

Application Site Address	Thurlow House 35 Thurlow Road Torquay TQ1 3EF
Proposal	Remodelling of existing building including demolition of existing extensions, increase in ridge height, proposed extensions and alterations to allow for change from office use to residential and formation of 7no. apartments. Construction of new 'coach house' building within the ground to provide 4no. apartments. Associated external works including parking and landscaped grounds. (Part-retrospective).
Application Number	P/2024/0429
Applicant	McCarthy Contracting and Development Ltd
Agent	Kay Elliott Architects
Date Application Valid	01.08.2024
Decision Due date	31.10.2024
Extension of Time Date	17.02.2024
Recommendation	Approval subject to: 1. The planning conditions outlined below, with the final drafting of planning conditions delegated to the Divisional Director of Planning, Housing and Climate Emergency. 2. The resolution of any new material considerations that may come to light following Planning Committee to be delegated to the Divisional Director of Planning, Housing and Climate Emergency, including the addition of any necessary further planning conditions or obligations.
Reason for Referral to Planning Committee	Major Development.
Planning Case Officer	Emily Elliott

Location Plan



Site Location Plan

1 : 1250

Site Details

The site is occupied by a detached Victorian Villa and its curtilage, it would have historically been used for residential purposes but has more recently been used as offices for the Ministry of Justice. The property was constructed in the 1870s and was then extended in the later part of the 20th century. The application site is approximately 0.2 hectares in size. The application site is surrounded by residential uses.

The site is located within the Upton Conservation Area. The Upton Conservation Area Appraisal (CAA) identifies the property as a key building within the conservation area. The site is also located within Flood Zone 1, which is a Critical Drainage Area. The site is located within the Torquay Community Investment Area.

Description of Development

This is a full planning application for the redevelopment of Thurlow House to form 11no. 2-bedroom apartments. This will include the remodelling of the existing building including the demolition of the existing extensions, increasing the ridge height, the construction of new

extensions and alterations to allow for a conversion from office to residential use through the formation of 7no. apartments.

The proposed development will also include the construction of a new 'coach house' building within the grounds to provide 4no. apartments.

The proposal includes associated external works including parking and landscaped grounds.

The vehicular access is maintained within the existing location which is accessed from Thurlow Road via a private access road. In terms of car parking the development provides 11no. spaces, which is located within the north eastern section of the application site.

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"); and
- The Adopted Torquay Neighbourhood Plan 2012-2030 ("The Neighbourhood Plan")

Material Considerations

- National Planning Policy Framework (NPPF);
- Planning Practice Guidance (PPG);
- Published Standing Advice;
- Heritage setting, within a Conservation Area (Upton);
- Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990: Section 72; and
- 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

P/1990/1790: Demolition Of Outbuilding And Wall. Approved 16/11/1990.

P/1990/1425: Alterations And Extension To Form New Single Storey Office Wing With Provision Of Car Parking On Roof Top. Approved 13/11/1990.

P/1984/2561: Extension To Form Workshop. Approved 25/10/1984.

P/1980/3144: Use Probation Day Centre And Offices. Approved 19/12/1980.

Summary of Representations

4 letters of support and 3 letters of objection have been received.

Note: Full responses are available to view on the public access system (<https://publicaccess.torbay.gov.uk/view/>).

Comments in support include:

- It provides houses.
- It provides/retains jobs.
- It removes an eyesore.

- Works and/or removal of existing trees.
- Impact on the local area.

Concerns include:

- Impact on the local area.
- Not in keeping with the local area.
- Emergency services access.
- Drainage.
- Noise.
- Overdevelopment.
- Privacy/overlooking.
- Traffic and access.
- Trees and wildlife.
- Loss of light.

Summary of Consultation Responses

Torquay Neighbourhood Forum (Comments dated 13/11/2024):

The provision of 11 apartments overall will make a valuable contribution towards meeting the housing needs of Torquay, and the Forum is pleased that the existing villa will be re-modelled.

We judge that increasing the height of the building will not affect the external appearance of the property to any significant extent. Removal of the ugly 20th century extensions and restoration of the original appearance of the villa will be beneficial, as will remodelling of the interior to remove offices and create internal living space. Construction of the new extension and new coach house, and creation of the courtyard garden will be beneficial. Overshadowing analysis shows that the new coach house has little impact on loss of light or overlooking of adjacent properties.

We have some concerns about the loss of the existing historic windows. Replacement with uPVC equivalents would have a detrimental impact on the character and appearance of the building. We also are concerned that car parking provision of one space per apartment only makes no allowance for visitors etc.

In summary, we have minor concerns about the heritage impact on the Ellacombe Conservation Area and the limited provision of parking spaces. Nevertheless, considered overall, the proposal is supported as we feel the benefit significantly outweighs the harm. The Forum recommends that this Application is approved.

Torbay Council's Principal Strategy & Project Management Officer (response dated 23/09/2024):

In principle I strongly support bringing the vacant villa property into use. The site scores well against the criteria in Local Plan Policy H1 and TS4 of the TNP and is a highly sustainable urban location. The council urgently needs to increase its delivery of new homes, especially on brownfield sites.

I understand that the building was last used as a probation office until around 2021, and may now be CIL liable. The proposal also raises conservation/ heritage, access and amenity issues. I note that comments have been made in relation to impact of the proposed coach house on neighbours' amenity. These are all detailed DM matters.

Securing a successful conversion that respects the character and appearance of the Upton Conservation Area is an important consideration. In the light of this, and potential CIL liability, I do not consider it necessary to seek loss of employment contributions in this instance.

Please let me know if I've missed anything, or if there are policy matters that you would like a more detailed consideration of; but in principle I support the application.

Torbay Council's Strategy & Project Management Officer (response dated 28/08/2024):

I don't think this development would be liable for affordable housing as it's below the Policy H2 threshold of 15+ for a brownfield site. It's quite possible I'm overlooking something; happy to discuss.

I appreciate there's Paragraph 66 of the NPPF which states that "Where major development involving the provision of housing is proposed, planning policies and decisions should expect at least 10% of the total number of homes to be available for affordable home ownership", however it then goes on to limit this by saying "*unless this would exceed the level of affordable housing required in the area*". My reading is that Policy H2 does not seek affordable housing for brownfield sites of fewer than 15 homes and so seeking 10% as affordable homeownership would indeed exceed the level of affordable housing required in terms of local planning policy, and so this requirement is disapplied.

Torbay Council's Climate Strategy & Project Officer (response dated 27/08/2024):

I have reviewed the submitted documents and have the following comments / recommendations;

- I welcome the early consideration of re-using the existing building and improving on its current thermal performance whilst bringing the proposed new building up to better standards of energy efficiency. Ensuring the principle of making the current building as energy efficient as possible is in line with Policy ES1 of the Torbay Local Plan.
- I welcome that the applicant states 'be lean, be clean and be green' principles for this application by improving the thermal performance of both the existing building and the new building through designs that incorporate low fabric air permeability, thermal insulation, low energy lighting (LED) and solar shading.
- I'd be interested to know from the applicant if they plan on meeting or exceeding part L of the Building regulations to better understand how they intend to ensure that the buildings are as energy efficient as possible, which will further limit the energy needs of the building and support a reduction in energy bills for future residents.
- The use of heat pumps as a source of heating is welcomed, however, we want to ensure that this proposal is committed to, therefore I would recommend a condition is placed that a detailed energy and sustainability report is submitted at the reserved matters stage(s).
- Within the submitted design and access statement and the sustainability checklist, the applicant has stated with the energy statement that to further maximise CO2 reductions, the potential for renewable energy sources will be assessed at the next design stage. I would suggest we get firmer commitment that this will happen. As outlined in energy hierarchy within policy ES1 of the Torbay Local Plan, we want to ensure that renewable energy sources are implemented to maximise carbon reductions. Therefore, I would recommend that a condition is put in place that requests a detailed energy and sustainability report is submitted at the reserved matters stage(s).

Torbay Council's Senior Environmental Health Officer (response dated 30/08/2024):

No objection subject to a planning condition for a Construction/Demolition Management Plan.

Active Travel England (response received 12/08/2024):

In relation to the above planning consultation, Active Travel England (ATE) has no comment to make as it does not meet the statutory thresholds for its consideration.

Devon & Somerset Fire and Rescue's Fire Safety Inspector (response 30/10/2024):

As the proposal will be subject to Building Regulations and the Regulatory Reform (Fire Safety) Order 2005, a statutory consultation will be undertaken between the Building Control Body and the Fire Authority.

Under this process, the proposal must comply with the functional requirements of Approved Document B of the Building Regulations, to include access requirements for Fire Service Vehicles (B5). These include Vehicle Access, including minimum road widths, turning facilities for fire service vehicles and maximum reversing distances of 20 meters.

In addition, the provision of appropriate water supplies for firefighting (Street Hydrants) including appropriate flow rates will need to be achieved. Information on this should be sourced from the National Guidance document on the provision of water for firefighting (3rd Edition; Jan 2007).

SWISCo’s Green Infrastructure Manager (response dated 27/08/2024):

Reference to Section 4.6 Open Space, Sports and Recreation of the Planning Contributions SPD 2022 (https://www.torbay.gov.uk/media/19102/planning-contributions-spd_2022.pdf) table 4.9 and 4.10 identify the framework for s106 requests. In particular, the cost of open space per dwelling as per table 4.9

The proposed development is to provide 20 dwellings. It is understood that 25% are affordable housing but have been included within the calculation as there is likely to be increased pressure on existing resources irrespective of housing allocation.

Sq footage/metreage/no beds	No of Dwellings	Costs as per table 4.9 (£)
2 (37-59m2)*	11	£12,023.00
3 (60-59m2)*		NA
4 (80-108m2)*		N/A
	Total	£12,023.00

*estimated

Please note the amount shown incorporates all elements of shown in the SPD and further detailed discussion may be required to disaggregate the contributions between the relevant sub – categories of open space and recreation etc.

This should be proportionately reduced to take account of any on-site provision in negotiation with and the Green Infrastructure Team.

FUTURE MANAGEMENT OF OPEN SPACE

Without prejudice SWISCo would be seeking to take on the management of any open space provision for a period of 25 years.

A review of the proposed management of open space identified a requirement for grass cutting/non-residential bin emptying/playground inspection/bench repair/non-highway path repairs. The annual cost of the works can be provided and will be plus RPI for 25 years.

SWISCo’s Senior Tree Officer (updated response dated 08/01/2025):

I have reviewed the updated information which is much more comprehensive and satisfies my initial concerns. I'm happy to raise no objections of arboricultural grounds based on the

updated submissions and the use of planning conditions within any grant of planning permission which might be issued.

The Tree Protection Plan (Drawing 06084.TPP 04.11.2024) should be secured for implementation through a planning condition. This plan also relates to the Arboricultural Method Statement (Aspect Ref: 06084 AMS Rev A) which relates to the tree protection plan. Both of which should be read and delivered in conjunction with each other and are mutually supporting in terms of managing the site.

The Arboricultural Statement addresses the investigation of works to underground infrastructure already undertaken, providing a method for evaluating any damage to protected trees which may have been caused.

The statement raises a number of questions around root pruning to mitigate damage to trees from the ground works. I am happy with the methodology and approach but will require the findings and any evidence to be submitted to the LPA for our consideration. The granting of planning permission referencing this statement will provide a de facto permission to undertake any root pruning as might be required. Please can this be secured by a planning condition with any grant of planning permission. Let me know if you need any help with a condition for this element which isn't something I've had to address before.

SWISCo's Senior Tree Officer (previous response dated 16/12/2024):

No arboricultural support based on the overdevelopment of the site and pressure placed on protected trees by structures and associated infrastructure.

A heavy reliance is placed on strict adherence to the Tree Protection Plan and an absence of detailed method statements which would be required prior to commencement. Works have already commenced with no regard to protected trees.

At the time of my site visit (24.9.24), extensive works were already underway on site. Tree protection measures were not evident and I was advised verbally that drainage works had been completed on the west side of the house.

A Tree Protection Plan has been prepared by Aspect Tree Consultancy (Aspect) Ref 06084.TPP 04.11.2024, based on the development proposals and phasing of works. Whilst I have no issues with the approach to the majority of the works (based on the tree protection plan), works have commenced and further arboricultural supervision etc has not been undertaken. This is a significant departure from the tree protection plan and supporting arboricultural method statements. Photo 1 in the Aspect Tree Protection Plan clearly indicates area of disturbance and recommends further investigation to determine if mitigation is required.

The proposed attenuation tank is within immediate proximity to high and moderate quality trees 418 & 419 which are protected trees. G428 is also impacted by this structure. The fencing is located at the limit of the root protection area and the Arboricultural Impact Assessment highlights the risks to retained trees as low if the method statements are followed. I am unhappy with the location of this structure as no method statement for its installation is provided to show this achievable without harming retained trees.

The foundations for the Coach House are impacting on the root protection area of protected tree 419 when BS5837 clearly states that there should be an overriding justification for construction within root protection areas. This case has not been made in my professional view.

In this case, tree removals are proposed. The proposed works will not have a significant impact on the setting of the Conservation Area.

The provision of a landscaping scheme to ensure boundary treatments and natural screening are maintained would be advisable in the interests of residential privacy and amenity provision.

I am uncertain as to how to advise the LPA on proceeding with this application. Works have commenced invalidating and conflicting with parts of the tree protection requirements which now cannot be secured by a planning condition (technical breach already occurring). The LPA will carefully need to consider how to regularise the works already undertaken into the planning submissions already submitted.

I am concerned that the cumulative impacts of the proposed development will have a negative impact on protected trees.

SWISCo's Senior Tree Officer (previous response dated 07/08/2024):

The application is supported by a BS5837 tree survey, but the Tree Constraints Plan is not available. I am unable to provide a technical assessment without this document.

The Tree Protection Plan also does not provide root protection area details. It also refers to Arboricultural Method Statements, but this technical detail is not provided. In this case, as the development is being proposed in close proximity to a range of trees (including those covered by a Tree Preservation Order), I will require the method statements to be provided in order to assess and be satisfied that any proposed works will not have a negative impact on any retained trees.

South West Water (response dated 07.08.2024):

The applicant should demonstrate to your LPA that its prospective surface run-off will discharge as high up the hierarchy of drainage options as is reasonably practicable (with evidence that the Run-off Destination Hierarchy has been addressed, and reasoning as to why any preferred disposal route is not reasonably practicable):

1. Water re-use (smart water butts, rainwater harvesting, grey flushing toilets)
2. Discharge into the ground (infiltration); or where not reasonably practicable,
3. Discharge to a surface waterbody; or where not reasonably practicable,
4. Discharge to a surface water sewer, highway drain, or another drainage system; or where not reasonably practicable,
5. Discharge to a combined sewer. (Subject to Sewerage Undertaker carrying out capacity evaluation)

Having reviewed the applicant's current information as to proposed surface water disposal for its development (domestic roof and driveway run off only) Please note that discharging to the public combined sewerage network is not an acceptable proposed method of disposal, in the absence of clear evidence to demonstrate why the preferred methods listed within the Run-off Destination Hierarchy have been discounted by the applicant.

For Highway run off please contact the Highway Authority to agree disposal method.

Torbay Council's Principal Historic Environment Officer (updated response dated 13/12/2024):

Impact on Significance of Heritage Assets:

The following table accounts for the amended plans and identifies each major element of the proposals, the asset affected, the impact and identifies harm or enhancement:

Proposed Works	Overall Impact	Harm/Enhancement /Neutral	Commentary
<i>Demolition of late 20th century northern extension</i>	High to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the original appearance of the northern elevation of the main building which is the most visible from a public perspective
<i>Demolition of late 20th century southern extension</i>	Moderate to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the lower ground floor of the main building and would enhance the landscape setting of the asset.
<i>Alternations to roof of principal building to replace internal valley with mansard roof</i>	Moderate to NDHA, low to Upton Conservation Area	Harm	The change in the form of the roof for the principal building is considered to have a minor harmful impact on the character and appearance of the building as an NDHA. In addition, the introduction of an inset balcony within the roof slope on the south elevation is at odds with the established character of the building and is considered to be harmful. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Forming a new hipped mansard roof over original extension on northern elevation and further extension</i>	High to NDHA, low to Upton Conservation Area	Harm	Although this would replace the unsympathetic late 20th century extension, the proposed raising of the roof and increase in massing of the northern extension would permanently remove the original character and proportions of the original 'servants' extension – this coupled with the increase in massing and awkward junction with the main building, specifically the relationship with the line of the eaves and the reduction of the prominence of the chimney breast on the northern elevation, would be harmful addition to the building. It is recognised that the size of the proposed dormers have been reduced and stepped into the roof slope, this has reduced their visual impact. The use of a porch on the north elevation is still proposed, however, its 'grandness' has been reduced.

			The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Replacement of existing timber sash windows</i>	High to NDHA, moderate to Upton Conservation Area	Harm	The loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. UPVC windows are historically incorrect in their detailing and dilute the historic character of the property. The size of frame, joinery detail and method of opening would be both incongruous and conspicuous for the age and character of the building and would have an adverse impact on the special interest and significance of the conservation area.
Construction of coach house apartments	Low to NDHA, low to Upton Conservation Area	Harm	The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the principal building and the wider conservation area. The scale and massing of the coach house when viewed from the north remains subservient to the main building. The reduction in the footprint of the existing extension and the reinstatement of a garden area is considered to be a positive element of the proposed scheme. The use of balconies and the architectural treatment of the east elevation of the coach house appears at odds with its design approach, however, it is recognised that this would have a limited impact on the character or appearance of the conservation area, but would result in a minor level of harm to the significance of the main building through inappropriate development within its setting.

As can be seen from the above table, a number of harmful elements to the significance of both the main building as an NDHA and the Upton Conservation Area as a designated heritage asset has been identified.

With regards to the removal of the unsympathetic late 20th century extensions, this is considered to enhance the significance of the identified heritage assets, however, their proposed replacements have a number of issues which would result in varying degrees of harm.

The amended plans have addressed a small number of the concerns raised with the initial proposals; however, the proposed development is considered, on balance, to result in less than substantial harm to the building as an NDHA and the Upton Conservation Area.

Conclusions:

As a result of the above, it is clear that the proposed development would cause harm to an identified heritage asset and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

The level of harm identified should be assessed against the public benefits of the proposed development in the planning balance whilst being mindful of the great weight afforded to the conservation of heritage assets, paragraphs 216 and 219 of the NPPF and the special regard which should be paid to the preservation or enhancement of conservation areas.

Torbay Council's Principal Historic Environment Officer (previous response dated 27/09/2024):

Significance of identified Heritage Assets:

Designated:

Upton Conservation Area

The site sits within the Upton Conservation Area and is identified as a key building.

The site makes a positive contribution to the character and appearance of the conservation area and demonstrates a number of its identified special characteristics including:

- The elements of design that characterise much of the development that took place between the early-to-late 19th century are well represented in the breadth of historic frontage and layout forms – the extent, scale and proportion of most such development remains significantly unaltered, including overall frontage detail, spatial arrangement, roof profiles, stacks and original pots
- There is a high proportion of surviving of period detail to the buildings –conservatories, glazed verandahs, original sash windows with glazing bars, ironwork features, panelled doors, etc;

The Upton Conservation Area Appraisal also identifies the loss of historic joinery, especially sash windows, as an issue which requires addressing within the conservation area.

Non-Designated Heritage Asset

The building has been identified as a key building within the Upton Conservation Area Appraisal. It can also be tested to be a potential non-designated heritage asset using Historic England's established criteria:

Asset Type	Detached villa, historically residential use now in use as offices
Age	Late 19th century – believed to be constructed in the 1870s

Rarity	Detached villas in large gardens – mostly on higher ground with some extensive outward views are a characteristic of the area
Architectural and Artistic Interest	Late 19th century form and areas of retained detailing and materials, including fenestration, a good example of a design typical of this period and typology. Has undergone unsympathetic late 20th century extensions to the north and south elevations, however, original form is still clearly readable and as such has clear architectural value.
Group Value	Forms part of an informal group with other detached villas of a similar age in the area
Historic Interest	Demonstrates the speculative late 19th century development of this area and the expansion of Torquay as a result of its emergence as a fashionable destination in which to live and visit
Landmark Status	Sits on an elevated position within the area but only north elevation is readily visible from a public perspective due to surrounding built development and vegetation cover

Summary:

Although the building has undergone unsympathetic extension in the late 20th century the building has demonstrable architectural and historic value through its surviving form, detailing, fenestration and materials.

Additionally, the heritage value of the building and its contribution to the character of the local area could be further enhanced through its sensitive conversion back to residential use.

It can therefore be considered to be a non-designated heritage asset.

Impact on Significance of Heritage Assets:

The following table identifies each major element of the proposals, the asset affected, the impact and identifies harm or enhancement:

Proposed Works	Overall Impact	Harm/Enhancement /Neutral	Commentary
<i>Demolition of late 20th century northern extension</i>	High to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the original appearance of the northern elevation of the main building which is the most visible from a public perspective
<i>Demolition of late 20th century southern extension</i>	Moderate to NDHA, low to Upton Conservation Area	Enhancement	The demolition of this element of the building would reveal the lower ground floor of the main building and would enhance the landscape setting of the asset.
<i>Alternations to roof of principal building to replace internal valley with mansard roof</i>	Moderate to NDHA, low to Upton Conservation Area	Harm	The change in the form of the roof for the principal building is considered to have a minor harmful impact on the character and appearance of the building as an NDHA. In addition, the introduction of an inset balcony within the roof slope on the south

			elevation is at odds with the established character of the building and is considered to be harmful. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Forming a new hipped mansard roof over original extension on northern elevation and further extension</i>	High to NDHA, low to Upton Conservation Area	Harm	Although this would replace the unsympathetic late 20th century extension, the proposed raising of the roof and increase in massing of the northern extension would permanently remove the original character and proportions of the original 'servants' extension – this coupled with the increase in massing and awkward junction with the main building, specifically the relationship with the line of the eaves and the reduction of the prominence of the chimney breast on the northern elevation, would be harmful addition to the building. In addition, the proposed dormer and elaborate porch detail would result in an extension which would not be respectful or subservient to the character of the host building and would be detrimental to its significance and historical evolution. The loss of the original roof profile would also cause harm to one of the special characteristics of the conservation area as identified within the associated appraisal.
<i>Replacement of existing timber sash windows</i>	High to NDHA, moderate to Upton Conservation Area	Harm	The loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. UPVC windows are historically incorrect in their detailing and dilute the historic character of the property. The size of frame, joinery detail and method of opening would be both incongruous and conspicuous for the age and

			character of the building and would have an adverse impact on the special interest and significance of the conservation area.
<i>Construction of coach house apartments</i>	Low to NDHA, low to Upton Conservation Area	Harm	The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the principal building and the wider conservation area. The scale and massing of the coach house when viewed from the north remains subservient to the main building. The reduction in the footprint of the existing extension and the reinstatement of a garden area is considered to be a positive element of the proposed scheme. However, it is considered that the proposed fenestration and use of fibre cement cladding be reconsidered to raise the design quality of the proposed development. The layout of the proposed fenestration and the use of a plethora of window types results in a discordant appearance, especially to the east elevation. The use of simple profiled metal cladding or a natural stone on the lower ground floor elements and a simplified fenestration pattern, removing the Juliet balconies and potentially coupled with the use of metal window frames would result in a higher quality appearance. The proposed development in its current form would result in a low level of less than substantial harm to the significance of the main building.

As can be seen from the above table, a number of harmful elements to the significance of both the main building as an NDHA and the Upton Conservation Area as a designated heritage asset has been identified.

With regards to the removal of the unsympathetic late 20th century extensions, this is considered to enhance the significance of the identified heritage assets, however, their proposed replacements have a number of issues which would result in varying degrees of harm.

Overall, the proposed development is considered to result in a high level of less than substantial harm to the building as an NDHA and a low to moderate level of less than substantial harm to the Upton Conservation Area.

Conclusions:

As a result of the above, it is clear that the proposed development would cause clear harm to an identified heritage asset and that the proposals in their current form would neither preserve nor enhance the character or appearance of the identified conservation area. This being the case, the proposals are considered to be contrary to Policy SS10 of the Torbay Local Plan.

The level of harm identified should be assessed against the public benefits of the proposed development in the planning balance whilst being mindful of the great weight afforded to the conservation of heritage assets and the special regard which should be paid to the preservation or enhancement of conservation areas.

Torbay Council's Drainage Engineer (Comments dated 15/08/2024):

I would like to make the following comments:

1. The site is located in Flood Zone 1 and the developer has submitted a flood risk assessment and drainage strategy, dated 13th June 2024, for the proposed development.
2. Due to the gradient of the site and insufficient room on the site for soakaways to be constructed infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system.
3. As the new buildings will require two separate discharge locations, it has been agreed that each location can discharge at a controlled rate of 1.0l/sec.
4. Within the flood risk assessment and drainage strategy document, details of the proposed surface water drainage system together with the hydraulic design for the surface water drainage system have been included.
5. The hydraulic design confirms that the drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

Providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design, I have no objections on drainage grounds to planning permission being granted for this development.

SWISCo's Waste (Strategy & Performance) Team Manager (updated response dated 21.10.2024):

This is a bit of a problem one, as Tor Dale does have a Toploader collection (recycling – glass and food), but the crew usually bring the bins to the adopted highway and leave them there after collection for the residents / property managers to take back up. This is for food and glass only.

If the building was converted to flats and another communal collection introduced at the end of the unadopted drive, this would create problems as it would double the amount of bins that have to be brought to the adopted highway for collection. As the unadopted highway is outside of the area of the Planning application we don't know who owns it to investigate improvements to the surface and cutting back of vegetation which prevents the larger toploader vehicle from accessing Tor Dale to collect food and glass. We would also look to put a formal indemnity agreement in place if access on the unadopted highway is facilitated and agreed by its owner.

The collection arrangements for Tor Dale are not ideal and we would look to try to improve access to this and any potential new development if there is an opportunity to do so, we would not add to our existing difficult collections.

SWISCo's Waste (Strategy & Performance) Team Manager (original response dated 27/08/2024):

In response to this consultation request I would OBJECT to this development.

The site is accessed by unadopted highway which meets with Thurlow Road. As stated in the Access and Design Statement, waste will be collected from the adopted highway from 1100litre bins. This will mean that the residents/developer or management company will need to arrange for all recycling and waste to be brought down to Thurlow Road where the access road meets the adopted highway network. The distance between the storage location and the quality of the surface of the access road are likely to make moving 1100L bins hazardous. There is also a lack of space where the access road meets the adopted highway network for the number of bins that the 12 dwellings will require for both recycling and waste. SWISCo would not drive up to the development to collect waste from the bin store identified in the plans.

I am concerned that the waste management plan for this development does not meet the requirements of Building Regulations Document H6 which specifies the maximum distance between the storage location and the collection point, and also the distance between each dwelling and the storage location for recycling and waste. I would be keen for the developer to demonstrate how the design meets these requirements.

The Access and Design Statement identifies that 2 x 1100 Litre bins will be provided. This would be adequate if only services for residual waste collection were provided, however recycling collections must also be provided to residents and this needs to be factored into the design. For recycling we do not use 1100L bins, I have attached the latest advice to developers which details which materials are collected for recycling and how this will be managed at developments with a communal recycling and waste arrangement.

Should the application be approved, I would like to request waste management contributions in line with the table below, I would request the higher rate due to the communal recycling and waste arrangement.

WSP on behalf of the Highway Authority (updated response dated 11/11/2024):

Analysis

- Swept Path Analysis: The applicant has updated the swept path analysis (Appendix B), dated Sept 2024, using a 4.75-meter-long private car for the forecourt parking area. This vehicle size is considered sufficient for assessing parking space accessibility. The Highway Authority is satisfied with the accessibility of the car parking spaces.
- Cycle Parking: The updated drawing, which includes an alternative bin and bike store layout, indicates a reduction in cycle parking from 14 spaces to 12. This still complies with Appendix F of the Adopted Local Plan. The applicant has also replaced the vertical storage with 6 Sheffield stands, in response to previous comments from the Highway Authority. These changes are acceptable.
- Tree Removal: The applicant has provided a tree protection plan (TPP) and Arboricultural Impact Assessment (AIA Statement) in response to concerns about removing trees under Tree Protection Orders (TPOs). According to the AIA statement dated May 2024, except for T412, the trees to be removed are of low quality, and the overall arboricultural impact is assessed as moderate to low. The Highway Authority does not wish to raise concerns based on the updated information.

- Waste Collection: As the access road and proposals do not adhere to the Torbay Highways Design Guide, and bin drag distances are excessive, the Highway Authority has recommended a planning condition to facilitate safe and suitable access for waste collection.

Conclusion

The Highway Authority does not wish to raise an objection to the proposal subject to the inclusion of the recommended condition.

Conditions:

No properties shall be occupied unless the local planning authority has approved a Road Maintenance Plan for that road including the arrangements for the implementation of a Private Road Management Scheme to secure the effective management and maintenance of the road to facilitate safe and suitable access for residents and visitors including refuse collection and emergency vehicle access throughout the lifetime of the development.

The access roads shall be privately maintained a Private Road Management Scheme has been submitted to and approved in writing by the local planning authority and which shall provide for;

- a) Setting up a company or other entity to be responsible for the on-going management and maintenance of the road and refuse collection (the "Management Body").
- b) How the company and the future management and maintenance of the road is to be financed including initial capital investment with subsequent funding.
- c) The rights for and obligations on the Management Company to manage and maintain the road
- d) Arrangements for the management and collection of refuse and waste from the dwellings.
- e) A road management and maintenance schedule.
- f) The ongoing maintenance and management of road maintenance and management of access where potholes or subsidence arise.

The development shall be carried out in accordance with the Road Maintenance Plan and the Private Road Access Scheme which shall thereafter be fully complied with and implemented.

No dwelling shall be occupied unless Subject to a Private Road Management Scheme where the Management Body has been established and is responsible for the management and maintenance of the road and the collection of waste and refuse from the date of occupation of the dwelling. The access Road which does not form part of the highway maintainable at the public expense shall be permanently maintained to a safe and suitable standard and retained and made available for public use for the lifetime of the development

Reason: To provide safe and sustainable access to the site for drivers, cyclists and pedestrians in accordance with Policies TA1, TA2 and DE1 of the Adopted Torbay Local Plan 2012-2030.

WSP on behalf of the Highway Authority (original response dated 29/08/2024):

Site Description

The site is located in the Ellacombe ward of Torquay, approximately 1 km north of Torquay Town Centre and 0.8 km east of Torre train station. The site was formerly operated by the Ministry of Justice probation office. It is bordered by Thurlow Road to the north, Ash Hill Road from the south of the site to the west, and St Marychurch Road to the east.

The extant land use is Class E (Commercial, Business and Services), the building has GFA of 957sqm which has 22 designated car parking spaces.

The existing access to the site is gained via a private access road, accessible via Thurlow Road.

Thurlow Road is a 7m wide single carriageway residential street with footways on both sides. However, the southern footway is discontinuous due to private access roads and appears to face obstruction by parked vehicles. The road is subject to a 30mph speed limit.

Ash Hill Road borders the rear of the site, although there is no through access for any users. Ash Hill Road is a 3m wide road, serves as a shared carriageway for all users. It provides direct residential access to a limited number of properties.

Site History

There are no relevant recent planning applications which have been submitted for the site. No preapplication advice has been sought for this application.

Traffic Impact

Trip Generation

Section 5 of the TTPS submitted in support of the planning application contains a comparative trip generation assessment. This forecasts the trip generation arising from the proposed residential land use in the context of the extant use of the site. This is an acceptable methodology.

At peak times, the proposed apartments and single detached house will result in a net reduction in traffic from the site of 11 or 12 vehicles in each of the AM and PM peak hours respectively.

Due to the scale of the proposed development, and the extant use, the Local Highway Authority are satisfied that trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

Highway Safety

Section 2.8 of the TTPS includes a review of Personal Injury Accidents (PIAs) over the 5-year period from 2018 to 2022. The review indicates that no PIAs were recorded on Thurlow Road, Ash Hill, or other nearby streets in the vicinity of the site.

Design Considerations

Pedestrian and Cycle Access

Thurlow Road has footways on both sides of the carriageway for most of its length. According to the TTPS, there are no Public Rights of Way across the site, and the 11 proposed apartments will be accessed via the existing private access road from Thurlow Road. The existing private access has no dedicated pedestrian or cyclist provisions and thus access operates via a shared surface arrangement. The TTPS indicates that active travel permeability for the site will primarily be along Thurlow Road, leading towards either Lymington Road or St Marychurch Road, via the existing footways.

The TTPS indicates that a large area of Torquay is accessible within a 25-minute walk from the site, with the town centre reachable within 20 to 25 minutes on foot. It highlights that a wide range of local amenities and facilities, including schools, healthcare, and convenience stores, are within a 25-minute walking distance of the site.

Additionally, the TTPS establishes that most of Torquay is accessible within a 10-minute cycle from the site, while the wider area, including Paignton, can be reached within a 20- to 30-

minute cycle. Key local facilities, such as schools and healthcare, are located within a 5- to 10-minute cycling time.

Cycle Parking

According to Appendix F of The Torbay Local Plan (2012-2030), it is recommended that flats provide at minimum one cycle parking space per flat, and that these parking spaces are secure and covered and easy to use. Cycle parking for visitors should also be provided.

The Access Design Statement states that 14 cycle spaces are proposed in the north near the bin storage and site entrance, within a covered and secure cycle storage using vertical storage for efficiency. It is recommended that cycle parking is provided in the form of Sheffield Stands to improve accessibility for users of all ages and abilities. The Applicant should explore the ability to provide Sheffield Stands as opposed to vertical racks.

Public Transport Access

The Department for Transport Inclusive Mobility guide (2021) confirms that bus stops in residential areas should ideally be located within a 400 meters walkable distance.

The nearest bus stop to the site is Hatfield Cross on St Marychurch Road, located 280 meters away, 3-4 minute walk time. The bus stop includes bus shelter, seating arrangement and a bus layby provision. The southbound bus stop (Lynway Court) on St. Marychurch Road has flag and pole arrangement and no provision for bus layby. There is not a dedicated pedestrian connection to this bus stop. Potential improvements to these bus stop may include provision of bus shelter in the southbound bus stop, Kassel kerb in both bus stops and provision of dropped kerbs at the eastern end of Thurlow Road to enable crossing for pedestrians of all ages and abilities, including the mobility impaired, in line with paragraph 116 of the NPPF.

Another bus stop to the site is located on Lymington Road at a walking distance of 515m, a six minute walk time. The bus stops are located in both directions with bus shelters and a pedestrian crossing connection in between.

Vehicular Access

The application form states that there are no changes proposed to the vehicular access arrangements from the lane off Thurlow Road. Currently, vehicles access the site from Thurlow Road, entering the private access road to access the site. The Local Highway Authority request further information regarding the existing ownership / maintenance arrangements for the private access road.

In Section 4.2 of the Access Design Statement, the Applicant has included a vehicle routing plan that shows the proposed vehicular and pedestrian routes. The submitted documents do not provide details on junction sight lines or visibility splays in accordance with the requirements of Manual for Streets (MfS) for the 30 mph speed limit on Thurlow Road. However, given the extant use of the site and the demonstrated decrease in trip generation this is not required in this instance.

Torbay Council's Highway Design Guide for New Developments recommends that the design speed for shared private drives should be 10 mph. It also advises the inclusion of a turning area for refuse vehicles and passing bays.

Car Parking

According to Appendix F of The Torbay Local Plan (2012-2030), it is recommended to provide one parking space per flat, with 20% of the available spaces equipped with electric vehicle (EV) charging facilities. Additionally, visitor parking spaces are required.

The application form indicates that the site has 20 existing number of parking spaces. 11 of which are proposed to be retained.

The Access Design Statement indicates that three of the 11 proposed parking spaces (27%) will be used for EV charging with containment for future EV charging points installed to balance of spaces.

The TTPS mentions the provision of two EV charging points. It is advisable that a suitably worded condition be attached to any planning consent granted for the site outlining the requirement for EV charging provision.

The Applicant has conducted and submitted a swept path analysis (Appendix B of the TTPS) using a 4.6-meter-long private car for the forecourt parking area. However, this vehicle size is insufficient for accurately assessing the accessibility of the parking spaces. To ensure the proposed parking spaces can accommodate larger vehicles, the swept path analysis should, at a minimum, demonstrate the ability of a standard large car to access and egress the parking spaces.

Refuse / Servicing / Emergency Access

Torbay Council's waste storage guidance recommends that communal stores must be located no further than 25 meters from the nearest point of access for the refuse collection vehicle.

The Access Design Statement states that the Refuse collections will be undertaken at the kerbside on Thurlow Road, with a dedicated bin store located within the communal forecourt area for the apartments. The application form mentions that the external store provides two bins for general waste and two bins for recycling in accordance with Torbay guidance. The Highway authority is concerned that the bin stores appear to be greater than 80m away from the public highway, which exceeds the drag distance for collections based on Torbay Council's waste storage guidance. The Applicant is required to provide further information regarding how they intend for waste to be managed at the site.

The Applicant is advised that Torbay Waste Collection Services are not permitted to enter private land and thus would not enter the existing private access road.

It is recommended that the Torbay Waste Collection team reviews whether the Bin Stores proposed in the site are an adequate size to accommodate the waste from all units.

No details have been provided regarding how the site will be accessed by emergency services. The existing shared private access road has a carriageway width that varies between 3 and 6 meters.

According to the Manual for Streets (MfS), a minimum carriageway width of 3.7 meters between kerbs is required for a fire appliance to access the site. Additionally, the MfS recommends that a fire appliance should be able to access every dwelling within a 45-meter distance.

Ash Hill Road, located at the rear of the site, is also narrow, with a carriageway width of only three meters and is at a considerably lower gradient than the site itself. Therefore, emergency servicing to the rear of the site is unlikely to be feasible.

The applicant must demonstrate that a fire appliance can access all parts of the building in compliance with the Manual for Streets standards (MfS Section 6.7). The Planning Officer should also consider whether a Fire Statement or Strategy is required to address access to the rear of the building.

Trees

There are three trees located on the site which are subject to Tree Preservation Orders (TPO Reference: 2000.008). The Proposed Layout (Drawing Ref: 12001 Rev P11) appears to suggest the removal of the trees under TPO's, as well as several other trees, with only two new specimen trees proposed. The Applicant is required to clearly identify the proposals for tree removal within the site.

Travel Plan

The Applicant has included a section for Travel Plan Statement (TPS) as part of the wider TTPS. The TPS follows a "measures only" approach being secured by s106 legal agreement. The TPS will be owned by the Applicant, who will be responsible for the appointing of a Travel Plan Coordinator (TPC) from the senior sales team. The TPC will introduce the Travel Plan to new residents, manage its measures, and ensure it evolves over time. Responsibilities include liaising with stakeholders, promoting the Travel Plan, and organizing sustainable travel events.

The TPS includes a good set of objectives and a good set of measures including promotion of walking, cycling and public transport. Travel Information Pack (TIP) and TPS noticeboard are proposed to help provide information on active and sustainable transport options to the residents. The TPS will also encourage the use of Low and Zero Emission Vehicles by providing EV charging points.

The TPS highlights that the Applicant will fund the Travel Plan during the site build-out and initial occupation, covering costs for Travel Information Packs, the on-site Travel Noticeboard, and support of the TPC.

Given the limited number of dwellings proposed on the site, this approach to Travel Planning is considered acceptable. The TPS should consider undertaking Travel Surveys on the 1st, 3rd and 5th anniversary of first occupation to understand how travel patterns at the site are evolving.

Planning Obligation

The Local Highway Authority will seek the necessary 278 works or S106 planning contributions that are essential to make the scheme acceptable in planning terms. Please also refer to the adopted Planning Contributions and Affordable Housing Supplementary Planning Document, Section 4.3 for the framework of seeking additional Sustainable Transport contributions for major schemes (PCAH SPD (<https://www.torbay.gov.uk/council/policies/planning-policies/local-plan/spd/>) and Table 4.3.

For major proposals that are likely to result in increased trips, Sustainable Transport contributions will be sought in accordance with the Planning Contributions SPD.

Construction Traffic Management Plan (CTMP)

A Construction Traffic Management Plan will be required for all phases of the construction, including demolition, excavation and construction of all elements of the building. This item could potentially be covered via a condition attached to any planning consent granted for the site.

Conclusion

The Local Highway Authority require the following items to be resolved before a positive recommendation can be made in respect to this planning application:

- Provide further information regarding the ownership / maintenance of the shared private access road;

- Provide swept path analysis that demonstrates accessibility of proposed car parking spaces using a large car;
- Provide an indicative refuse collection strategy;
- Provide further information regarding proposals for emergency access to the site;
- Explore the provision of cycle parking as Sheffield stands rather than vertical to ensure accessibility for all users; and
- Clarify the extent of trees to be lost.

Police Designing Out Crime Officer (response dated 14/08/2024):

From a designing out crime, fear of crime and anti-social behaviour perspective please find my advice and recommendations.

It is noted the section titled Secure By Design within the Design and Access Statement, within this section it refers to the Secured By Design Homes Guide 2019, this has now been replaced with newer guides that have been released, the current one is Secured By Design Home Guide 2024 and where this is being incorporated within the proposed development it is recommended that the practices and principles and standards are used from the latest guide. To assist, please find the link to the 2024 Homes Guide <https://www.securedbydesign.com/images/HOMES%20GUIDE%20May%202024.pdf>

I support the proposed measures detailed within the Secure By Design Section of the DAS, I would also recommend that the door providing entry into the bicycle store must be lockable, ideally incorporated within the suggested access control system. The door should have a self-closing mechanism to prevent it being inadvertently open and insecure. On the internal side of the door there must be a thumbturn lock or another emergency release mechanism. The bicycle stands within the bicycle storage should be certified to one of the following standards:

- Sold Secure SS104 Security Rating Silver, or
- Element (Wednesbury) STS 501 Security Rating TR2, or
- Element (Wednesbury) STS 503 Security Rating TR2, or
- Warringtonfire – STS 205 Issue 6:2021 Security Rating BR2, or
- Warringtonfire – STS 225 Issue 1:2021 Security Rating BR2 (S), or
- Loss Prevention Certification Board LPS 1175 Issue 8:2018 Security Rating B (B3)

The door to the bin store must also be lockable, ideally incorporated within the suggested access control system. The door should have a self-closing mechanism to prevent it being inadvertently open and insecure.

Devon County Council's Principal Ecologist (updated response dated 13/11/2024):

The nature of the further survey work undertaken on this site is deemed acceptable. Whilst no emergence survey was carried out, a detailed inspection of the areas of roof to be impacted by development has been carried out and has ruled out the presence of a maternity or hibernation roost. Given the results of the further November inspection, it is clear that the structure offers a very low potential for roosting bats and in the very unlikely event a bat roost was present onsite, I believe that it is only likely to be a low conservation status roost and the mitigation measures put forward by the consultant ecologist are sufficient to allow for a low impact class licence to be granted, should one be necessary.

Therefore, in this instance, I believe the bat survey data to be now acceptable.

Devon County Council's Principal Ecologist (previous response dated 29/10/2024):

Bat roosts – buildings / trees - The LPA agrees that the above precautionary methods are required and suitable.

As the building was ranked as low roosting potential, one emergence survey should have taken place (between April to October) in accordance with the current national best practice survey guidelines (Table 7.2).

The consultant ecologist has stated that the roof is too difficult to survey fully, however without the results of a bat emergence survey, or provision of a worst case scenario with regards to roosting bats for the purposes of planning, it is felt that the LPA cannot make a planning decision with regards to impacts to protected species and therefore cannot undertake its duty under the Conservation of Habitats and Species Regulations 2017.

Devon County Council's Principal Ecologist (original response dated 22/08/2024):

Statutory designated sites - SAC, SPA (HRA requirements), SSSI, NNR, LNR - The nearest statutory protected Sites are over 1 km from the Site and unlikely to be affected by the proposed works. HRA is therefore not required.

Non-statutory designated sites – County Wildlife Sites, Ancient Woodlands - There are no non-statutory Sites within 1 km of the Site.

Priority habitats - Deciduous woodland is located 500 m north west of the Site. This would remain unaffected by the proposed works.

European Protected Species

Bat flight lines / foraging - In the immediate surrounding area there are some large mature gardens which could provide flight lines/foraging areas for the commoner species of bats - the LPA concurs. The lighting mitigation measures are considered to be suitable to ensure flight lines are not impacted.

Bat roosts – buildings / trees - The LPA notes that the trees were ranked as “low” potential rather than PRF-I in accordance with the new bat survey guidelines. The LPA agrees that the precautionary methods are required and suitable. However, as the building was ranked as low and there were constraints regarding viewing all aspects of the roof, it needs to be robustly justified why one emergence survey hasn't take place (April to October) in accordance with the current national best practice survey guidelines (Table 7.2). If this robust justification cannot be provided, then further emergence surveys of the building will be required prior to determination of this application. As the roof is being replaced, if bats are found to be present then a mitigation licence will be required. Further Conditions may be required on receipt of requested further information.

Great Crested Newt - The Site falls within a GCN consultation zone. The habitat on Site is not considered suitable, however.

Other Protected Species

Nesting birds / Schedule 1 birds - Some droppings, probably pigeon was found in the attic. These are likely to be roosting birds as there was not a lot of droppings which would suggest breeding. All the surrounding trees and shrubs on site will have potential for breeding birds. The dense laurel can provide a secure bird breeding feature - the LPA concurs. The mitigation measures are deemed sufficient and if any nesting birds are discovered using the areas to be affected, work should not proceed until breeding has finished and all fledglings have departed the nest. Planning conditions are proposed with regards to vegetation clearance and for the development to be carried out in accordance with the Bat Preliminary Roost Assessment.

Badgers - There was evidence of digging in the lawn as shown in photo 12, this could be badgers foraging. However, an extensive search through the neighbouring semi-native area could not find any sett holes, latrines or evidence of worn paths that were being used by

badgers, therefore, the digging on its own was not enough to indicate badgers but precautionary mitigation has been applied - The LPA concurs. The proposed mitigation measures were considered to be acceptable.

Priority Species

Hedgehog - There is suitable habitat on Site for hedgehogs. The mitigation in place for badgers should sufficiently mitigate for hedgehogs too.

Cirl buntings - The Site falls approximately 400 m outside of a cirl bunting consultation zone.

Overall enhancement / net gain

The User Guide for the small sites metric was updated in July 2024 and states the following:

You should not:

- *Record the creation of any other new habitats within private gardens*
- *Record enhancement of any habitat within private gardens. However, habitats which are recorded in the baseline and remain within a private garden may be recorded as retained.*

This means that the habitat created as part of this application must be included as 'private garden' in the metric and cannot be included as another habitat type. The small sites metric therefore needs to be updated to reflect this. Offsite provision of BNG units is therefore likely to be required.

Planning Officer Assessment

Key Issues/Material Considerations

1. Principle of Development
2. Design and Visual Impact (including the impact upon heritage assets)
3. Residential Amenity
4. Highways, Movement and Parking
5. Ecology, Biodiversity and Trees
6. Flood Risk and Drainage
7. Low Carbon Development and Climate Change
8. Designing Out Crime

1. Principle of Development

The proposal is for the redevelopment of Thurlow House to form 11no. 2-bedroom apartments. This will include the remodelling of the existing building to allow for a conversion from office to residential use through the formation of 7no. apartments, and the construction of a new 'coach house' building within the grounds to provide 4no. apartments.

Policy H1 of the 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.

Policy SS11 of the Local Plan states that development will be assessed against its contribution to improving the sustainability of existing and new communities within Torbay. Development proposals will be assessed according to whether they create a well-connected, accessible and safe community, protect and enhance the local natural and built environment, and deliver development of an appropriate type, scale, quality, mix and density in relation to its location. As the application site is within the Torquay Town Centre Community Investment Area, Policy SS11 states that development proposals should provide a good standard of residential

accommodation and there should be resistance to changing the use of homes to houses of multiple occupation, therefore a planning condition is recommended to removal permitted development rights from C3 to C4.

Paragraph 124 of the NPPF promotes the effective use of land in meeting the need for homes and other uses. Paragraph 125 of the NPPF presents clear support for the principle of using land effectively to meet the need for homes and guides that decisions should give substantial weight to the value of using suitable brownfield land within settlements for homes. It also promotes support for the development of under-utilised land and buildings, especially where proposal would help to meet identified needs for housing.

Policy TS4 of the Neighbourhood Plan states that development proposals for brownfield sites will be supported, providing there are no significant adverse impacts, having regard to other policies in the Plan. Policy TS1 of the Neighbourhood Plan states that development proposals should accord with policies contained in the Neighbourhood Plan, where relevant, unless material planning considerations indicate otherwise.

The Government published the most recent Housing Delivery Test in December 2023. Torbay's result is 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required). Torbay's most recent housing land supply which was published in April 2023, stated that the Council has 2.17 years, which is a significant shortfall. The Housing Delivery Test requires that the presumption in favour of sustainable development be applied as per Paragraph 11 of the NPPF.

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

Footnote 7: The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 189) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, a National Landscape, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 75); and areas at risk of flooding or coastal change.

Whilst government guidance pulls in somewhat different directions, there is a clearly stated government objective of boosting the supply of housing. Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF. Accordingly, the presumption in favour of sustainable development is applied to applications involving the provision of housing.

Under the presumption, permission should only be refused where either:

- (i) The application of policies in the Framework that protect designated heritage assets provides a strong reason for refusal (i.e. the “tilted balance” at Paragraph (d)i) or
- (ii) The impacts of approving a proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination (i.e. the “tilted balance” at Paragraph 11(d)ii).

Development plan policies are taken into account when assessing whether the harm caused would “*significantly and demonstrably*” outweigh the benefit.

In accordance with Footnote 8 and Paragraph 11(d) of the NPPF the policies within the Development Plan which are most important for determining the proposal are out-of-date. The presumption in favour of sustainable development indicates that planning permission should be granted unless one of two circumstances apply. It is considered that neither limb within Paragraph 11(d) applies and therefore the presumption in favour of sustainable development applies and the tilted balance is engaged.

Policies SS3 and SS13 of the Local Plan also set out a presumption in favour of sustainable development separately to the NPPF.

In terms of the principle of development, the development is considered acceptable in principle.

This position is however subject to wider policy considerations that are relevant to the development proposal and consideration of relevant material considerations, the forthcoming sections of the report will discuss these matters.

2. Design and Visual Impact (including Heritage Impacts)

It is important to note that achieving good design is a central thread within national guidance and Part 12 of the NPPF “Achieving well-designed places” offers key guidance on this. Paragraph 131 of the NPPF states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Paragraph 131 goes on to state that good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities. In addition, paragraph 139 states that “*development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design [Footnote 54], taking into account any local design guidance and supplementary planning documents such as design guides and codes.*”. Similar design expectations are engrained within the Development Plan through Policies SS11, DE1 and DE4 of the Local Plan and Policy TH8 of the Neighbourhood Plan.

The application site is located within the Upton Conservation Area and is identified as a key building. The site is occupied by a detached Victorian villa and its curtilage, sited off a private access road from Thurlow Road. The original villa dates from the 1870s, the villa has late 19th century form and retains detailing and materials that are typical of the period and typology. The villa has undergone unsympathetic late 20th century extensions to the north and south elevations, however the original form is readable and has clear architectural value. The villa is part of an informal group that provides group value to the Upton Conservation Area. The application site has an elevated position, however it is mainly shielded from public vantage points due to surrounding built form and vegetation.

The proposal seeks to redevelop the former Ministry of Justice offices to convert the existing office accommodation into residential development. The proposals seek to form 11no. 2-bedroom apartments with associated landscaping and a parking provision.

The proposal involves the removal of late 20th century extensions and the construction of a new extension to the northern elevation. The proposed extension would have a smaller footprint than the previous northern extension, as well as having a hipped roofscape to match the villa. The hipped roofscape would also enable concealment of the lift over run. The existing hipped roof of the original villa would be adapted to form a mansard roof that would enable the roof space to be converted into residential development.

The removal of the lower ground floor extension to the southern section of the application site would permit the bay windows to be reinstated to the southern elevation of the original villa. The proposed coach house would be sited approximately 5 metres away from the original villa to provide a clear separation between the buildings. The proposed coach house would be two and a half storeys in height and would be a L-shape, with one wing being single storey. The proposed coach house would be finished in white render and vertical timber cladding; have a slate roof; and have aluminium windows, doors, rooflights and rainwater goods. The proposed coach house would also have a cast stone entrance door surround and metal balustrading.

The existing parking provision would be reduced to 11no. parking spaces and landscaping introduced to soften the appearance of the hard landscaping. The reduction in the existing parking provision is welcomed given the large expanse of hard surfacing.

The Council's Principal Historic Environment Officer has assessed the existing building through the tests Historic England provide on assessing whether a building has the potential to be a non-designated heritage asset. The Officer has concluded that although the villa has undergone unsympathetic late 20th century extensions, the villa remains to have demonstrable architectural and historic value through its surviving form, detailing, fenestration and materials, and therefore the property can be considered to be a non-designated heritage asset.

Policy SS10 of the Local Plan states that proposals will be assessed, amongst other things, in terms of the impact on listed and historic buildings, and their settings, and in terms of the need to conserve and enhance the distinctive character and appearance of Torbay's conservation areas. Development is also required to sustain and enhance undesignated heritage assets.

The application is supported by a Heritage Statement. The Upton Conservation Area Character Appraisal identify the villa as a key building. The site is not in close proximity to any listed buildings.

The Council's Principal Historic Environment Officer has outlined that the site makes a positive contribution to the character and appearance of the Upton Conservation Area and demonstrates a number of its identified special characteristics including:

- The elements of design that characterise much of the development that took place between the early-to-late 19th century are well represented in the breadth of historic frontage and layout forms – the extent, scale and proportion of most such development remains significantly unaltered, including overall frontage detail, spatial arrangement, roof profiles, stacks and original pots.
- There is a high proportion of surviving of period detail to the buildings – conservatories, glazed verandahs, original sash windows with glazing bars, ironwork features, panelled doors, etc.

Letters of support state that the proposal would have a positive impact on the local area and remove an eyesore, whereas letters of objection outline concerns that the proposed development would have a negative impact on the local area, would constitute overdevelopment, and would not be in keeping with the local area.

It is also incumbent on the Authority, in exercising its duties, under the provisions of The Planning (Listed Buildings and Conservation Areas) Act 1990 (Section 72(1)), to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

Paragraph 202 of the NPPF states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations. The NPPF outlines that the conservation of heritage assets should be given great weight in decision making (Paragraph 212 refers).

Explanatory notes 4.4.30 of Policy SS10 of the Local Plan states that 'Policy SS10 seeks to ensure that heritage assets are safeguarded for the future, and where possible enhanced both for their own merits and as part of regeneration projects. It is also sufficiently flexible to ensure that any harm to the significance of a historic asset can be weighed against the wider benefits of an application, for example social, economic and environmental enhancement'.

The proposal includes the demolition of the late 20th century extensions, the current impact of such is low on the Upton Conservation Area and high on Thurlow House as a non-designated heritage asset. The proposed demolition is considered to be an enhancement to both designated and non-designated heritage assets as confirmed by the Council's Principal Historic Environment Officer.

The proposal involves making alterations to the original villa roofscape to replace the internal valley with a mansard roof, as well as forming a new hipped mansard roof over the original and proposed extensions, it is considered such would result in low and moderate harm to the non-designated heritage assets and low harm to the Upton Conservation Area. The alterations to the original villa roofscape would have a minor harmful impact on the character and appearance of the villa. However, it is noted that a number of villas in the locality have had similar alterations. The proposed inset balcony within the roofscape would be at odds with the established character of the building and is considered to be harmful. It is noted that the loss of the original roof profile would also cause harm to one of the special characteristics of the Upton Conservation Area as identified within the associated Conservation Area Character Appraisal. The proposed new hipped mansard roof over the original and proposed extensions would seek an increase in roof height and increase the massing of the extension which would remove the original character and proportions of the original 'servants' extension. The proposed dormers have been reduced in size to limit their visual impact, as well as a reduction in the proposed porch on the northern elevation, both of which are an improvement to the original submission.

The Officer has also raised concerns regarding the replacement of the existing timber windows within the original villa, given the proposed uPVC replacements, the Officer has stated that such would result in high harm to the non-designated heritage asset and moderate harm to Upton Conservation Area, due to the loss of the existing historic windows without adequate justification and replacement with uPVC equivalents would result in the unnecessary loss of historic fabric and would have a detrimental impact on the character and appearance of the building. A planning condition is recommended to secure window and door details notwithstanding the submitted plans.

The Officer has also stated that the proposed coach house in terms of balconies and architectural treatment would result in low harm to both the non-designated heritage asset and the Upton Conservation Area. The form, scale and massing of the proposed coach house, when considering the topography of the site is considered to be appropriate when assessing its relationship to the original villa and the wider Upton Conservation Area. The scale and massing of the coach house when viewed from the north remains subservient to the Original villa. However, concerns have been raised regarding the design and massing of the coach house when viewing such from the outdoor amenity space and viewing the western elevation of the coach house. These concerns are limited to the views from within the curtilage of the application site.

The reduction in the footprint of the existing lower ground floor extension by its removal and the introduction of the coach house on a smaller footprint and the reinstatement of an external amenity area is considered to be a positive element of the proposed scheme.

Overall, the development would result in less than substantial harm to Thurlow House as a non-designated heritage asset and the Upton Conservation Area.

In such a circumstance where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, Paragraph 208 of the NPPF requires the harm be weighed against the public benefits of the proposal. Paragraph 214 of the NPPF requires local planning authorities to assess whether the benefits of the proposal, which would otherwise conflict with planning policies but would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies. The main public benefit of the scheme would result from the provision 11no. apartments. In this instance the benefits that are offered by the development do outweigh the harm to the designated heritage asset, namely less than substantial harm to the Upton Conservation Area. This conclusion has regard to the duties within the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.

The less than substantial harm to the Upton Conservation Area and the public benefits of the proposal will be weighed up in the planning balance and conclusion sections of this report as required by Policy SS10.7 of the Local Plan and the NPPF.

Planning conditions are recommended to secure external material details, as well as window and door details.

3. Residential Amenity

The NPPF guides that decisions should ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience (Paragraph 135). The Local Plan contains policy guidance aligned with the aspirations of the NPPF, principally through Policies SS11, H1 and DE3, towards ensuring that residential development produces high-quality living environments that present a good level of amenity for future users and neighbouring occupiers. Policy DE3 also identifies size standards for self-contained units, which reflect the nationally described space standards.

In terms of location the application site is relatively close to Torquay Town Centre and the Higher Union Street, Torre Local Centre and is therefore considered a positive sustainable location for the future use and well suited to a residential occupancy, presenting good opportunities for future occupants in terms of access to services, facilities and sustainable transport options.

Quality of living accommodation for future occupiers

Policy DE3 sets out the minimum floor space standards for new residential units, which align with the nationally described space standards. The proposed residential units comply with the minimum floor space requirements.

The proposal seeks to provide 11no. x 2-bed apartments. All apartments are considered to provide an acceptable scale of living accommodation with floor areas exceeding the prescribed standards. In addition to the size of the space, the quality of the space should be considered, in terms of how it is positively influenced by natural light levels and outlooks. The proposal is considered to provide all apartments with adequate natural light levels and outlooks.

Policy DE3 of the Local Plan also seeks secure the provision of usable outdoor amenity space where apartments should deliver 10 square metres per unit either individually or communally. The Neighbourhood Plan is in alignment with this guidance as advised within Policy THW4, either as balconies or communal space. The scheme provides a communal greenspace that accumulatively exceeds the policy-guided minimum of 110 square metres, which provides an acceptable level of outdoor space for future occupants of the apartments. Some of the proposed apartments will also have their own balconies.

Adjacent neighbouring amenity

Policy DE3 of the Local Plan states that development should not unduly impact upon the amenity of neighbouring and surrounding occupiers. Objectors have raised concerns regarding noise, loss of light and privacy/overlooking.

The construction phase will naturally have some temporary impacts however such impacts are not unusual and can be limited through positively managing the process through a Construction Method Statement, this is recommended as a planning condition.

In terms of the finished development the residential use aligns with the residential uses nearby and the proposed use would not result in undue noise or general disturbance. The move from an office use to a residential use is likely to be positive.

The existing built form within the application site is within close proximity to several adjacent neighbours (33 Thurlow House – 12 metres; 35A Thurlow House – 10 metres; Darjeeling Furzehill Road – 6 metres; 59 Ash Hill Road – 12.5 metres). It should be noted that the existing built form which is closest to Darjeeling and 59 Ash Hill Road is a lower ground floor extension.

The former use of the site was offices for the Ministry of Justice, it is considered that the proposed residential use would not result in any detrimental impact on adjacent neighbours in terms of noise. The original proposal has been revised given concerns relating to intervisibility, overbearing and overshadowing impacts. The proposal was subsequently revised to reduce the height of the proposed coach house, as well as amending the internal configuration and fenestration of such to address the concerns raised.

The proposed coach house would be approximately 5.4 metres from the south western elevation of Darjeeling. This elevation of Darjeeling has 2no. openings, both openings serve habitable rooms but are considered secondary openings to these rooms. The applicant has provided a sun path analysis to understand the impact of the original and revised proposal would have on Darjeeling in terms of overshadowing. The proposed coach house has been reduced, as the original proposal would have resulted in a substantial amount of

overshadowing, the revision has made the level of overshadowing less. The overshadowing would happen in the early evening. Given that the 2no. openings are secondary openings, it is considered that this harm would not be detrimental to warrant a reason for refusal. The proposed openings on the eastern elevation of the coach house that faces Darjeeling have been revised. The first floor of the proposed coach house would be at a similar level to the ground floor of Darjeeling and would include an obscurely glazed window at first floor and the proposed roof lights at second floor would be high level to prevent any intervisibility/overlooking issues. A planning condition is recommended to secure obscure glazing to the proposed scheme where appropriate.

Nos.57 and 59 Ash Hill Road is to the south of the application site. It is considered that the proposed openings of the coach house would be at an oblique obscured view to No.57 Ash Hill Road. The coach house is a two and a half storey element with a single storey aspect. The proposed openings on the southern elevation that face towards Nos.57 and 59 Ash Hill Road are mainly on the ground floor which would prevent intervisibility between the application site and Nos.57 and 59 Ash Hill Road given the boundary treatments and existing vegetation. It should also be noted that No.57 Ash Hill Road has no openings on its northern elevation. There are also 2no. openings on the southern elevation, 1no. at first floor and 1no. at second floor, if suitable boundary treatments are installed, it is considered that these openings would not result in a detrimental level of intervisibility into the external amenity spaces of Nos.57 and 59 Ash Hill Road.

Given its siting, scale, and design, it is considered that the proposal would not result in any detrimental harm to the amenities of the occupants of neighbouring buildings in terms of their privacy, outlook, or access to natural light.

Having regard to the amenities provided within the proposal for future occupants and the future relationship of the development with adjacent plots and neighbouring occupants, the majority of the scheme broadly aligns with the aims and objectives of Policies SS11 and DE3 of the Local Plan, Policy THW4 of the Neighbourhood Plan and the guidance contained within the NPPF. It is not considered that the issues identified within this section relating to the quality of living accommodation for future occupiers are not detrimental enough to constitute a reason for refusal.

4. Highways, Movement and Parking

Paragraph 115 of the NPPF guides that in assessing specific applications for development it should be ensured that a) sustainable transport modes are prioritised taking account of the vision for the site, the type of development and its location; b) safe and suitable access to the site can be achieved for all users; c) the design of streets, parking areas, other transport elements and the content of associated standards reflects current national guidance, including the National Design Guide and the National Model Design Code; and d) any significant impacts from the development on the transport network (in terms of capacity and congestion), or on highway safety, can be cost effectively mitigated to an acceptable degree through a vision-led approach. Paragraph 116 of the NPPF confirms 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, following mitigation, would be severe, taking into account all reasonable future scenarios.

Development Plan objectives align with the aspirations of national guidance with principal guidance within Policies TA1, TA2 and TA3 of the Local Plan encompassing outcomes for developing a sustainable model of transport, providing a good standard of access for walking, cycling, public and private transport modes, standard for parking and cycling facilities. The Neighbourhood Plan reinforces the guideline parking requirements contained in the Local Plan through Policy TH9 and more broadly offers support for new development proposals

where they are located on or near to public transport routes wherever possible and appropriate through Policy THW5.

The proposal proposes to maintain the existing vehicular access from Thurlow Road from a private access road that serves multiple properties. Thurlow Road is a 7 metre wide single carriageway residential street with footways on both sides. However, the southern footway is discontinuous due to private access roads. The road is subject to a 30mph speed limit. The former use of the application site was Use Class E (Commercial, Business and Services) and had 20no. parking spaces.

The proposed development seeks to retain 11no. parking spaces. Objectors have raised concerns regarding traffic and access. Local Plan policy guidance states that the proposed development should provide one off-street parking space per apartment, totalling 11no. off-street parking spaces, plus an additional parking space for visitors. The proposed layout does not assign specific parking spaces to each apartment. The Highway Authority has not raised a concern regarding the level of parking provision and is satisfied with the accessibility of the parking provision. It is noted that a large proportion of Torquay is accessible within a 25-minute walk which includes a wide range of local amenities and facilities, including schools, healthcare and convenience stores. The guidance notes also state that in flatted developments 20% of available spaces should have electric charging points and that there should be 10% of spaces suitable for disabled users. Should planning permission be granted, a planning condition should be employed to secure an appropriate level of electric charging points.

In terms of trip generation, the Highway Authority have stated that the proposed development will result in a net reduction in traffic from the site in each of the AM and PM peak hours respectively. The Highway Authority have confirmed that they are satisfied that the trips generated by the proposed development are likely to have at most a negligible impact on the surrounding local highway network.

The existing private access road has no dedicated pedestrian or cyclist provision, therefore operating via a shared surface arrangement. The proposal also includes 12no. bicycle storage spaces, which would comply with the policy requirement of 1no. space per apartment and is in the form of Sheffield stands to provide accessibility for users all ages and abilities. The proposed bicycle storage provision is considered to be acceptable, a planning condition is recommended to secure the provision prior to the first occupation of the development.

In terms of key ancillary elements, Policy W1 of the Local Plan states that as a minimum, all developments should make provision for appropriate storage of waste. As the private access road is not adopted and the proposals do not adhere to the Torbay Highways Design Guide, and the bin drag distances are excessive, the Highway Authority has recommended a planning condition of a Road Management and Maintenance Plan to facilitate safe and suitable access for waste collection.

5. Ecology, Biodiversity and Trees

The NPPF provides guidance in that planning decisions should contribute to and enhance the natural and local environment and includes guidance towards minimising impacts on and providing net gains for biodiversity (Paragraph 180). The Development Plan frames similar aspirations principally through Policy NC1 of the Local Plan and Policy TE5 of the Neighbourhood Plan, the latter in terms of impacts upon any existing protected species or habitats. Policy C4 of the Local Plan 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.

Objectors have raised concerns regarding trees and wildlife. The application is supported by a Preliminary Bat Roost Assessment, a Biodiversity Net Gain Report, and the statutory Biodiversity Net Gain Metric.

The supporting ecological information has been reviewed by Devon County Council's Principal Ecologist. The nearest statutory protected sites are over 1km from the application site and are unlikely to be affected by the proposed development, therefore a Habitat Regulations Assessment (HRA) is not required. Furthermore, there are no non-statutory designated sites within 1km of the application site.

There is a deciduous woodland located approximately 500m north west of the application site, which would remain unaffected by the proposed development.

Within the immediate surrounding area there are some large mature gardens which could provide flight lines/foraging areas for the commoner species of bats, the Council's Ecologist concurs. The supporting ecological information provides mitigation measures in terms of lighting to ensure flight lines are not impacted, the Council's Ecologist recommends a planning condition is employed regarding external lighting. The application site falls within the Great Crested Newt consultation zone, however the habitat within the application site is not considered suitable for such. The application site has the potential for breeding birds, the supporting ecological information provides mitigation measures which the Council's Ecologist supports. Planning conditions are recommended to ensure adherence to the actions within the Preliminary Assessment, as well as the standard vegetation clearance planning condition. Furthermore, the Preliminary Assessment proposes mitigation measures in relation to badgers and hedgehogs, such are recommended to be included within a planning condition.

The Council's Ecologist initially raised concerns regarding the survey work undertaken in relation to bat roosts. The applicant has undertaken further survey work that the Council's Ecologist has deemed acceptable, as a detailed inspection of the areas of roof to be impacted by development has been carried out and has ruled out the presence of a maternity or hibernation roost. Such confirms that the structure offers a very low potential for roosting bats.

In England Biodiversity Net Gain (BNG) has been mandatory from 12 February 2024 under the Town and Country Planning Act 1990 (as inserted by the Environment Act 2021). This means that, subject to certain exemptions, development must deliver a 10% gain in biodiversity. The application was supported by a full Biodiversity Net Gain (BNG) assessment and other reports required as part of the validation of the application. The application form confirmed that development had not commenced prior to the submission of the application, however a site visit was undertaken in September 2024 whereby it was questioned whether development had commenced.

Section 56(2) of the Town and Country Planning Act 1990 provides that development shall be taken to be begun on the earliest date on which any 'material operation comprised in the development' begins to be carried out. A 'material operation' is defined in section 56(4) as:

- (a) any work of construction in the course of the erection of a building*
- (b) any work of demolition of a building*
- (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building*
- (d) the laying of any underground main or pipe to the foundations of a building or to a trench*
- (e) any operation in the course of laying out or constructing a road or part of a road, and*
- (f) any change in the use of the land, which constitutes material development*

The applicant has undertaken works to the application site including digging a trench and

laying underground pipes to provide utilities to the property. The application has become part-retrospective and the Council's Solicitor has confirmed such. The NPPF confirms that planning policies and decisions should contribute to and enhance the natural environment by providing net gains for biodiversity. A planning condition is recommended to ensure that the proposed development secures a net gain.

Policy C4 of the Local Plan states that development will not be permitted when it would seriously harm, either directly or indirectly, protected trees or veteran trees, hedgerows, ancient woodlands or other natural features of significant landscape, historic or nature conservation value. Policy C4 goes on to state that development proposals should seek to retain and protect existing hedgerows, trees and natural landscape features wherever possible, particularly where they serve an important biodiversity role.

The trees on site are afforded statutory protection due to the application site being within a Conservation Area. There are also several individual Tree Preservation Orders within the application site.

SWISCo's Senior Tree Officer has reviewed the application on multiple occasions as well as undertaking a site visit. Upon receipt of updated arboricultural information, the Officer raises no objections of arboricultural subject to planning conditions securing the implementation of the supporting Tree Protection Plan and Arboricultural Method Statement. The supporting Arboricultural Statement addresses the investigation of works to underground infrastructure already undertaken, providing a method for evaluating any damage to protected trees which may have been caused. The statement raises a number of questions around root pruning to mitigate damage to trees from the ground works. The Officer is satisfied with the methodology and approach, but requires the findings and any evidence to be submitted to the Local Planning Authority in due course.

Subject to the aforementioned planning conditions, the development is considered acceptable, in-line with the aspirations of Policy C4 of the Local Plan, and advice contained within the NPPF.

6. Flood Risk and Drainage

The NPPF provides guidance towards avoiding inappropriate development in areas of flood risk by directing development away from areas at higher risk (Paragraph 170), and when determining applications seeks local planning authorities to ensure that flood risk is not increased elsewhere (Paragraph 181). The Development Plan offers similar expectations for ensuring the risk of flooding is not increased, together with expectations that proposals should maintain or enhance the prevailing water flow regime on-site, including an allowance for climate change, through Policy ER1. Policy ER1 of the Local Plan also outlines a hierarchy for water-flow management within new development, with similar guidance is contained within the Environment Agency's Critical Drainage Area Advice Note for Torbay.

The application site sits within Flood Zone 1 and the wider Torbay Critical Drainage Area as designated by the Environment Agency. Objectors have raised concerns regarding drainage. The submission has been reviewed by the Council's Drainage Engineer. The application has been supported by a flood risk assessment and a drainage strategy.

The Engineer has confirmed that due to the gradient of the site and insufficient room on the site for soakaways to be constructed infiltration drainage is not feasible at this site. As a result, the proposed surface water drainage strategy is for all surface water run-off from the development to be drained at a controlled discharge rate to the combined sewer system. As the new buildings will require two separate discharge locations, it has been agreed that each location can discharge at a controlled rate of 1.0l/sec. The hydraulic design confirms that the

drainage system has been designed for the critical 1 in 100 year storm event plus 50% for climate change.

The Engineer has confirmed that providing the surface water drainage is constructed in accordance with the submitted surface water drainage drawings and hydraulic design, they raise no objections on drainage grounds.

Subject to a planning condition to secure the surface water drainage for the proposed development, the proposal is considered to comply with Policy ER1 of the Local Plan.

7. Low Carbon Development and Climate Change

Paragraph 161 of the NPPF guides that the planning system should support the transition to net zero by 2050 and take full account of all climate impacts including overheating, water scarcity, storm and flood risks 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 supports national guidance 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 of the Local Plan seeks that all major development proposals should make it clear how low-carbon design has been achieved, and that proposals should identify ways in which the development will maximise opportunities.

The application is supported by an Energy Statement. The approach will be to reduce demand for energy consumption (be lean), prior to the consideration of integrating low carbon/zero carbon energy sources (be clean and be green). To reduce energy demand and carbon dioxide emissions for the proposed development, the following measures have been included:

- Re-use existing building
- Upgrade existing thermal performance of existing building
- High levels of thermal insulation for proposed new building
- Low fabric air permeability
- Energy efficient LED light fittings and controls
- Orientation allows for passive solar design
- Dual aspect living spaces and solar shading (new build) to control overheating

The Council's Climate Emergency & Project Officer has reviewed the application and has stated that they welcome the re-use of the existing building and improving the current thermal performance of such, along with the proposal of a new building that can provide better standards of energy efficiency. The applicant proposes to demonstrate the 'be lean, be clean and be green' principles through incorporating low fabric air permeability, thermal insulation, low energy lighting and solar shading. The Officer welcomes such. The applicant is also proposing the use of heat pumps to provide heating. The Officer has recommended a planning condition is employed to ensure that the energy and sustainability measures are carried out to maximise carbon reductions.

Subject to the aforementioned planning condition, the proposal is considered to accord with Policies ES1 and SS14 of the Local Plan, and the guidance contained within the NPPF.

8. Designing Out Crime

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

The Police Designing Out Crime Officer was consulted and commented upon the application. The submitted Design and Access Statement includes a section on Secure By Design, however it refers to the Secured By Design Homes Guide 2019, which has been subsequently replaced with newer guides, the current one is Secured By Design Home Guide 2024. The Officer supports the proposed measures and also provides additional measures. A planning condition is recommended to secure up-to-date Secured by Design measures to assist in preventing crime and the fear of crime. Subject to the aforementioned planning condition, the proposal is considered to accord with Policy SS11 of the Local Plan and Policy TH2 of the Neighbourhood 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. The application has been supported by a Sustainability Checklist. Each of which shall be discussed in turn:

The Economic Role

The loss of the office use is considered acceptable, given the adjacent and surrounding uses are residential.

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

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

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

The Social Role

The principle social benefit of the proposed development would be the provision of additional housing. Given the NPPF priority to significantly boost the supply of housing the additional dwelling to be provided must carry significant weight in this balance.

The provision of housing would provide an appropriate use and offer units within a sustainable location. On balance, the social impacts of the development weigh in favour of the development.

The Environmental Role

With respect to the environmental role of sustainable development, for reasons set out in this report there is considered to be less than substantial harm to the identified heritage asset of the Upton Conservation Area. This harm is considered to be at the minor end of the scale.

Other elements that are considered to be especially relevant to the proposed development are impacts on trees, biodiversity and drainage. A landscaping scheme has been submitted which results in no net loss of biodiversity and the proposal also provides low carbon and energy efficiency measures. These matters have been considered in detail above and weigh in favour of the proposal.

The proposed development is located in a sustainable location within close proximity to local amenities and public transportation links. This weighs in favour of the proposal.

It is concluded that the environmental impacts of the development, due to the adverse impact on the heritage asset weigh against the development, however the positive elements of the proposal in terms of a sustainable location, low carbon and energy efficiency measures, landscaping and drainage weigh in favour.

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

Affordable Housing

The proposal falls below the threshold for affordable housing contributions as outlined in Policy H2 of the Local Plan which seeks affordable housing contributions on brownfield sites of 15 dwellings or more.

CIL

The land is situated in Charging Zone 1 in the Council's CIL Charging Schedule; this means that all new floorspace will be charged at a rate of £30/sqm for 4+ dwellings.

The estimated CIL liability is £3,254.90. This figure is indexed linked, and the final figure will be calculated on the day of the decision.

An informative can be imposed, should consent be granted, to explain the applicant's/developer's/ landowner's obligations under the CIL Regulations.

CIL is a "Local Finance Consideration" relevant to determining applications. However, in the officer's assessment, it is not a determining factor (either way) in the planning balance assessment below.

S106

Site Acceptability Matters: None.

Affordable Housing: Not applicable for this scale of development on a brownfield site.

Sustainable Development Matters: N/A as CIL liable development.

As such no S106 legal agreement is considered necessary.

EIA/HRA

EIA

Due to the scale, nature and location this development will not have significant effects on the environment and therefore is not considered to be EIA development. The development does not meet the thresholds for screening and is not in a sensitive area.

HRA

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

The application site is not within a strategic flyway/sustenance zone associated with the South Hams SAC and a formal HRA screening is not necessary in this instance as the proposed development is unlikely to have a significant effect on the South Hams SAC.

Planning Balance

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

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

Development Plans often contain policies that pull in different directions and it is sometimes difficult to come to a view whether a proposal is in accordance with the development plan "taken as a whole". Whilst the proposal is supported by policies in the Local Plan that seek to boost housing supply, there are conflicts with the historic environment (Policy SS10 of the Local Plan). Whilst the harm to the character and appearance of the Conservation Area has been assessed as being "less than substantial" it is sufficient to render the proposal not in accordance with the development plan.

As noted above, the Council has less than 5 years housing land supply and on this basis the Development Plan must be "deemed" to be out of date. At 2.17 years supply, the shortfall is serious and must be given significant weight in the planning balance. However, the proposal is for 11no. residential units, which reduces the weight that should be given to the proposal,

and this weight is considered to be moderate. Out-of-date policies can still carry weight in the planning balance, but in practice attention shifts to other material considerations, especially the Presumption in Favour of Sustainable Development which is set out in Paragraph 11(d) of the NPPF.

Paragraph 11 of the NPPF states:

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

For decision-taking this means:

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

d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [Footnote 8], granting permission unless:

i. the application of policies in this Framework that protect areas or assets of particular importance [Footnote 7] provides a strong reason for refusing the development proposed; or

ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination [Footnote 9].

The first issue is whether the application of NPPF policies related to heritage assets provides a strong reason for refusing the development.

Paragraph 210 of the NPPF states:

In determining applications, local planning authorities should take account of:

a) The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;

b) The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and

c) The desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 212 of the NPPF states:

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Paragraph 214 of the NPPF states:

Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

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

Great weight should be given to the conservation of designated heritage assets. The Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the Upton Conservation Area. However, in this case the harm identified to the designated heritage asset

of the Upton Conservation Area from the proposal is assessed as the minor end of less than substantial harm.

The public benefits in the form of the economic and social benefits include the economic growth and associated economic benefits to the construction industry from the proposed development, the proposal would also result in additional disposable income from the occupants. The proposal would provide housing where there is a lack of 5 year housing land supply and this would be located within a sustainable location. Other matters that weigh in favour include a landscaping and drainage scheme and the proposal promotes low carbon and energy efficiency measures in the building construction and promotion of electric vehicle charging points and bicycle storage.

The proposed development will result in less than substantial harm to the Upton Conservation Area, however the application site benefits from being heavily screened by existing vegetation and being sited towards the end of a private access lane.

Paragraph 215 of the NPPF indicates that proposals that result in less than substantial harm to the significance of designated heritage assets should be weighed against the public benefits of the proposal, including where appropriate securing its optimal viable use. The level of harm identified is less than the threshold that would constitute a “strong reason” for refusal under paragraph 11(d)(i) of the Framework and the accompanying Footnote 7.

Attention then turns to Paragraph 11(d)(ii) which directs decision makers to grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework taken as a whole. This can include a consideration of Development Plan policies. Particular regard should be given to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination.

On balance, the public benefits of the scheme as a whole, when weighed against the level of harm caused, are considered to justify the proposal and the proposal is considered to represent sustainable development when considering the Local Plan, Neighbourhood Plan and NPPF taken as a whole as the adverse effects of granting planning permission would not significantly and demonstrably outweigh the benefits.

Other than the less than substantial harm to the Conservation Area, there are no other adverse impacts of granting planning permission which would significantly and demonstrably outweigh the benefits of the development.

In addition, the public benefits are a material consideration which weigh in favour of granting planning permission notwithstanding conflicts with some aspects of the development plan.

Conclusions and Reasons for Decision

The relevant legislation requires that the application be determined in accordance with the statutory development plan unless material considerations indicate otherwise.

In terms of material considerations, the provision of 11no. residential units, is a significant public benefit in favour of the development where national guidance seeks to significantly boost the supply of homes. The weight afforded housing supply is not insignificant where the most recent Housing Delivery Test (December 2023) for Torbay was published as 55% (i.e. between 2019-22 there were only 55% as many completions as the number of homes required), and Torbay’s most recent housing land supply (April 2023) is that there is 2.17 years, which is a significant shortfall.

In terms of other matters that weigh in the developments favour there will be economic benefits through construction phase in terms of created jobs, and post construction in terms of local household spend within the local economy. The stated biodiversity net gain also weighs positively within the planning balance.

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 could 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 planning conditions.

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

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 (11no. residential units), when assessed against the policies in the NPPF when taken as a whole. Subject to the recommended planning conditions, the application of policies in the NPPF that protect areas or assets of particular importance do not provide a strong reason for refusing the development proposed.

Officer Recommendation

Approval: subject to;

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

Planning Conditions

1. External Materials

Prior to their installation, technical details and/or samples of the proposed exterior materials including wall finishes, roofing materials, eaves, fascias and rainwater goods 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 Policies DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

2. Windows and Doors

Notwithstanding the approved plans and details, prior to the installation of new windows and doors, the following shall be submitted to and approved in writing by the Local Planning Authority:

- Broken sections at a scale of 1:1 and elevations at a scale of 1:10, of all new windows and doors
- Reveal sections, drawn to a scale of 1:1-1:10
- Sill sections, drawn to a scale of 1:1-1:10
- Frame and door materials

The development shall then proceed in full accordance with the approved details and shall be retained as such thereafter.

Reason: In the interest of visual amenity and in accordance with Policy DE1 and SS10 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

3. Boundary Treatments

Notwithstanding the approved plans and details, 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 approved in writing by the Local Planning Authority. Once provided, the approved boundary treatment shall be maintained and retained for the life of the development.

Reason: To ensure a satisfactory completion of development in the interests of visual and residential amenity and to protect the privacy of future and neighbouring occupants in accordance with Policies DE1, SS10 and DE3 of the Adopted Torbay Local Plan 2012-2030 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

4. External Lighting

No external lighting shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, number, luminance, angle of illumination and type of each luminaire or light source and a lux diagram showing the light spill from the scheme. The lighting shall thereafter be installed, operated and maintained operated in accordance with the approved details.

Reason: To avoid harm to bats and wildlife in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

5. Surface Water Drainage

The development shall proceed in full accordance with the approved drainage details and drainage strategy and shall be fully implemented prior to the occupation of the development hereby approved. The drainage system shall then be maintained at all times thereafter to serve the development.

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 Adopted Torbay Local Plan 2012-2030 and the guidance contained in the National Planning Policy Framework.

6. Bicycle Storage

Prior to the first occupation of the development hereby permitted, the bicycle storage shown on the approved plan (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024), shall be provided in full and retained for the life of the development.

Reason: To ensure adequate parking facilities are provided to serve the development in accordance with Policies TA2 and TA3 of the Adopted Torbay Local Plan 2012-2030.

7. Bin Storage

Prior to the first occupation of the development hereby approved, the bin storage area detailed on approved plan (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024) shall be installed and made available for use. 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 Policies W1 and DE1 of the Adopted Torbay Local Plan 2012-2030.

8. Waste Management Plan

Prior to the first occupation of the development a Waste Management Plan (WMP) for the building, setting out recycling and waste collections methods which follow the waste hierarchy to ensure locally established recycling targets at the that time are met, together with measures to review and respond to evolving targets, shall be submitted to and approved in writing by the Local Planning Authority. The approved WMP shall be implemented prior to the first occupation of the building and maintained at all times thereafter as a working document and strategy for the lifetime of the development.

Reason: To ensure that the private waste collection strategy for the apartment building, which will not receive waste collection from the local authority due to the location within a building, accords with locally established recycling rates, to accord with Policies W1 and W2 of the Adopted Torbay Local Plan 2012-2030.

9. Electric Vehicle Charging Points

Notwithstanding the approved plans and details, prior to the occupation of the development hereby approved, a scheme for the insertion of 3no. electrical charging points to be located within the site shall be submitted to and approved in writing by the Local Planning Authority. Details shall include design, location, specification and a timescale for insertion prior to occupation. The agreed electrical charging point shall be thereafter maintained and retained for the lifetime of the development.

Reason: To ensure the parking provision of the new residential units is in accordance with the requirements of Planning Policy TA1, TA3 and Appendix F of the Adopted Torbay Local Plan 2012-2030.

10. Parking Provision

The residential units hereby approved shall not be occupied or brought into use until the parking areas as detailed on approved plans (ref: '4958-KEA-XX-XX-DR-A-12001-A3 P12', received 18th November 2024), have been provided in full and are available for use. The parking areas shall thereafter be permanently retained for the use of parking for the associated apartment 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.

11. Designing Out Crime

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

Reason: In the interests of crime prevention in accordance with Policy DE1 and SS11 of the Adopted Torbay Local Plan 2012-2030 and Policy TH2 of the Adopted Torquay Neighbourhood Plan 2012-2030.

12. Vegetation Clearance

No vegetation clearance or demolition works shall take place during the bird nesting season (01 March to 31 August, inclusive) unless the developer has been advised by a suitably qualified ecologist that the works will not disturb nesting birds and a record of this kept.

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

13. Ecology Report

The development shall proceed, and shall be retained thereafter, in full accordance with the mitigation and enhancement measures contained within the approved Preliminary Ecological Appraisal (ref: '5750 (Bat PRA)', received 18th November 2024).

Reason: To ensure that the development proceeds in an appropriate manner, in accordance with Policy NC1 of the Adopted Torbay Local Plan 2012-2030.

14. Biodiversity Net Gain

Prior to the first use of the development hereby approved, measures to maximise opportunities for biodiversity enhancement in and around development, in order to deliver a net gain for biodiversity, shall be submitted to and approved in writing by the Local Planning Authority. The submitted detail will recognise ecological features lost and include a measurable guide to demonstrate a net gain for biodiversity.

The approved measures shall be incorporated within the development prior to the developments first use and maintained thereafter.

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

15. Sustainability

The construction of the development hereby approved shall be carried out in accordance with the details contained within the approved 'Torbay Sustainability Checklist' (ref: 'P-2024-0429-2' (Sustainability), received 26th June 2024). All measures contained within the approved document to limit carbon emissions shall be implemented prior to first occupation of the development and shall be retained for the lifetime of the development.

Reason: In interests of low carbon development and in accordance with Policy SS14 and ES1 of the Adopted Torbay Local Plan 2012-2030.

16. Construction/Demolition Management Plan

The development shall proceed in full accordance with the submitted and approved Construction Method Statement.

Reason: To safeguard the Local Planning Authority's rights of control over these details to ensure that the construction and demolition works are carried out in an appropriate manner to minimise the impact on the amenity of neighbouring uses and in the interests of highway safety in accordance with Policies TA1, TA2 and DE3 of the Adopted Torbay Local Plan 2012-2030.

17. Tree Protection Plan and Arboricultural Method Statement

The development hereby approved shall be carried out in full accordance with the approved Arboricultural Method Statement and Tree Protection Plan (refs: '06084 TPP 04.11.2024 Rev A' and '06084 AMS 08.11.2024 Rev A', received 19th December 2024).

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

18. Arboricultural Statement

The development hereby approved shall be carried out in accordance with the methodology and approach of the approved Arboricultural Statement (ref: '06084 (Arbo. Statement)', received 19th December 2024).

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

19. Arboricultural Findings, Evidence, Mitigation and Remediation

In the event that root pruning causes damage to the existing trees, which was not previously identified, is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless mitigation and remediation measures have been first agreed in writing with the Local Planning Authority. An investigation shall be undertaken and where mitigation and remediation are necessary, a revised Arboricultural Statement shall be submitted to and approved in writing by the Local Planning Authority.

The revised Arboricultural Statement shall thereafter be implemented as approved. The requirements of this condition shall also apply if any further damage to the existing trees arises during the development, which requires a reconsideration of the approved Arboricultural Statement.

Reason: To ensure that all existing trees and hedges on the site and adjoining sites are adequately protected while development is in progress, in accordance with Policies NC1 and C4 of the Adopted Torbay Local Plan 2012-2030 and Policy TE5 of the Adopted Torquay Neighbourhood Plan 2012-2030.

20. Landscaping

Prior to first occupation of the development hereby approved a hard and soft landscape scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include the following details:

- a. Size, species and positions for new trees and plants;
- b. Surfacing materials (including roadways, drives, patios and paths);
- c. Any retained planting; and
- d. A detailed programme of implementation.

Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with others of a similar size and the same species. All hard landscaping works shall be permanently retained thereafter in accordance with the approved details.

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

21. External Amenity Spaces

The development hereby approved shall not be occupied or brought into use until the outdoor amenity spaces, including balconies, detailed on the approved plans (refs: '4958-KEA-XX-XX-DR-A-12001-A3 P12', '4958-KEA-ZZ-ZZ-DR-A-22000 P10 (GF, LGF)' and '4958-KEA-ZZ-ZZ-DR-A-22001-A3 P7 (L01, L02, Roof)' received 18th November 2024) have been provided in full. The outdoor amenity spaces and balconies shall thereafter be maintained and retained for the use of the development's occupiers for the life of the development.

Reason: In the interests of residential amenity and in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

22. Removal of Permitted Development Rights C3 to C4

Notwithstanding the provisions of Class L of Part 3 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking or re-enacting that Order with or without modification), the residential use of any one or more units hereby approved shall not be changed to a House in Multiple Occupation, 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 the living environment conditions in this locality in accordance with Policies DE1, DE3, H4 and SS11 of the Adopted Torbay Local Plan 2012-2030.

23. Removal of Permitted Development Rights Schedule 2, Part 2, Class A

Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) 2015, Article 3, Schedule 2, Part 2, Class A, no other means of enclosures shall be erected within the external areas of this development, 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 and Policy TH8 of the Adopted Torquay Neighbourhood Plan 2012-2030.

24. Obscure Glazing

Prior to the first occupation of the coach house hereby approved, the ground floor, hallway window in the eastern flank elevation of the development shall be fitted with obscure glazing to Pilkington level 4, or an equivalent standard. This window shall be fixed shut unless opening parts are located higher than 1.7m above finished floor level or they are fitted with a 100mm opening restrictor. The window shall thereafter be permanently retained in that condition for the lifetime of the development.

Reason: In the interests of privacy of the neighbouring properties, in accordance with Policy DE3 of the Adopted Torbay Local Plan 2012-2030.

25. Contamination

In the event that contamination which was not previously identified is found at any time when carrying out the approved development, it shall be reported in writing immediately to the Local Planning Authority and further development works shall cease unless alternative arrangements have been first agreed in writing with the Local Planning Authority. An investigation and risk assessment shall be undertaken and where remediation is necessary, a revised remediation scheme shall be submitted to and approved in writing by the Local Planning Authority. The revised scheme shall thereafter be implemented as approved. The requirements of this condition shall also apply if other circumstances arise during the development, which require a reconsideration of the approved remediation scheme.

Reason: For the protection of controlled waters from contaminated discovered during demolition or construction and in the interests of public health and the natural environment in accordance with Policy ER3 of the Adopted Torbay Local Plan 2012-2030, and guidance contained within the National Planning Policy Framework.

Informative(s)

Positive and Proactive

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, where possible, relevant planning concerns have been appropriately resolved. In this instance the Council has concluded that this application is not acceptable for planning approval for the reasons stated.

Biodiversity Net Gain

The effect of paragraph 13 of Schedule 7A to the Town and Country Planning Act 1990 is that planning permission granted for development of land in England is deemed to have been granted subject to the condition (biodiversity gain condition) that development may not begin unless:

- (a) a Biodiversity Gain Plan has been submitted to the planning authority, and
- (b) the planning authority has approved the plan.

There are statutory exemptions and transitional arrangements which mean that the biodiversity gain condition does not always apply. These are set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 and The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024.

Based on the information provided to determine the application this permission is considered to be one which will not require the approval of a biodiversity gain plan before development is begun because one or more of the statutory exemptions or transitional arrangements is/are considered to apply.

Relevant Policies

Development Plan Relevant Policies

- SS1 - Growth Strategy for a Prosperous Torbay
 - SS3 - Presumption in Favour of Sustainable Development
 - SS10 - Conservation and the Historic Environment
 - SS11 - Sustainable Communities
 - SS12 - Housing
 - SS13 - Five Year Housing Land Supply
 - SS14 - Low Carbon Development and Adaption to Climate Change
 - TA1 - Transport and Accessibility
 - TA2 - Development Access
 - TA3 - Parking Requirements
 - C4 - Trees, Hedgerows and Natural Landscape Features
 - H1 - Applications for New Homes
 - DE1 - Design
 - DE3 - Development Amenity
 - DE4 - Building Heights
 - ER1 - Flood Risk
 - ES1 - Energy
 - W1 - Waste Hierarchy
 - NC1 - Biodiversity and Geodiversity
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- TS1 - Sustainable Development
 - TS4 - Support for Brownfield and Greenfield Development
 - TH8 - Established Architecture
 - TH9 - Parking facilities
 - TE5 - Protected species habitats and biodiversity
 - TH2 - Designing Out Crime
 - THW4 - Outside Space Provision
 - THW5 - Access to Sustainable Transport