission for the levels as built. The layout, the density and material appearance of the development is not altered from the previous approvals and are subsequently considered to be acceptable.

The western hedgerow was punctured in parts during the construction of the units currently on site, this has now been rebuilt and is to be replanted out. This issue is dealt with via a separate discharge of condition application.

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")

Material Considerations

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

Summary Of Consultation Responses

Natural England: No comment

Environment Agency: No comments received

Drainage Engineer: *I can confirm that, providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawing and the hydraulic design calculations dated 18th May 2020, I have no objections on drainage grounds to the planning condition relating to surface water drainage being discharged.*

Ecology advisor: No objection

South West Water: No objection

Highways: No objection

Council's tree and landscape officer: The Arboricultural Method Statement and Tree Protection Plan are satisfactory, records of the site supervision will need to be submitted. The landscaping details are considered to be acceptable.

Architectural Liaison Officer: All gates that lead to rear gardens must match the same height and robust construction as the adjoining boundary treatment (1.8m as a minimum height requirement).

All gates that lead to rear gardens must be capable of being locked from both sides so that rear gardens are secure regardless of access or egress.

All garden dividing material must be a solid fence or wall to a height of 1500mm or a 1200mm solid fence or wall with the option of raising to 1500mm or 1800mm by use of trellis or ironwork topping.

Housing Delivery Officer: Comments from Housing Services on the previous RM submission were that they had no objection to the location of the affordable housing units. The locations of these units has not changed.

Paignton Neighbourhood Forum:

Paignton Neighbourhood Forum: object to the scheme and state that;

- *The housing density is substantially in excess of the guidance provided in the Torbay Local Plan. The site has 1.39 hectares which should contain no more than 41 dwellings, based on the maximum of 30 dwellings per hectare defined in the Local Plan. To accommodate 68 dwellings would require 2.27 hectares.*

Excessive housing density is not conducive to a comfortable and peaceful living environment, in contravention to Torbay Local Plan Policy DE3.

- *That the car parking provision does not meet the requirements of the Torbay Local Plan, Appendix F which provides a requirement of two parking spaces per dwelling. Furthermore, the tandem parking arrangements effectively tend to reduce the use of allocated parking, because people find it inconvenient to move both cars in order to use the one parked farthest from the road. Reliance on tandem parking in the design would require the provision of additional, unallocated spaces beyond the requirement of 2 per dwelling.*
- *The proposal fails to provide secure and covered storage for at least two cycles per dwelling, as required by the Torbay Local Plan, Appendix F, p.294. The Building for Life Assessment report notes that cycles can be stored in the garden at the rear of the property, but that the storage is not covered, in contravention to the Local Plan requirements. It also appears that to use the cycle would generally require that the cycle is brought through the house and down stairs in order to have access to the road.*

In addition, we are disappointed that the decision in October 2018 permitted the plans for development to proceed with only 20% of the dwellings developed as affordable housing, in contravention of Policy H2 of the Torbay Local Plan, which requires 30% affordable housing. Given that the need for housing in Torbay is predominantly for affordable and social housing, that 2018 decision was not in the interests of the community.

Summary of Representations

Seven objections and one representation to the scheme had been received at the point at which this report was written. The concerns raised are as follows.

1. Overdevelopment/out of character with surrounding residential area/cramming.
2. Impact on amenity/loss of privacy/overlooking through the increase in height from what was approved.
3. Impact on trees/wildlife and loss/removal of parts of the boundary hedgerow
4. Flooding
5. Impact on infrastructure.
6. Land destabilisation
7. Access from the site crossing cycle route.

It should be noted that a number of these aspects of the application have previously been approved by applications P/2018/0522 & P/2019/0291 with the only material change being that to the heights of the dwellings.

Relevant Planning History

P/2019/0291 - Reserved matters application relating to outline application P/2014/0938. This sought amendments to previous reserved matters approval (P/2018/0522) for the siting of 4 of the units as a result of the location on site of the SWW mains. Approved 12.06.2019

P/2018/0522 - Reserved matters application relating to outline application P/2014/0938 (formation of up to 68 dwellings with associated road and landscaping). Approved 12.12.2018

P/2014/0938 – Outline Application for the formation of up to 68 dwellings with associated road and landscaping; Approved 14.05.2018

Key Issues/Material Considerations

The principle of residential development of this site is long established through the previous allocation in the Local Plan and the granting of Outline planning permission for up to 68 dwellings. Reserved matters approval for the appearance, landscaping, layout and scale of the units has also previously been approved under application references P/2018/0522 & P/2019/0291.

The key issues of this application largely relate to the impact of the increase in height of 60 of the buildings from between 0.15m & 1.95m.

The matters for consideration are:

1. Layout, appearance and scale.
2. The impact on the surrounding properties in terms of amenity.
3. Proposed landscaping, impact on trees and ecology.
4. Flooding and drainage.
5. Highways impact.
6. CIL

Each will be addressed in turn.

1. Layout, Appearance, and Scale

An indicative layout was provided as part of the outline application, this was subsequently included in condition 1 of the outline permission P/2014/0938. This condition states that the submitted reserved matters shall be based on the approved Master Plan as shown in Plan No.3528 (12) 03 rev P1 and the design concepts outlined within the associated Design and Access Statement dated July 2014.

The layout matches the two previously approved Reserved Matters schemes P/2018/0522 and P/2019/0291. In total the proposal is for the provision of 68 residential dwellings, the development would achieve an average density of approximately 43 dwellings per hectare (16 per acre). This relates well to the existing density of development adjoining the boundaries of the site, and also accounts for the topography and retention of areas of vegetation and open space. The development would consist of two to four bedroom family sized homes.

In terms of scale, the change in building heights is considered acceptable and would not result in any significant change to the previous approvals on the site.

The proposed dwellings would be finished predominantly with red brick with render used to establish focal buildings through the site and to provide a different texture to corner buildings. Interconnecting concrete pan tiles would be used on the roofs of the buildings.

Bearing the above points in mind the proposal is deemed to comply with Policy DE1 (Design) of the Local Plan which, among other things, requires development to be

uncluttered and attractive, acknowledge local character and develop distinctive character in townscape and landscape terms, relate to the surrounding built environment in terms of scale, height and massing and have a clear urban structure and grain that integrates with the surrounding context.

It is noted that there is an objection to the scheme from the Paignton Neighbourhood Forum which states that Policy DE3 advises that a maximum of 30 dwellings per hectare is allowed, the explanatory text on p.198 of the Local Plan actually advises that 30 dwellings per hectare is the minimum expected on a greenfield site. There is also an outline consent on the site for up to 68 dwellings with a condition advising that the layout should be based on the Master Plan submitted with the application. The layout also accords with that approved under previous Reserved Matters applications P/2019/0291 & P/2018/0522. The comments from the Neighbourhood Forum do not relate to the changes to the previous permissions which are being applied for by this application.

The relevant Paignton Neighbourhood Plan policies for this application are Policy PNP1 (Area wide – provide housing growth appropriate to meet local needs and the strategic needs set out in the Torbay Local Plan 2012-2030, including affordable housing), PNP1(c) (Design Principles), PNP1(d) Residential Development and PNP20 (Great Parks). These requires development to be in keeping with the surroundings in terms of scale, density, height, design and landscaping and to comply with the Great Parks master plan. The proposal is deemed to comply with these Policies.

Policy SS11 (Housing) states that there is a requirement for 8,000-10,000 new homes to be built within the plan period as long as these can be delivered without harm to either the economy or the environment. Torbay does not currently have a 5 year housing land supply and the site has not been allocated in the Paignton Neighbourhood Plan. The proposed development provides the opportunity of a deliverable sustainable development in Paignton, which meets the needs and demands of local communities for new open market and affordable housing.

2. The impact on Amenity

Policy DE3 (Development Amenity) requires that all development should provide a good level of amenity for future residents or occupiers and should not unduly impact upon the amenity of neighbouring or surrounding uses. The key issue in relation to this is the increase in height to the previously approved Reserved Matters applications P/2018/0522 & P/2019/0291.

When considering the impact on the surrounding properties and firstly concentrating on those to the north on Montesson Road, the distance between the rears of the proposed properties and the side elevation of 12 Montesson Road is approximately 15m which, in an urban environment, is considered to be an acceptable side to rear relationship. The layout of the proposed dwelling here has not altered from the previous Reserved Matters approval but they have increased in height due to a change to the level of the road on site. There is an increase in height of 0.75m to units 7 & 8 and 0.9m to units 9 & 10. Given the distance between the properties, the increase in height proposed is not deemed to have a significant impact on 12 Montesson Road through additional overbearing impact or loss of light.

The distance between the rear elevations of 1 & 3 Montesson Road and the rear elevations of the closest proposed properties is in excess of 20m, a distance which is deemed to be acceptable in terms of potential overlooking/loss of privacy. The maximum height increase to proposed units 5 & 6 from that previously approved is 0.5 metres which is considered to be acceptable.

The distance between the side elevations of the 4 storey apartment blocks to the north of the site and the rear elevations of the proposed units is acceptable and it is not deemed that this would result in an unacceptable level of overlooking/loss of privacy.

The separation distances between the properties on Kings Ash road and the proposed development is sufficient to prevent any unacceptable impacts with regards to loss of privacy/overlooking.

To the south of the site, the layout of unit 40 is retained as per the previous Reserved Matters application but the height of unit 40 is increased by 0.45m. The increase in height is considered to result in an acceptable residential environment between the properties to the south on Luscombe Road (no. 42 & The White House).

Proposed dwellings 40-63 include terraced rear gardens, there is potential for this to result in views back into the rear of neighbouring properties, however boundary treatments between dwellings would aid in reducing potential overlooking.

Given its siting, scale, and design, it is considered that the proposal would not result in unacceptable harm to the amenities of existing occupiers, and that it would provide an adequate standard of living accommodation for the enjoyment of the proposal's future occupiers. In these respects, the proposal is considered to be in accordance with Policy DE3 of the Torbay Local Plan.

3. Landscaping, Trees, and Ecology

The principle of the proposed development is established, however, the proposed landscaping is under consideration, and all of the reserved matters being considered can have potential knock-on effects in relation to ecology and trees.

A key issue raised by objectors was the damage/loss of parts of the hedge and bank on the western boundary of the site which was the subject of enforcement action as the applicant was in breach of conditions applied to the original outline permission. The developer has replaced parts of the bank and has submitted details with regards to its construction, planting specification and the ongoing management of the hedgerow. The Council's Senior Tree and Landscape officer has confirmed that these details are acceptable.

The Council's Senior Tree and Landscape Officer has confirmed that the submitted Tree Protection Plan and an Arboricultural Method Statement are acceptable and that a record of site supervision during construction should be submitted.

In terms of the ecological value of the site, an updated addendum to the previous Ecological Impact Assessment and Phase 1 Habitat Survey has been submitted. This identifies broad mitigation and enhancement proposals pre and post construction, and

seeks to ensure that the most important ecological features of the site are protected and indeed improved. This includes a paragraph covering the loss of some of the western boundary hedgerow and that the submitted technical note and Landscape and Ecology Management Plan (LEMP) provides a specification for the creation, establishment and maintenance of the hedgerow to ensure it is appropriately replaced.

In summary the mitigation for the site is:

- To protect woodland, hedgerows and retained trees in accordance with BS 5837:2012 'Trees in relation to design, demolition and construction'.
- For the western boundary hedge to be kept outside property ownerships and left with a maintenance strip for access. Maintained tall and bushy.
- Soft felling of trees with low bat roost potential in the presence of a suitably qualified bat ecologist, (this was undertaken between February and March 2019).
- Removal of invasive species prior to commencing earthworks. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- An Ecological Clerk of Works to be present during the removal of dense scrub to search for badger setts.
- Construction team to maintain site in tidy and efficient manner, with any excavations provided with a means of escape (e.g. ramped side or plank) and pipes over 200mm capped off at night. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- No lighting to hedgerows, trees or other boundary vegetation during construction. Detailed within the CEMP produced for Conditions 14 and 15 of the outline consent.
- As a precautionary measure, an ecologist will be present when the ridge tiles of Building 3 (the bungalow) are removed.
- Translocation exercise to remove reptiles from site, including phased vegetation clearance and a fingertip search of rubble/ other suitable vegetation. This was undertaken between March and May 2019.

Compensation for habitat loss has been detailed within the Landscape and Ecology Management Plan (Green Ecology, Rev 2, March 2020), separately submitted as part of a discharge of condition application. This includes hedgerow, tree and species-rich grassland planting/creation. Bat and bird boxes are also to be integrated at a rate of 1 per dwelling.

The current proposal is a variation of previously approved scheme (P/2018/0522) which was subject to a detailed HRA. This HRA concluded that there would be no Likely Significant Effect on the South Hams Greater Horseshoe Bat Special Area of Conservation SAC providing that the proposed mitigation measures set out in the outline application (lighting scheme/CEMP/LEMP) were adhered to. The current scheme proposes the same layout, with the only differences being an increase in the height of some dwellings. The LEMP and CEMP submitted as part of a separate discharge of condition application have also been altered, but these changes have not arisen as a consequence of the changes proposed within this current application.

It is considered that the current application to vary the previously approved reserved matters scheme does not result in any changes which would be material to the previous conclusion, no additional material information has emerged or any

circumstances have changed so as to make the previous decision out of date and the analysis underpinning the reasoning, conclusion or assessment of the previous HRA is considered to be sufficiently rigorous and robust. Therefore, it is considered appropriate to adopt the assessment conclusions of the previous HRA.

It is considered that a condition requiring the implementation of the mitigation measures in the Ecological Impact Assessment and Phase 1 Habitat Survey Ecology Update Report should be requested by condition.

The Outline permission also required the submission of an external lighting strategy prior to the occupation of any of the units. This is to ensure the lighting from roads and footpaths has a minimal impact on bats in the area. A lighting plan which shows lighting levels would be below 0.5 lux to the hedgerow is also considered necessary and will be requested by condition.

The submitted boundary treatment plan does not provide details of a means of separation between the gardens of plots 10-19, 27,28 & 39 and the western boundary hedge. It is considered that this is necessary to ensure future residents do not interact with the hedge in a detrimental way or in a way which would be contrary to the separately submitted LEMP. It is also considered that biodiversity information packs for the aforementioned plots would be helpful in protecting the hedgerow in future.

Subject to the aforementioned conditions, the proposal is deemed to comply with Policies C4 and NC1 of the Torbay Local Plan.

4. Flooding and Drainage

A condition relating to the submission of drainage details prior to the commencement of development was added to the Outline permission P/2014/0938. The applicant has submitted drainage details to discharge this condition and these details have also been submitted as part of this application. The Council's Drainage Engineer has confirmed that the submitted surface water drainage drawing and the hydraulic design calculations are acceptable.

5. Highway Impact

These details were determined at the outline stage with conditions added to P/2014/0938 accordingly. The Council's Highways Department has confirmed that the road layout is acceptable and is of a standard which is adoptable. This accords with the requirements of the outline permission. The proposed layout includes parking spaces for 136 cars, or 2 per dwelling, which complies with the Council's parking standards, this proposal does not include any alterations to the previously approved applications P/2018/0522 & P/2019/0291.

The proposal is deemed to comply with Policies TA2 & TA3 of the Local Plan.

6. Community Infrastructure Levy

The land is situated in Charging Zone 2 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £70/sqm. An exemption applies for the affordable housing. An informative can be imposed, should consent be granted, to explain the applicant's/developer's/landowner's obligations under the CIL Regulations.

Statement on Human Rights and Equalities Issues

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

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

EIA

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

Proactive Working

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.

Conclusions

The proposed layout, scale, appearance, and landscaping are considered to be acceptable, subject to the use of conditions. As such, the proposal is considered to be in accordance with the Torbay Local Plan, and all other material considerations.

Officer Recommendations

That planning permission be granted subject to the conditions detailed at the end of this report, with the final drafting of conditions delegated to the Assistant Director of Planning, Housing and Climate Change.

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

Condition(s)/Reason(s)

1. Prior to, details of the proposed retaining walls and hard landscaping materials shall be submitted to and approved in writing by the Local Planning Authority.

The development shall thereafter be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

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

2. Prior to the first occupation of the development hereby approved, a scheme of boundary treatment shall be fully installed in accordance with details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. This shall include a means of separation between plots 10-19, 27,28 & 39 and the western boundary hedge.

Once provided, the agreed boundary treatment shall be retained for the life of the development.

Reason: In interests of visual and residential amenity and in accordance with Policies DE1, DE3, NC1 & C4 of the Torbay Local Plan 2012-2030.

3. All planting, seeding or turfing comprised within the landscaping scheme hereby approved shall be carried out in the first planting season following the completion of the development and any trees or plants which within a period of 5 years from completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species. The approved hard landscaping details shall be provided within 12 weeks of the development being brought into use, and shall be retained for the life of the development.

Reason: In the interests of visual amenity and in accordance with Policies DE1 & C4 of the Torbay Local Plan 2012-2030.

4. The dwellings hereby approved shall not be occupied or brought into use until the associated parking spaces and manoeuvring areas detailed on the approved plans have been completed. These elements shall thereafter be retained for the use of the associated dwellings for the life of the development.

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

5. Prior to the first occupation of each dwelling hereby permitted, provision shall be made for its refuse and bicycle storage according to details which shall previously have been submitted to and agreed in writing by the Local Planning Authority. Once provided, the agreed storage arrangements shall be retained for the life of the development.

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

6. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 1, Classes A to E, no

enlargements, improvements or other alterations shall take place to either the proposed or existing dwellings within the application site, and no outbuildings or other means of enclosures shall be erected within the garden areas of these dwelling houses, with the exception of one ancillary structure each up to 10 cubic metres in volume, unless permission under the provisions of the Town and Country Planning Act 1990 has first been sought and obtained in writing from the Local Planning Authority.

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

7. The development shall proceed fully in accordance with the mitigation recommendations within Table 3 and Figure 1 (Ecological Constraints & Opportunities Plan) of the Ecology Update Report (ref: 0617-EcU-FM) and the additional covering letter (ref: 0617-LR-FM) . These measures shall be retained as such for the life of the development.

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

8. Prior to the construction of any landscaping retaining walls details of a professional geotechnical consultant's investigation and recommendations confirming that geotechnical and structural stability is maintained on the development site and neighbouring areas shall be submitted to the Local Authority for its approval in writing. The landscaping retaining wall shall be constructed in accordance with the approved details, and shall be retained as such for the life of the development.

Reason: To ensure a safe and satisfactory development and in accordance with Policy ER4 of the Torbay Local Plan.

9. Prior to the occupation of dwellings 10-19, 27,28 & 39, a lighting plan which shows lighting levels would be below 0.5 lux to the western hedgerow shall be submitted to the Council for approval. The development shall be retained in accordance with the approved lighting plan for the lifetime of the development thereafter.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

10. Upon occupation of dwellings 10-19, 27,28 & 39, biodiversity information packs shall be provided to all new occupiers of the dwellings hereby approved, with the packs including as a minimum, clear and precise information on the importance of maintaining the dark corridor to the western boundary hedge where no additional external lighting and no removal of boundary hedges will be allowed in the interests of protected species.

The details of the information to be included within these information packs shall be approved in writing by the Local Planning Authority prior to the occupation of dwellings 10-19, 27,28 & 39.

Reason: In the interests of biodiversity and to minimise impacts on protected species in accordance with Policy NC1 of the Torbay Local Plan 2012-2030.

11. The development shall be undertaken in strict accordance with the approved drainage details and retained as such at all times thereafter.

Reason: In the interests of adapting to climate change and managing flood risk, and in order to accord with Policies ER1 and ER2 of the Torbay Local Plan 2012-2030 and advice within the NPPF